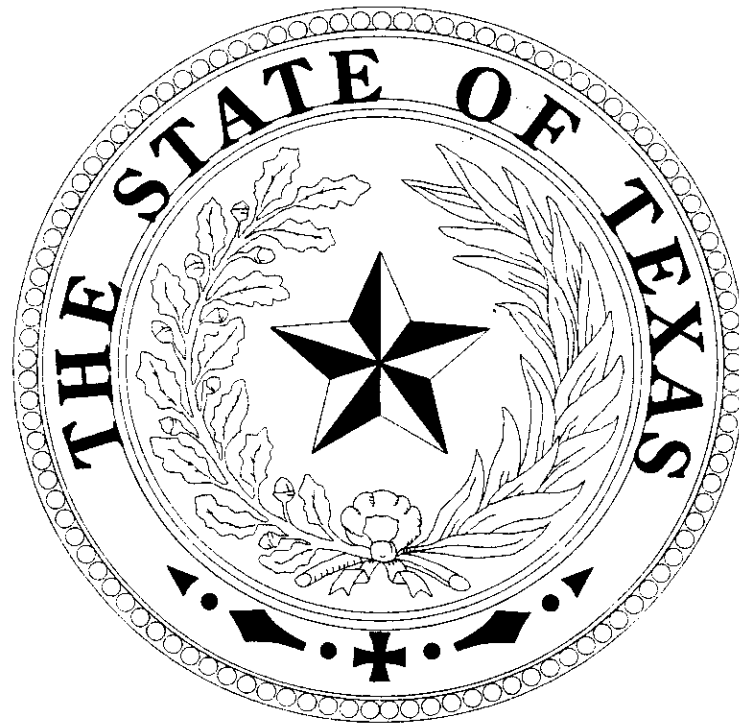


Thursday Morning  
February 25, 2010  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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# ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

## QUESTION 1

John and Susan married in 1977 and separated in 2007. John filed for divorce in 2008. At the divorce trial, the evidence showed the following:

- Susan's minimum expenses were \$1,700 per month.
- Susan was a high school graduate. Before the separation, Susan had not worked outside the home for over twenty years, and John was the only source of income.
- Since the separation, Susan had sought employment and had obtained a job at \$6.50 per hour, but only worked for a week because, as she testified, she was physically unable to do the work.
- Susan testified she had a deteriorating disc in her lower back and that she suffered from depression.
- John testified he believed Susan could support herself; that she could cook, perform household chores, and drive.
- Susan's mother testified that Susan suffered stress and frustration when she had to perform her work too quickly or under pressure.
- Susan did not have any separate property.
- Both Susan and John admitted to several episodes of marital infidelity each had during the marriage.

The trial court awarded Susan 75% of the community estate. Her share consisted of a savings account worth \$10,000 at the time of trial; a 2002 motor vehicle worth \$5,000; a house worth \$90,000; and all clothing, jewelry, and other personal effects in Susan's possession.

Over John's strenuous objection, the trial court also ordered John to pay spousal maintenance of \$1,000 per month until further order of the court.

1. **Did the trial court err in ordering John to pay any spousal maintenance at all? Explain fully.**
2. **Did the trial court err in ordering John to pay spousal support for an indefinite period? Explain fully.**

**Answer the NEXT question in the GRAY answer book.**

# ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

## QUESTION 2

Cindy and Michael married in 2003, and Cindy filed her divorce petition in 2008. After a bench trial, the trial court entered a decree dividing property valued at \$1,500,000. The court characterized a certificate of deposit in Michael's name as community property, and awarded half of it to Michael and half of it to Cindy. The court also awarded Cindy \$25,000 damages as a result of an assault and battery by Michael.

The evidence at trial established that Michael had purchased the certificate of deposit in his name prior to the marriage and that it had a pre-marriage balance of \$50,000. At the time of trial, the balance was \$60,000, the additional \$10,000 being interest that had accrued during the marriage.

Regarding the award of damages for assault and battery, Cindy testified that Michael had grabbed her and choked her during an argument. Michael testified that he reached for Cindy after she cursed at him, but he denied choking her. The investigating police officer testified that Cindy's face and neck were red, but he did not see any specific hand marks on her neck. Cindy's treating physician, who saw Cindy three days after the event, testified that Cindy had marks on her throat at the time he saw her. On cross-examination, the physician admitted that he was a friend of Cindy.

1. **Did the trial court commit reversible error by awarding the certificate of deposit half to Cindy and half to Michael? Explain fully.**
2. **Did the trial court commit reversible error by awarding Cindy damages for assault and battery by Michael? Explain fully.**

**Answer the NEXT question in the BLUE answer book.**

## **ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK**

### **QUESTION 3**

Dale, a widower, owned Greenacre located in Henderson County, Texas. In December 2008, Dale and Tom entered into a three-year written lease (the "Surface Lease") under which Greenacre was leased to Tom for storage of trucks and other equipment. In the Surface Lease, Dale granted to Tom exclusive possession of the surface of Greenacre, and Dale waived any right to use the surface for any purpose during the term of the Lease, including use for the exploration for and production of oil, gas or other minerals. The Surface Lease was promptly recorded with the Henderson County Clerk.

In January 2009, Dale died. Dale bequeathed to his sister, Sue, a 1/8<sup>th</sup> royalty interest and all executive rights to execute oil and gas leases for Greenacre. Dale bequeathed to Nora, Sue's daughter, all other interests in Greenacre not bequeathed to Sue.

On Nora's birthday soon after Dale's death, Sue told Nora that she was making a gift to Nora of the executive rights in Greenacre that Sue had received from Dale. At the time, Sue intended to have her lawyer prepare a document that could be recorded to provide evidence of the gift, but she forgot to do so.

In August 2009, Nora signed an oil and gas (the "Mineral Lease") covering Greenacre with Athens Oil Company ("Athens"). Nora told Athens that the Mineral Lease did not need Sue's signature on the document because Sue only owned a royalty interest in Greenacre.

Athens wanted to purchase Sue's royalty interest so it mailed to Sue a \$500 check. The cover letter from Athens asked only that Sue sign and return "the enclosed document." The document had no descriptive heading, and it contained words in small print purporting to convey to Athens Sue's royalty interest in the oil, gas and other minerals on Greenacre. Sue was aware of the Mineral Lease signed by Nora, so she assumed that the check was a royalty payment from Athens. Without reading the document, Sue signed it, returned it to Athens, and cashed the check. Sue later examined her copy of the document she had signed and discovered for the first time that it purported to convey her royalty interest to Athens. Sue did not wish to rescind the conveyance but, instead, wanted to sue Athens for damages. Athens intends to begin drilling activities on Greenacre.

- 1. Can Sue claim that the Mineral Lease was not effective, and, if so, on what bases? Explain fully.**
- 2. What rights, if any, can Tom assert to preclude Athens from conducting drilling activities on the surface of Greenacre? Explain fully.**
- 3. What prerequisites must Sue satisfy before bringing suit against Athens, is it likely that she can prevail in the suit, and, if so, what recovery can she obtain? Explain fully.**

**Answer the NEXT question in the PINK answer book.**

## **ANSWER QUESTION 4 IN THE PINK ANSWER BOOK**

### **QUESTION 4**

Martha, a single person, owned Whiteacre, a ranch located in Hill County, Texas, in fee simple. In April 2006, Martha conveyed Whiteacre to her son, Stan, by a properly signed and acknowledged gift deed. The deed recited that, "Martha gives and grants Whiteacre to Stan, for as long as Stan maintains the family chapel on Whiteacre. If Stan ever destroys the family chapel, Whiteacre shall automatically revert to Martha, without any further act by Martha." The deed was properly recorded in the Hill County Real Property Records in April 2006.

In June 2007, to expand the ranch operations, Stan purchased Redacre, a tract adjacent to Whiteacre, and he demolished the family chapel. Although Stan paid for Redacre with cash that was community property belonging to him and his wife, Eve, the warranty deed that conveyed Redacre to him named only Stan as the grantee. This deed to Redacre showing Stan as the sole owner was properly recorded in the Hill County Real Property Records.

In December 2008, Stan and Eve divorced in Falls County, Texas. In dividing the marital property, the court awarded Redacre entirely to Eve. Nothing was recorded in the Hill County land records concerning the divorce or Eve's ownership of Redacre.

In January 2009, Martha learned of the destruction of the family chapel, took possession of Whiteacre, and leased it to Pete. At the same time, Pete, unaware of the divorce proceedings in Falls County, offered to buy Redacre from Stan. Stan agreed to sell Redacre to Pete but told Pete that he would only give him a quitclaim deed. Pete paid a discounted price for Redacre and received the quitclaim deed, which recited that Stan "releases, remises and quitclaims to Pete all of Stan's right, title and interest in and to Redacre."

Eve, who wanted to conduct ranching operations on Redacre, demanded that Pete vacate Redacre. Pete refused, asserting that he owns Redacre.

- 1. Was Martha entitled to lease Whiteacre to Pete? Explain fully.**
- 2. What are Eve and Pete's arguments in support of their respective claims of superior title to Redacre, and who will likely prevail? Explain fully.**

**Answer the NEXT question in the DARK GREEN answer book.**

# ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

## QUESTION 5

Patty purchased a big screen TV on a monthly payment credit plan from Big Box Electronics ("Big Box") in San Antonio. Patty made monthly payments until she lost her job. Big Box hired Dubious Debt Collections, Inc. ("Dubious") to collect the money owed by Patty. Dubious' agent, Rocky, made numerous phone calls to Patty's home phone, including calls early in the morning and late at night, but could not reach Patty. Rocky left several threatening messages on Patty's answering machine.

Frustrated with his inability to contact Patty directly, Rocky contacted Patty's mother, Marge, by phone, and told her that Patty owed his company a great deal of money and was shirking her financial obligations. He told Marge that if she refused to help him contact Patty, he would take immediate action to have Patty arrested for failing to pay her debts. Upon hearing this, Marge became so upset that she fainted, hitting her head on the coffee table. Her injuries required medical attention in the emergency room.

Larry, Big Box's in-house collector, became impatient when Dubious' debt collecting methods proved unsuccessful and promptly fired Dubious. Larry located Patty and told her during a phone call that Big Box would file a lawsuit against her if she failed to pay the amount owed. Additionally, although Larry knew that Patty's monthly payment agreement did not provide for collection of any amounts over and above the consumer debt, Larry told Patty that she would have to reimburse Big Box for the fees the company had incurred in hiring Dubious to collect on the debt. Patty felt so intimidated by the call from Larry that she suffered anxiety attacks.

Patty and Marge retained Ann, an attorney, to advise them on their legal options.

1. **What consumer law violations, if any, did Dubious and Rocky commit in their efforts to collect from Patty? Explain fully.**
2. **What consumer law violations, if any, did Larry and Big Box commit in their efforts to collect from Patty? Explain fully.**
3. **What remedies, if any, are available to Patty and Marge for any such violations? Explain fully.**

**Answer the NEXT question in the TAN answer book.**

# ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

## QUESTION 6

Harry and Wanda had one child, Amy, and lived in Corpus Christi, Texas during their marriage. They divorced in 1998, and Harry moved to Amarillo. After the divorce, Harry had no further contact with Wanda or Amy.

Wanda married Steve in 2000 and they raised Amy together until 2006, when Wanda was killed in an automobile accident. Shortly after Wanda's death, Steve filed an application with the Probate Court to be appointed the permanent guardian of Amy's person and estate. Harry filed an answer to Steve's guardianship application and filed his own application to be appointed Amy's permanent guardian.

During the hearing, the court received the following evidence:

- A letter signed by Wanda declaring that, in the event of her death, she “hereby appoints Steve as Amy's guardian.”
- A letter signed by Amy, who was now 12 years old, stating that she wanted Steve to be her permanent guardian and did not want to live with Harry.
- Testimony that Steve had been an attentive stepfather to Amy and was the owner of a successful business.
- Testimony that Harry was a high school dropout, had two felony convictions, was unemployed, and was burdened by a large amount of debt.

Harry argued that the Texas Probate Code mandates that he be appointed Amy's guardian because, as Amy's only surviving parent, there was a presumption that his appointment as Amy's guardian was in her best interest.

The Court appointed Steve as permanent guardian of Amy's person and estate.

1. **Did Wanda's letter have the effect of requiring the court to appoint Steve as Amy's guardian? Explain fully.**
2. **Could the court properly consider Amy's declaration expressing her desire that Steve be her permanent guardian? Explain fully.**
3. **Did the court err in appointing Steve rather than Harry as Amy's guardian? Explain fully.**

**This concludes the morning portion of the Texas Essay exam.**