

Thursday Morning
February 28, 2008
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

Jack, a Texas resident, executed a valid attested will in 1993, which appointed his brother, Bill, as the independent executor of his will. Jack devised his entire estate, which consisted of more than \$2,000,000, to Bill. Although Jack had married and divorced twice, there were no children born in wedlock or adopted during either marriage.

Jack died in 2005, at which time he was unmarried. While gathering Jack's personal belongings after Jack's death, Bill discovered among them a life insurance policy on Jack's life in the amount of \$50,000, which named Tim as the beneficiary and on which the premium was fully paid.

After Bill filed Jack's will for probate in 2006, Sue, as next friend of Tim, a minor born in 2000, filed a will contest alleging that Tim was the natural child of Jack. Sue alleged that Tim, as a pretermitted child, was entitled to inherit intestate all of Jack's estate, because at the time of Jack's death, Jack was unmarried and had no other children.

Evidence at the will contest trial established: (a) there had been a long standing relationship between Jack and Sue even though Sue was married; (b) Jack had never mentioned this relationship to anyone, including Bill; (c) even though Jack's name did not appear on Tim's birth certificate as his father, genetic testing had established conclusively that Jack was Tim's father; and (d) Tim was the person named as the beneficiary in the life insurance policy Bill had found.

How should Jack's estate be distributed? Explain fully.

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

Fred executed a valid attested will, which named his brother Ken as independent executor. At the time of execution of his will, Fred was married to Wilma. No children were born or adopted of the marriage of Fred and Wilma. Fred had two sisters, Jackie and Ann.

Fred devised his estate in his will as follows:

“I hereby devise a life estate in my estate, both real and personal, to my wife, Wilma, and subject to this life estate, I leave all the rest, residue and remainder of my estate, both real and personal, in equal shares to the children of my sisters, Jackie and Ann.”

At the time Fred executed his will, Jackie had twin adult sons, Mike and Ike. Ann had one adult son, Tom. Mike died in 2004 after a lengthy illness leaving one child, Sarah. Jackie adopted a baby daughter named Erika in 2005. Fred died in 2006, and Wilma died a few months later. They were both survived by the following individuals:

- Fred’s sister, Jackie;
- Jackie’s son, Ike;
- Jackie’s adopted daughter, Erika;
- Jackie’s granddaughter, Sarah;
- Fred’s sister, Ann; and
- Ann’s son, Tom.

Ken filed Fred’s will for probate in 2007.

1. **Who is entitled to share in the remainder of Fred’s estate? Explain fully.**
2. **How is Fred’s estate to be distributed? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

Brenda owned a home in Victoria County, Texas. In September 2007, Brenda entered into a written contract with Karl for the construction of a garage and workshop at her home for \$50,000. The contract provided that Brenda would pay the entire \$50,000 within ten (10) days after completion.

Also in September 2007, Karl and Sandy entered into a written subcontract for Sandy to furnish and install cabinets and perform the work needed to finish out the interior of Brenda's workshop for \$10,000. The subcontract provided that \$9,000 was to be paid to Sandy within ten (10) days after Sandy's work was completed and that the remaining \$1,000 was to be withheld and paid to Sandy 35 days after the completion of the entire garage and workshop project. Sandy commenced the interior work on October 1, 2007.

Thereafter, the following sequence of events occurred in 2007:

- On October 15, Sandy sent a statutory notice of the subcontract by certified mail to Brenda and Karl. This notice correctly stated that under the subcontract between Karl and Sandy, a ten percent (10%) retainage of \$1,000 was deferred until 35 days after the completion of the entire project.
- On October 30, Sandy completed his work on the cabinets and interior of the workshop.
- On November 5, Karl paid Sandy \$7,000.
- On November 15, Sandy sent Brenda and Karl notice by certified mail that Karl owed Sandy \$2,000, which was past due, in addition to the \$1,000 retainage as explained in the October 15 letter. This letter complied with all statutory requirements, including notice to Brenda that Brenda could be personally liable or her home could be subject to a lien for any balance due Sandy unless Brenda withheld payment to Karl in an amount sufficient to pay the balance owed to Sandy or, if Brenda failed to withhold the 10% statutory retainage, from the amount due under her contract with Karl.
- On November 20, Karl completed the entire project. He assured Brenda that he would settle up with Sandy, so, based on that assurance, Brenda paid Karl \$49,500, withholding the last \$500 "just in case."

Karl failed to pay Sandy any more money.

1. **What actions should Brenda have taken to protect herself from claims by Sandy? Explain fully.**
2. **In December 2007, what claims against Brenda or her home, if any, is Sandy entitled to assert? Explain fully.**
3. **What should Sandy do in a timely manner to preserve any lien claims? Explain fully.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Greg owned in fee simple a tract of land of approximately 200 acres in Wharton County, Texas. He conveyed to the County a 60-foot-wide easement on which the County had constructed a public road. The road ran east and west across Greg's tract, bisecting the tract into the North Ranch and the South Ranch.

Greg sold the North Ranch to Ned and the South Ranch to Sarah and conveyed both in fee simple by separate warranty deeds, each of which described the parcel by metes and bounds and included "all rights and appurtenances thereto." The metes and bounds descriptions for the North and South Ranches described the parcels each as abutting the outer edges of the County road but did not include any part of the actual roadbed. No mineral reservations were included in the warranty deeds. The deeds were properly recorded in the Wharton County real property records.

In March 2007, Ned executed an oil and gas lease with Ace Oil with a primary term of one year covering the North Ranch. The lease with Ace Oil contained precisely the same description as that in the deed Ned had received when he bought the land from Greg. Ace Oil's lease included a provision stating that it also covered "all land owned by Ned, if any, contiguous or adjacent to or adjoining the herein described tract."

In April 2007, Sarah executed an oil and gas lease with Jumbo Oil covering the South Ranch. The lease with Jumbo Oil contained precisely the same description as that in the deed Sarah had received when she bought the land from Greg. The Jumbo Oil lease stated that it was for a term of two years from April 1, 2007 and as long thereafter as oil, gas or other minerals were produced. Under the Jumbo Oil lease, if production was not begun within one year of the date of the lease, Jumbo Oil could extend the lease for another year, without production, by payment of \$2,000 as a delay rental.

Jumbo Oil drilled an oil well in January 2008, but its production was so poor that it was unclear whether the well would produce in paying quantities or whether Jumbo Oil should abandon it.

- 1. What rights, if any, do Ned, Sarah, and Ace Oil have in the land and minerals beneath the public roadbed? Explain fully**
- 2. What is the standard by which it is determined whether Jumbo Oil's well is considered to be producing in paying quantities? Explain fully.**
- 3. What should Jumbo Oil do to preserve its rights under the lease? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

In 2005, Kim, a 22-year-old resident of New Mexico, prepared and filed Articles of Incorporation with the Texas Secretary of State to form Abby Corp, a Texas business corporation. Kim was engaged in the business of raising thoroughbred racing horses in New Mexico and selling them in Texas. Her primary intent and purpose was to incorporate to avoid the risk of personal liability for debts and liabilities incurred in that business. Kim was the only incorporator signing the Articles of Incorporation, and she was the only director named in the Articles of Incorporation. The Articles of Incorporation provided that shares of the stock would be limited to 1000 shares of non-par value stock.

After the Secretary of State issued a Certificate of Incorporation, Kim, without notice of the organizational meeting and without keeping minutes, purported to elect herself sole director as well as President and Secretary, and directed that the entire 1000 shares of stock be issued by the corporation to herself in return for \$1000 cash, which Kim paid the corporation for the stock.

Kim then transferred to Maddy and Liz 10 shares each of the stock because of their business connections with others in the thoroughbred racehorse business. Kim assured both Liz and Maddy that they would have no liability for corporate obligations. Before transferring the shares to Liz and Maddy, Kim typed a "right of first refusal" on the face of the certificates, stating that neither Liz nor Maddy would sell any portion of the stock without first giving Kim the right to match the price offered by the prospective purchaser.

Kim, acting on behalf of Abby Corp, sold a racehorse to Dan. When the racehorse did not live up to Dan's expectations, he filed suit for damages, alleging actual and constructive fraud against Abby Corp and Kim, as director and officer, and against Liz and Maddy as shareholders. Kim, in her capacity as director, sent the following e-mail to Liz and Maddy: "I hereby give you notice that 5 days from today I am holding a special meeting of the Board of Directors of Abby Corp. I hereby also give you notice that we have been sued by Dan over the horse I sold him." Liz and Maddy received the e-mail but did not attend the meeting. Kim, as sole director in attendance at the meeting and on behalf of the corporation adopted resolutions: (a) authorizing employment of counsel to defend Dan's suit, and (b) requiring the corporation to provide full indemnity for the sole director as to any claims asserted against her arising out of the sale of the racehorse.

In answering the following questions, please disregard any issue of "interested director."

1. **Were all requirements met entitling Abby Corp to be legally incorporated? Explain fully.**
2. **Were the 1000 shares of stock properly issued, and was the right of first refusal typed on the certificates of the shares transferred to Liz and Maddy effective? Explain fully.**
3. **Was the resolution requiring the corporation to indemnify Kim as the sole director properly authorized? Explain fully.**
4. **What liability, if any, do Kim, Liz, and Maddy have to Dan for damages? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

In 2003, three Texas attorneys, Nicole, Courtney, and Jen, orally agreed to open a law practice. They each contributed \$10,000 for startup expenses and associated together to carry on the practice of law under the name of NCJ Law Firm ("NCJ") and to share any profits. Wishing to remain generally independent of each other, they signed an agreement: a) eliminating the duties of loyalty, care and good faith to each other and b) expressly stating that they were not agreeing to be responsible for any losses resulting from any errors or omissions of the other.

Nicole, Jen and Courtney terminated NCJ and they properly formed a limited partnership called Nicole, Courtney, and Jen Law Firm Ltd. ("Ltd.") for the continuation of the law firm business, with Nicole as general partner and Courtney and Jen as limited partners. In the regular course of the limited partnership business, Jen, at the request of Nicole, purchased \$5000 worth of office supplies from Ashley's Office Supplies on credit in the limited partnership name, signing the purchase order as "Jen, Limited Partner." When the debt was not paid, Ashley sued Nicole, Courtney, Jen and Ltd. for the indebtedness.

In 2005, Nicole, Courtney, and Jen terminated Ltd. and continued their law firm business as a registered limited liability partnership called NCJ Law Firm, LLP ("LLP"). They properly filed an application in duplicate, with the required fee, with the Secretary of State as required by law and notified all existing clients of the change in name. Jen, while handling a case under Courtney's supervision for Courtney's client Wyatt, negligently missed a deadline resulting in a default judgment against Wyatt. Wyatt sued Nicole, Courtney, Jen and LLP for damages.

In answering the following questions, disregard any issues relating to rules of professional responsibility.

1. **In 2003, what type of business entity, if any, was formed and was the agreement regarding their duties and liability valid? Explain fully.**
2. **Which parties, if any, are liable to Ashley's for the office supplies purchased? Explain fully.**
3. **Which parties, if any, are liable for Wyatt's damages resulting from the default judgment? Explain fully.**

This concludes the morning portion of the Texas Essay exam.