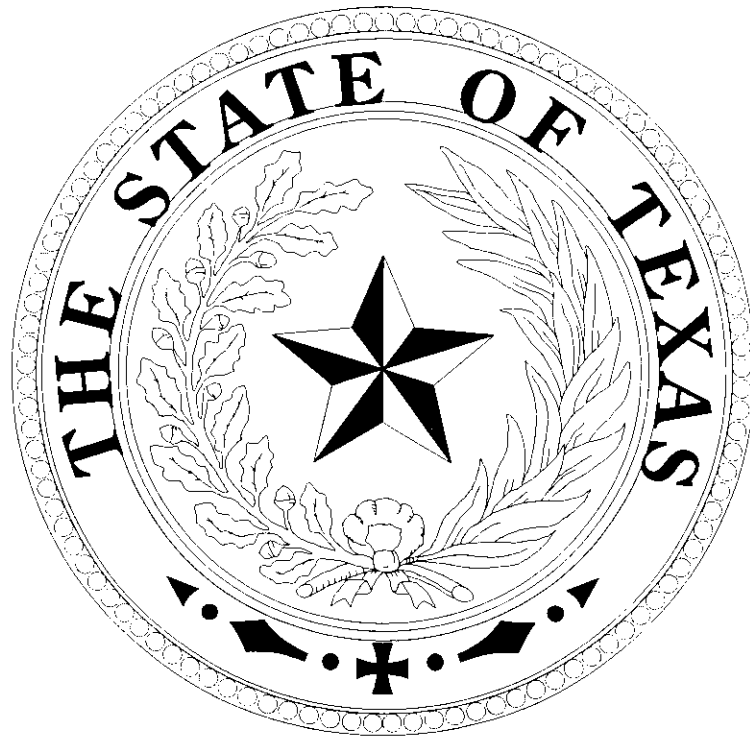


Thursday Afternoon
February 28, 2008
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

Jane took her car to DDD Auto Repair (DDD) for inspection because of an unusual noise she heard while driving. Ray, DDD's owner, inspected Jane's car and told her that the brakes and transmission were faulty and needed to be replaced. Ray told Jane he would repair her car using new parts and that all of DDD's parts and labor were guaranteed for one year. Based on Ray's assessment and remarks, Jane authorized DDD to do the work.

Unknown to Jane, Ray's business financial condition was perilous. DDD's mechanic looked at Jane's car and determined that her transmission needed repair, but not replacement, and that her brakes were old but did not need replacement. Ray nevertheless instructed the mechanic to replace both the brakes and the transmission with used, re-conditioned parts. The mechanic did as instructed and placed the original brakes in the trunk of Jane's car. Jane paid DDD's bill and picked up her car.

A week later, Jane was involved in a collision, and her car was severely damaged. Jane had the car towed to her local manufacturer's dealership, where she told the service manager that she believed her newly repaired brakes had failed, and she told him about the brake and transmission work that DDD had done. The service manager checked the brakes and told Jane that her brakes had failed because they were the wrong brakes for her car, had been poorly re-conditioned, and had been improperly installed. The service manager agreed with Jane that the brake failure had caused the collision. The service manager also told Jane that its inspection of her original brakes revealed that the original brakes had not needed replacement. At Jane's request, the service manager inspected the transmission and told Jane that it was a reconditioned one, not a new one.

When Jane confronted Ray, he denied that he promised Jane "new parts." Ray also said that he did not believe the brakes that DDD installed had caused the collision because his employees thoroughly road tested Jane's car, checked the brakes, and the brakes were working when the car left DDD's shop. Ray offered to reimburse Jane the labor for installing her brakes but otherwise declined to make any other payment on DDD's one-year guarantee.

Assume Jane is a consumer under Texas consumer laws.

- 1. What Texas consumer law claims, if any, can Jane assert against DDD, and what must she prove to maintain them? Explain fully.**
- 2. Under Texas consumer laws, what damages, if any, can Jane recover from DDD? Explain fully.**

Answer the next question in the LIGHT GREEN answer book.

ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK

QUESTION 8

Tom, a mentally disabled 19-year-old who was incapable of caring for himself, lived with his parents, Mary and Joe, in Lubbock, Texas. Tom attended a school for students with special needs and had a part time job in a sheltered workshop.

Mary and Joe died simultaneously in an automobile accident. Their 1994 separate, valid wills left their respective estates, valued at \$1.2 million, in equal shares to their three sons, Mark, Bill, and Tom. The wills also designated Tom's grandmother, Gran, as Tom's guardian pursuant to the Texas Probate Code.

Mark was a successful stockbroker and financial counselor in a Texas town about 300 miles distant from Lubbock. Tom's other brother, Bill, lived in Lubbock and worked as a physical education coach at Tom's school. Bill had previously worked at a local bank, where he had exhibited no talent for managing other people's money.

Gran was mentally alert but was, by the time of Mary and Joe's deaths, physically feeble and confined to her large and roomy house. Gran had no experience in managing financial affairs, but she had retained Steve, a local banker, to pay her bills and keep track of her finances. Steve had also been Mary and Joe's banker, but had not done a particularly good job of managing their investments.

After Mary and Joe died, Tom moved into a room at Bill's home and appeared to be very happy there. Bill transported Tom to and from school and to his job at the sheltered workshop. Tom expressed a desire to continue living with Bill.

Mark volunteered to manage Tom's inheritance without charge. Bill was interested and willing to serve as guardian of both Tom's person and estate. Steve, attracted by the prospect of managing Tom's inheritance for a fee, urged Gran to assert her rights as the appointed guardian under Mary's and Joe's wills. Acting on Steve's urging, Gran expressed a desire to serve as guardian of both Tom's person and estate.

Gran, Mark, and Bill filed applications with the court to be appointed as Tom's guardian.

- 1. What threshold facts must each of the applicants prove in order to establish the necessity for a guardianship, and by what evidentiary standard must they prove them? Explain fully.**
- 2. Is the court bound by the guardianship designated in the wills? Explain fully.**
- 3. Who would the court be most likely to appoint as guardian of Tom's (a) person and (b) estate? Explain fully.**

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

Stan owed Julia \$425 for yard work. Stan gave Julia a check payable to Julia for \$425 drawn on Local Bank in satisfaction of that debt. A thief stole the check out of Julia's purse, indorsed the check by signing Julia's name, and cashed it at Local Bank. Immediately after the check cleared, Stan closed his account at Local Bank.

Elroy Electronics owed Julia a rebate for \$35 and mailed a check payable to Julia for \$35 drawn on Local Bank. The rebate check was mailed to the wrong address. An unknown person indorsed the rebate check by signing Julia's name and cashed it at Local Bank.

1. **Does Julia have a claim against Local Bank for cashing Stan's check? Explain fully.**
2. **Does Julia have a claim against Stan to recover \$425 based on the underlying yard work debt aside from the check? Explain fully.**
3. **Does Julia have a claim against Local Bank for cashing Elroy Electronics' check? Explain fully.**
4. **Does Julia have a claim against Elroy Electronics for her \$35 rebate? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Francis, a Texas resident, operated an interior design business as a sole proprietorship. He entered into the following financial transactions:

- Francis had an open line of unsecured credit with Max Depot for office supplies that, on February 1, 2007, had an unpaid balance of \$300.
- On February 1, 2007, Francis borrowed \$25,000 from Town Bank and gave Town Bank a security agreement covering all of his current and after acquired office equipment, supplies and accounts receivable.
- On February 5, 2007, Town Bank properly filed a financing statement with the Texas Secretary of State perfecting its interest under the February 1 security agreement.
- On February 20, 2007, Francis bought an \$800 laptop computer for his business on credit from Max Depot. Francis gave Max Depot a security agreement with the laptop as collateral to secure both the cost of the laptop and the existing \$300 balance on the office supplies debt.
- On March 1, 2007, Francis borrowed \$600 from Lou's Loans properly to make a tax payment. He gave Lou's Loans a security agreement pledging the laptop computer and his currently owned and after acquired office furniture as collateral to secure the loan.
- On March 1, 2007, Lou's Loans filed a financing statement with the Texas Secretary of State reflecting the terms of this March 1 security agreement.
- On March 5, 2007, Francis purchased a new desk for cash from Gary's Furniture.
- On March 9, 2007, Max Depot properly filed a financing statement reflecting the terms of the February 20, 2007, security agreement it had with Francis to secure the cost of the laptop and the \$300 debt.

Which creditor, if any, has the superior interest in the following items of Francis' property? Explain fully.

- a. The laptop purchased from Max Depot;**
- b. The new desk purchased from Gary's furniture;**
- c. The office supplies purchased from Max Depot.**

Answer the next question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

QUESTION 11

The Texas Department of Family and Protective Services (DFPS) filed a petition to terminate Robert and Sally's parental rights to their two minor children, ages 3 and 5. The case was tried before a judge without a jury. At the trial, the court heard the following evidence:

- In investigating the living conditions at Robert and Sally's residence, it appeared that Sally often left the children in the care of numerous different men in a known drug trafficking neighborhood.
- When DFPS arrived at the residence, Sally answered the door, said she was not "the lady of the house," and left by the back door.
- DFPS entered the residence and found the two children alone in a room with a sharp knife on the floor near them.
- The younger child was eating from a box of raw brownie mix.
- DFPS also found on a tabletop, in the same room with the children, a razor blade and an unknown white residue, which was never identified.
- DFPS removed the children from the home and has unsuccessfully attempted to place them with other family members.
- At the time DFPS investigated, Robert was in jail on pending charges of sexual assault of an unrelated minor.
- Both Sally and Robert had prior convictions for possession of crack cocaine, with Sally just having completed serving a 24-month prison term.
- Robert was on parole for the last of those offenses, but no evidence was introduced to establish when Robert committed his prior offenses or whether he had ever served time for a drug offense.
- Robert testified at trial that he was not a drug user, but admitted that he had sold drugs.

Based on this evidence, the trial court issued an order terminating the parental rights of both Robert and Sally to their two children. Sally and Robert appealed, asserting that the evidence was legally insufficient to support the trial court's order and that DFPS failed to establish by the appropriate burden of proof the statutory grounds to terminate their parental rights.

1. **What is the standard of proof by which the appellate court will review the evidence? Explain fully.**
2. **Based on the statutory factors enumerated in the Texas Family Code, was there sufficient evidence to support the trial court's termination of the parental rights of:**
 - a. **Sally? Explain fully.**
 - b. **Robert? Explain fully.**

Answer the next question in the PURPLE answer book.

ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

QUESTION 12

Donald and Judy, both Texas residents, married in 2000. They have one child of the marriage, Monica, born in 2002. Donald separated from Judy in 2006 and filed a petition for divorce in 2007. The contested issues in the divorce proceeding involve the amount of child support Donald will be required to pay Judy and the characterization of a certificate of deposit.

At the trial, Donald testified that he was currently employed by his girlfriend as the office manager of her law practice in Waco earning \$20,000 per year. Judy offered credible evidence that office managers in the Waco area typically earn average annual salaries of \$40,000 per year. At the time of the separation, Donald held a job paying \$40,000 a year. Both Donald and Judy testified that Donald had previously held jobs earning an average of \$75,000 per year in the information technology field. Donald testified that he had attempted to find employment in that field but that his lack of a college degree and the length of his time away from information technology made it difficult for him to secure a higher paying job. Donald admitted, however, that he had twenty years experience working with computer systems still widely in use in the United States.

With regard to the certificate of deposit, the testimony established that during the marriage Donald had wanted to start his own business but needed a loan. Judy offered \$50,000 of her separate property funds to purchase a certificate of deposit. Judy purchased the certificate of deposit in both her and Donald's names and allowed Donald to use it for collateral to secure a \$50,000 loan for the business. At trial, Judy testified that, although she never told Donald so, it was always her intention that, once the loan was repaid, she would cash in the certificate of deposit and again treat the proceeds as her separate property.

The trial court found that Donald's net monthly resources were \$1,500 per month, and, based upon certain findings filed by the judge, the trial court ordered Donald to pay Judy \$600 a month in child support. The trial court further found that the purchase of the certificate of deposit constituted a gift to Donald of one half of the certificate of deposit.

Did the trial court err in:

- 1. Ordering Donald to pay Judy \$600 per month in child support? Explain fully.**
- 2. Characterizing the certificate of deposit as a gift of one-half to Donald. Explain fully.**

This concludes the Texas Essay portion of the exam.

Be certain that you write the pledge on the back of your PURPLE answer book.