

Thursday Afternoon
July 26, 2007
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

Karen and Scott married in 1997 and lived together as husband and wife in Texas until 2005, when Karen filed for divorce. Prior to the marriage, Karen and Scott each owned substantial separate property assets. Specifically, Scott owned a 20-acre tract known as The Little Ranch, title to which was held in Scott's name. Karen was the beneficiary of a trust that paid her cash distributions, which she maintained in separate accounts as her separate property throughout the marriage.

In 1999, Karen persuaded Scott to tear down the existing home on The Little Ranch and build a larger dream home. Scott contracted to have the new home built. Scott and Karen executed a 30-year \$500,000 mortgage loan on the new home, and he and Karen lived in the new home until Karen filed for divorce and moved out.

At the divorce trial, Karen claimed an interest in the new home on The Little Ranch on the ground that it was marital property or, in the alternative, that she was entitled to economic contribution for payments made by her separate estate for the benefit of Scott's separate estate. It was undisputed at the trial that Karen had made substantial disbursements from her separate accounts. However, Karen failed to present specific evidence that any of the disbursements were made to benefit Scott's separate estate.

The court found that the new home on The Little Ranch was Scott's separate property and denied Karen's claim for economic contribution toward the new home on the ground that she had failed to present sufficient evidence.

- 1. Did the court err in finding that the new home on The Little Ranch was Scott's separate property? Explain fully.**
- 2. Assuming the court correctly denied Karen's claim, what evidence should Karen have presented in order (i) to establish a claim for economic contribution and (ii) to give the court the ability to calculate the value of her economic contribution? Explain fully.**

Answer the next question in the LIGHT GREEN answer book.

ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK

QUESTION 8

Kim and Bob are married residents of Texas. While married to Kim, Bob had an affair with Cindy. In 1995, shortly after Bob and Cindy ended their affair, Cindy told Bob that she was pregnant with his child. Bob sent Cindy a letter asking Cindy to notify him when the child was born and stating that he would then agree to a paternity test. There was no further contact between Bob and Cindy until 2005, when the Attorney General initiated parentage and child support proceedings on behalf of Cindy and her then 10-year-old son.

At the hearing, the trial court found that Bob was the child's biological father and ordered Bob to pay prospective child support of \$500 per month and retroactive child support in the amount of \$60,000. These child support awards were based on the Texas child support guidelines and the court's determination of Bob's net resources.

The court included in the calculation of Bob's net resources the following two categories of community property: rental income from a building in Kim's name and income from a child care business operated by Kim. In both cases, Bob listed the building and the childcare business as community assets subject to Kim's sole management and control. Cindy did not dispute these characterizations. Bob had tried unsuccessfully to limit the court's award of retroactive child support on the ground that Cindy had failed to notify him of their child's birth for 10 years, thus depriving him of any meaningful relationship with his son due to the passage of time.

Did the trial court err in its award of:

- 1. Prospective child support? Explain fully.**
- 2. Retroactive child support? Explain fully.**

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

For a number of years, Liz, Mattie, and Wyatt, independently of each other, worked out of their homes in Waco, Texas making online travel arrangements for friends and acquaintances to supplement their incomes.

In March 2005, Liz, Mattie, and Wyatt decided they would associate together to open a travel business. They agreed orally to the following terms: they would call the business ToSee Company (Company); they would try the new arrangement for a period of one year; each would work actively and participate equally in control of the business; each would contribute \$500 to cover initial costs of office supplies and other incidentals; each would receive a small salary out of the income of the business generated; and they would share equally any remaining profits. There was no agreement regarding the sharing of losses that the business might incur.

They bought a small building to which they took title in their individual names as joint tenants. They rented space to Company and a few other tenants, used the rent receipts to make the mortgage payments on the building, and shared equally the remaining rent payments.

In June 2005, Wyatt applied to Bank in the name of Company to borrow \$10,000 to be used expressly as operating funds for Company. Wyatt, the sole signatory on the loan documents, signed "Company by Wyatt." Liz and Mattie represented orally to Bank, with Wyatt's approval, that they and Wyatt were "partners" in Company.

In September 2005, Wyatt decided that he no longer wanted to be associated in the business with Liz and Mattie. He gave Company, Liz, and Mattie written notice of his intention to withdraw from the business effective September 30, 2005, and, included in the written notice, was a demand that Company, Liz, and Mattie buy out his interest in the business. After September 30, 2005, Wyatt ceased to work in the business of Company.

Liz and Mattie, speaking for themselves and Company, declined to buy out Wyatt's interest in Company. Liz and Mattie continued to operate the business and after September 30, 2005, incurred an additional \$25,000 of debt from a credit union on behalf of Company. On October 30, 2005, the \$10,000 debt to Bank fell into arrears and Bank notified Company that the Bank loan was in default.

- 1. Are Liz, Mattie, and Company each liable to Bank for the \$10,000 debt, and, if so, on what theories? Explain fully.**
- 2. Assuming that a partnership was created, do Liz, Mattie, and Company, or any of them, have any obligation to buy out Wyatt's interest in Company and, if so, on what terms? Explain fully.**
- 3. Assuming that a partnership was created, does Wyatt have any potential liability: a) for payment of the \$10,000 debt to Bank, and b) for the additional \$25,000 of debt to the credit union? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Kim, Jen, and Dan were given a ranch in Texas. The gift included the cattle, a small stockyard, and a meat processing plant all on the ranch property. Kim, Jen, and Dan each want to continue working in their other businesses, but they also want to operate the cattle raising and meat processing business.

Their objectives are to: (i) avoid many restrictions or formalities of organization and complexities of management of the business; (ii) avoid federal taxes on the entity to the extent they reasonably can; (iii) limit their personal liability for debts or acts in the cattle raising and meat processing business; and (iv) limit transferability of their interests to strangers.

In 2005, Kim, Jen, and Dan come to you, as a lawyer, seeking your advice as to which would be the better entity to operate the cattle raising and meat processing business consistent with their stated objectives: (i) a Texas business corporation; (ii) a Texas general partnership; or (iii) a Texas limited liability company.

In view of their stated objectives, which of the three business entities would you recommend? Explain fully, including the strengths and weaknesses of each.

Answer the next question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

QUESTION 11

Bill and Sue married in 1991 and lived in Texas throughout their marriage. No children were born or adopted during their marriage. Bill, however, acknowledged his son, Ted, born in 1975 during a relationship with a woman he never married. Sue's only living relative is her nephew, Frank.

While on vacation in 2006, Bill and Sue died in an automobile accident. Bill died instantly, and Sue died the next day. Neither Bill nor Sue died leaving a will.

Bill and Sue died owning the following property, all of which they had acquired during their marriage: a South Texas ranch where they lived; a life insurance policy with a \$1,000,000 death benefit naming Bill as the insured and Sue as the beneficiary; a \$300,000 joint savings account subject to a valid bank signature card with a right of survivorship provision; and a diamond ring worth \$15,000, which Sue had inherited from her aunt.

Bill was survived by his son Ted, now married with a child named Manuel. Sue was survived by her nephew, Frank.

- 1. How are the estates of Bill and Sue to be distributed? Explain fully.**
- 2. Assume that Ted decides he does not want to accept any potential inheritance. What is Ted required to do to effectively reject any inheritance, and how would the rejected inheritance be distributed? Explain fully.**

Answer the next question in the PURPLE answer book.

ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

QUESTION 12

Jack, a widower, executed a valid attested self-proving will in 1998, in which he left all of his real and personal property to his son, Raymond. After a bitter argument with Raymond in 2000, Jack wrote and signed, but did not date, the following language on the back of the last page of his 1998 will, all in his own handwriting:

I hereby revoke my will to the extent that I now give at my death to my best friend, Herbert, the sum of \$500,000, which I had previously given to my son Raymond under my will.

/s/ Jack

In 2005, Jack became very ill while on a business trip and was admitted to the intensive care unit of a hospital in a city over 200 miles from home. Raymond came to the hospital to visit his father and learned from the doctor that Jack was near death. Not wanting his father to die while they were still at odds, Raymond asked his father to forgive him for their bitter argument. Jack asked Raymond to forgive him, as well. Immediately thereafter, Jack called his doctor and two nurses to his bedside and, in their presence, said, "I hereby revoke the bequest of \$500,000 to Herbert, and I give it all to my son Raymond at my death."

Jack died in the hospital three days later. On the day of Jack's death, the doctor and the two nurses wrote, signed, and had notarized affidavits stating the substance of what Jack had said in their presence.

Within three months of Jack's death, Raymond filed Jack's 1998 will for probate along with the affidavits of the doctor and nurses. Herbert filed a timely will contest, asserting a claim based on the language Jack had written on the last page of the 1998 will.

1. **How should the court rule on Herbert's will contest? Explain fully.**
2. **How should Jack's estate be distributed? 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.