

Thursday Morning
February 26, 2009
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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**If WRITING, answer Question 1 in the GOLD answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 1

In 2001, Brad and his wife, Cora, purchased Greenacre, a 100-acre tract of land in Collin County, Texas. They immediately began to live in the home on Greenacre. Upon her uncle's death in 2004, Cora inherited Whiteacre, a 50-acre tract of land also located in Collin County, Texas. Greenacre and Whiteacre were within a few miles of each other and were not within the city limits or extraterritorial jurisdiction of any town. Brad and Cora farmed both Greenacre and Whiteacre as their primary source of income.

In 2005, Ace Oil proposed favorable terms to Cora, and without consulting Brad, Cora signed an oil and gas lease with a three-year primary term describing both Greenacre and Whiteacre.

In 2006, Cora inherited her parents' home (the "Denton Property") located in the city of Denton in Denton County, Texas. In 2007, Cora borrowed \$10,000 from First Bank to pay gambling debts. To secure the loan, Cora granted First Bank a Deed of Trust lien on the Denton Property. The Denton Property was rented to a series of tenants.

On November 1, 2008, Cora leased the Denton Property to Toby. Toby and Cora signed a one-year lease, and Toby paid the \$800 November rent and a \$700 security deposit. On November 6, 2008, a lightning strike in the yard at the Denton Property damaged a water line so that no water could flow from the water main to the home. The damage was a casualty loss covered by Cora's insurance. On November 7, Toby gave immediate written notice of the damage to Cora. On November 15, Toby gave written notice to Cora that he was terminating the lease, and he moved out, leaving the home in excellent condition. Cora did not begin repairs until she received insurance proceeds on November 30. Toby demanded that Cora pay him \$500 in damages because of her delay in making the repairs. In addition, Toby demanded a full refund of the November rent and security deposit.

After Cora repaired the water line, Brad and Cora moved to the Denton Property. After moving to the Denton Property, Cora defaulted in payment of the loan from First Bank. First Bank notified Cora that it intended to begin foreclosure proceedings. Cora told First Bank that it did not have a valid lien because the Denton Property was her homestead.

1. In 2007, did Ace Oil obtain a valid oil and gas lease as to Greenacre and Whiteacre? Explain fully.
2. Did Toby properly terminate the Denton Property lease, and is he entitled to recover the damages, rent and security deposit that he has demanded? Explain fully as to each.
3. Will Cora prevail in her assertion of the invalidity of First Bank's lien? Explain fully.

Answer the next question in the GRAY answer book.

**If WRITING, answer Question 2 in the GRAY answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 2

In 1955, Able Inc. (“Able”) purchased Blackacre, a 200-acre tract of land in Chambers County, Texas, from the seller, Rex, Inc. (“Rex”). Rex reserved a one-eighth royalty interest in any and all oil, gas, and other minerals.

In 1956, Able signed an oil and gas lease that leased Blackacre to Joe’s Oil Co. (“Joe’s Oil”). Joe’s Oil drilled a producing oil well and made correct royalty payments to Able and Rex until production ended in 1958. Joe’s Oil then abandoned the well without properly plugging it.

In August 2008, Able signed an oil and gas lease of Blackacre to New Oil Co. (“New Oil”). In September 2008, Able sold an 80-acre tract out of Blackacre to Gloria and retained the other 120 acres. The warranty deed to Gloria contained an exception to exclude Rex’s one-eighth royalty interest. However, the warranty deed to Gloria did not contain a reservation of any interest in the oil and gas by Able.

In November 2008, New Oil discovered the abandoned well located on the 120-acre tract retained by Able. As required by law, New Oil reported to the Railroad Commission that the well had not been properly plugged and might be a pollution hazard. Joe’s Oil no longer exists, and its sole shareholder, Joe, cannot be located.

In December 2008, New Oil drilled a producing oil well on Gloria’s 80-acre tract. In January 2009, New Oil sent a division order to Rex. Rex agreed that its royalty share was properly listed in the division order, but refused to sign the division order because it included a statement requiring Rex to acknowledge responsibility for plugging the abandoned well.

Able and Gloria each claim to be entitled to the remaining share of the royalty payment due under the lease after payment to Rex of Rex’s share. New Oil has not made any royalty payments to Rex, Able or Gloria.

1. Can the Railroad Commission properly require Able, Rex or New Oil to plug the abandoned well? Explain fully.
2. What are New Oil’s responsibilities to Rex once Rex refuses to sign the division order? Explain fully.
3. To whom should New Oil make the royalty payments for the well on Gloria’s 80-acre tract? Explain fully.

Answer the next question in the BLUE answer book.

**If WRITING, answer Question 3 in the BLUE answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 3

Jane and Bill married in 1970. Together they had one child, Sue. Shortly after Sue was born in 1975, Jane was committed to a mental hospital. After spending five years in the mental hospital, Jane underwent a frontal lobotomy and was released from the mental hospital in 1980. From then until Bill and Jane divorced in 2000, Sue, embarrassed by her mother's mental condition, shunned and treated Jane with disrespect.

After the divorce, Jane moved to Houston in 2000, where she lived with her brother, Marvin, who cared for her, until her death in 2008. In 2005, Jane had executed an attested self-proved will, which devised all of her estate worth several million dollars to her brother, Marvin. Jane's will stated that she did not want her daughter, Sue, to ever have any part of her estate because of the way Sue had treated her.

After Jane died in 2008, Marvin filed Jane's will for probate. Sue filed a will contest asserting two grounds: (i) that Jane lacked testamentary capacity to execute a will in 2005 and (ii) that Jane had been unduly influenced by Marvin to write her will leaving nothing to Sue.

In support of her grounds of contest, Sue presented the following evidence:

- That Jane lived with Marvin from 2000 to the time of her death in 2008 and that Marvin handled all of Jane's personal health needs and financial affairs;
- The testimony of a home health care nurse, who visited Jane once a week throughout the period of 2000-2008, that Jane always seemed confused and appeared unable to take care of herself;
- The testimony of a receptionist employed by the veterinarian who cared for Jane's dog, that during Jane's visits to the veterinary clinic Jane seemed to be in a state of confusion;
- The testimony of Reba, Sue's teenage daughter, that when she last saw her grandmother, Jane just before her death, Jane did not appear to have the normal range of emotions and the ability to recognize Reba; and
- Medical records indicating that, in the years since her release from the hospital, Jane periodically suffered debilitating seizures and, as a consequence, would lapse into extended periods of serious confusion.

In rebuttal, Marvin presented the following evidence:

- His testimony confirming that he had cared for Jane from 2000 until her death and that he did so entirely without cost to Jane and without any assistance or expression of interest from Sue; that, as long as Jane regularly took her medications, she was able to function fully aware of her affairs and surroundings; that Jane had taken her medications regularly in the period leading up to and including the day she executed her will; that, when Jane asked him to find someone to draft a will for her, he recommended the lawyer who drafted it, and, aside from that, he neither suggested the contents of the will nor who should be the beneficiary;
- The testimony of the witnesses who subscribed Jane's will and of the notary public before whom Jane signed her will that Jane appeared to know that she was signing her will and that Jane said she knew she was going to "die rich" and was "glad Marvin would get it all;" and that in the years they had known Jane since her release from the hospital, Jane had never appeared to be confused as long as she was taking her medications; and
- The testimony of the physician who treated Jane for the periodic seizures referred to in the

medical records that the seizures happened only after prolonged periods of Jane failing to take her medications and that, upon resumption of her medication regimen, she would regain lucidity; the physician also gave his opinion that during periods of lucidity Jane was fully capable of making a will.

How should the court rule on each ground of Sue's will contest, and to whom should Jane's estate be distributed? Explain fully.

Answer the next question in the PINK answer book.

**If WRITING, answer Question 4 in the PINK answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 4

Frank, a Texas widower, died in 2007, survived by his two adult children and only heirs, Linda and David. Frank had executed a valid attested self-proved will in 2003, which left \$1,000 to David and the remainder of his multi-million dollar estate to Linda. Linda filed Frank's 2003 will for probate.

Soon after Linda commenced the probate proceedings, David received the following information from Jack and Edward, two close friends of Frank: In late 2006, during a visit with Frank at his sick-bed, Frank told them he felt remorseful about how he had written his 2003 will. Frank showed Jack and Edward a document, which they recognized as being signed by Frank and entirely in his own handwriting. Frank said he had written this document earlier in the day, and he read it aloud to them. They remembered that the words that Frank read to them stated that Frank was "revoking his prior will" and that his estate was to be "shared 50-50 between David and Linda." Jack and Edward said they saw Frank put that document in the top desk drawer in his bedroom.

After Frank's death in a nearby hospital, Linda was the only person who had access to Frank's house. On the day of Frank's death, she was seen leaving the house after having searched through Frank's belongings. Later, when David was able to enter the house, he looked in the desk drawer and found nothing. When David confronted Linda with the information that he had received from Jack and Edward, Linda admitted that Frank had written such a document, but that Frank had torn it up in her presence.

David filed an application in the probate court alleging the existence of the handwritten document and seeking to have it probated as Frank's last will and testament.

1. What must David prove in order to have Frank's handwritten document probated as Frank's last will and testament? Explain fully.
2. How should Frank's estate be distributed? Explain fully.

Answer the next question in the DARK GREEN answer book.

If **WRITING**, answer Question 5 in the **DARK GREEN** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 5

Shirley and Robert, Texas residents, had three children before divorcing in 1999. In the divorce decree, Robert was ordered to pay a total of \$1,000 per month in child support. He never paid any child support.

Robert married Marcia in 2000. They also resided in Texas. Their community property consisted of Robert's earnings, jointly held savings accounts, a jointly held portfolio of securities, all acquired with Robert's earnings, and a pension plan benefit that Robert received from his employer.

In 2008, Robert and Marcia filed for divorce. At the same time, Shirley filed a motion in her old divorce proceedings to require Robert to pay all child support arrearages (which, by this time, amounted to over \$100,000) out of the community property of Robert and Marcia's marriage. The trial court appointed a receiver and ordered Robert to turn over all of Robert and Marcia's community property, pending resolution of Shirley's motion.

Robert and Marcia objected to the court's receivership order and made the following contentions:

1. that, because the three children of Robert's marriage to Shirley are now over 18 years of age, the court has lost jurisdiction and Robert is no longer responsible for the child support arrearages;
2. that, in any event, Robert's earnings, the savings accounts, and the portfolio of securities are not subject to Robert's child support obligation, if any; and
3. that Marcia's community share of Robert's retirement benefits is not subject to Robert's child support obligations, if any.

How should the court rule on each of these contentions? Explain fully.

Answer the next question in the TAN answer book.

**If WRITING, answer Question 6 in the TAN answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 6

Carmen and Alex were married in Texas in 1968. Carmen filed for divorce in 2005, alleging insupportability, adultery, and cruel treatment. The court heard the following evidence in a bench trial in 2008:

Both spouses worked outside the home during the marriage. Carmen had worked for thirty-five years and had taken an early retirement two years before trial. Alex was still employed at the time of trial. Since her retirement, Carmen had devoted her time to household matters and had not sought other employment or job training.

At the time of trial, the community estate contained a number of real and personal property assets including the marital home, a rental property, retirement and savings accounts, two automobiles and household furnishings. The total value of the community estate, less debt, was \$500,000.

At the trial, Carmen testified that she filed for divorce, in part, because of Alex's adultery. Throughout discovery and continuing at trial, Alex denied having committed adultery. However, both videotape and live witness testimony confirmed that Alex had, in fact, committed adultery.

The trial court awarded Carmen 60% of the community estate, a value of \$300,000. Carmen contends, however, that Alex's adultery and his consistent denials entitled her to an even more unequal division than ordered by the court.

Carmen also sought an award of spousal maintenance. She argued that, during their many years of marriage, Alex was the dominant provider, developing his career, while Carmen worked at low-paying jobs. Carmen proved that her monthly expenses exceed her available retirement income and that she could not meet her reasonable minimum needs with just her monthly retirement check. The trial court denied her request for spousal maintenance and for a greater share of the community property.

1. Did the trial court err in denying Carmen's request for a greater share of the community property? Explain fully.
2. Did the trial court err in denying Carmen's request for spousal maintenance? Explain fully.

This concludes the morning portion of the Texas Essay exam.