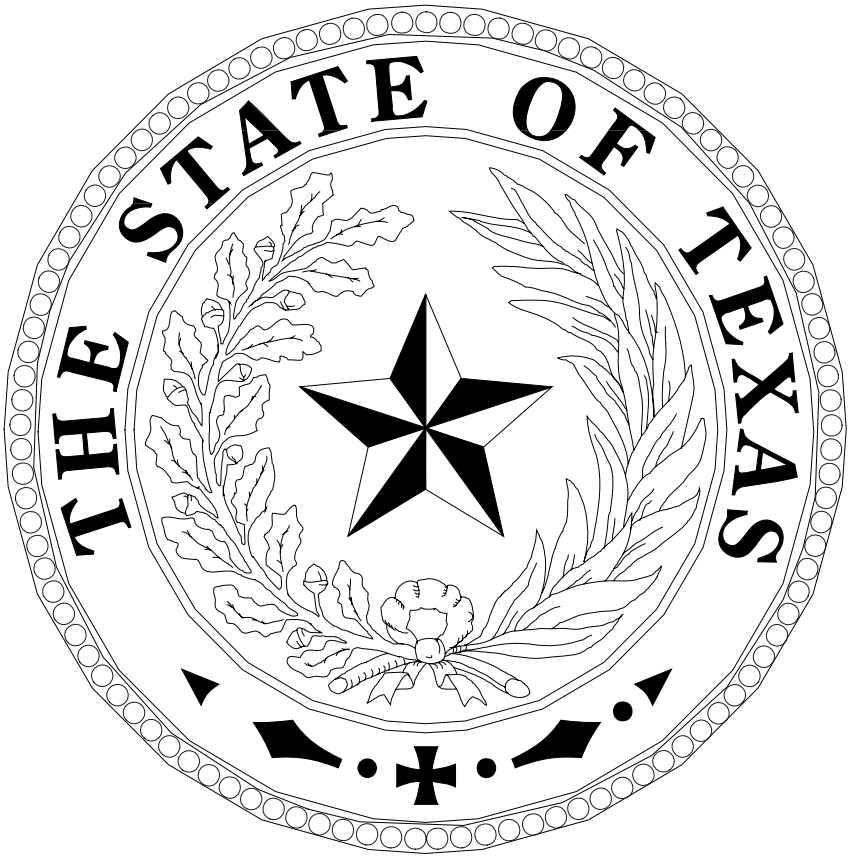
Thursday Morning
July 26, 2007
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

Ted was a lawyer employed as an associate in the law firm of Small Firm, LLP ("Small Firm") in Lubbock, Texas. Mark met with Ted in the Small Firm office and asked Ted to represent Mark in a personal injury action arising from a serious automobile accident in which the driver of the car that collided with Mark was clearly at fault. In connection with the personal injury action, Mark signed a standard contingent fee agreement agreeing to pay Ted one-third of any recovery.

Mark also retained Ted to sell an undeveloped commercial parcel of land for him. In connection with the land sale, Mark gave Ted a written power of attorney with the right of sale. Mark also gave Ted a copy of a five-year-old appraisal, which showed that the value of the parcel was $75,000. Mark told Ted that he expected that the parcel would sell for "about $75,000, maybe a bit more." Mark agreed to pay Ted a commission of 10% of the sale price. Ted said nothing about this real estate matter to anyone at Small Firm.

With Mark's permission, but without telling anyone at Small Firm and before any work was done on the matter, Ted referred Mark's personal injury case to Big Firm, which had a reputation for obtaining good results in automobile accident cases. Unknown to Mark, however, Ted agreed to work with Big Firm on the case during hours when he was not working at Small Firm, and Big Firm agreed to pay Ted one-third of whatever fee it recovered. Mark's personal injury case settled for $450,000, and Big Firm, with Mark's approval, kept one-third, $150,000, as its fee. At this point, Ted quit his employment at Small Firm and opened his own law office. Big Firm then paid Ted $50,000, which Ted kept for himself.

A few weeks later, Ted learned that two developers were interested in Mark's parcel of real estate for a super-store site. Ted was successful in getting them to bid against one another. Exercising the right of sale under Mark's power of attorney, Ted closed the sale of the parcel for $160,000 without informing Mark of the terms. Ted distributed $100,000 to Mark and kept the remaining $60,000 for himself. Mark was pleased because the $100,000 was far more than he expected. He paid Ted $10,000 by way of commission and did not inquire further into the details.

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

1. Can Small Firm recover from Ted a portion of the contingent fee agreement, and if so, on what basis? Explain fully.

2. **Can Mark recover from Ted in connection with the real estate transaction, and if so, on what basis? Explain fully.**

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

Chad and Ray are equal partners in Printer's Shop ("PS"), a commercial print shop. PS borrowed $20,000 from Bank for the purchase of a printing press. Principal and interest on the PS loan were to be paid monthly. Chad took a personal loan from Bank for $10,000, with principal and interest payable in a single annual payment.

A loan officer at Bank erroneously believed that Chad was supposed to be making monthly payments on his personal loan and that Chad's loan was delinquent. The loan officer also believed that the PS loan was delinquent, even though the monthly payments were current. Bank wrote to Chad and Ray at their business address demanding, pursuant to an acceleration clause applicable to each loan, that both loans be paid in full. The letter stated that, unless both loans were paid in full within 10 days, Bank would file criminal charges against Chad and cause the sheriff to seize PS's printing press. At the same time, Bank notified the local credit bureau that Chad, Ray, and PS were delinquent on both loans.

Chad and Ray each called Bank, informed the loan officer that he was mistaken about the loans being delinquent, and protested the collection efforts. Bank ignored the protests of Chad and Ray and turned the PS loan over to its lawyers, Law Firm, for collection. Law Firm and its staff members specialize in debt collection. Law Firm wrote Chad and Ray a letter advising them that "a writ had been issued" for the seizure of all of PS's property. In fact, no writ had been sought or issued. Ray called and convinced Law Firm that the PS loan was not delinquent, whereupon Law Firm ceased any further collection efforts.

Bank continued its own collection efforts against Chad on his personal loan, refusing to acknowledge that no payment was due. Bank filed suit against Chad but eventually non-suited Chad. This lawsuit so upset Chad that he became physically and emotionally ill, requiring medical and psychiatric treatment.

Chad, Ray, and PS sued Bank and Law Firm under the applicable Texas consumer laws. It is undisputed that Chad, Ray, and PS are "consumers" under the applicable statutes.

1. **What causes of action and remedies do Chad and PS have against Bank? Explain fully.**

2. **What causes of action and remedies do Chad and PS have against Law Firm? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

Ira, a psychiatrist with his office in Austin, Texas, had a habit of putting checks received from his patients in the top drawer of the desk in his office. On July 9, 2007, during a counseling session with Willie, Ira stepped out of the office momentarily. While Ira was out, Willie stole the following three checks from Ira's desk drawer. Each of the checks were drawn on Reliable Bank (Reliable):

Art's check: Dated January 2, 2007, payable to Ira for $100. This check was not indorsed by Ira, so Willie signed Ira's name on the back of the check.

Bill's check: Dated July 6, 2007, payable to Ira for $200. Ira had indorsed this check in blank by signing his name on the back.

Cindy's check: Post-dated to July 13, 2007, payable to Ira for $300. Ira had indorsed this check in blank by signing his name on the back.

On July 10, 2007, Ira discovered the checks were missing and called Art and Bill to let them know their checks had been stolen. Art and Bill immediately telephoned Reliable and asked Reliable to stop payment on their respective checks.

On July 11, 2007, Willie presented all three checks at Midtown Bank (Midtown) and received cash for them. Midtown, in turn, presented all three checks to Reliable on July 12, 2007.

Reliable paid Midtown on Art's check and debited Art's account for $100. Reliable refused to pay Midtown on Bill's check and returned it unpaid to Midtown. Midtown then notified Ira of Reliable's refusal to pay. Reliable paid Midtown on Cindy's check, creating an overdraft in Cindy's account because Cindy did not have sufficient funds to cover the check.

1. **Did Reliable properly pay Midtown on Art's check? Explain fully.**

2. **Did Reliable properly refuse to pay Midtown on Bill's check? Explain fully.**

3. **Did Reliable properly pay Midtown on Cindy's check? Explain fully.**

4. **Does Ira have potential indorser's liability on any of the three checks? Explain fully.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Wilma, a student in Austin, Texas, needed transportation to get to school, so she financed the purchase of an automobile with Bank on January 2, 2007. Wilma signed a $15,000 promissory note at 9 % interest payable in 36 monthly installments of $477 each month beginning February 1, 2007. Wilma signed a security agreement, pledging the automobile as collateral to secure the promissory note. The note provided for acceleration of the indebtedness upon a default, at the option of Bank.

Wilma paid as agreed, until she failed to make the June 1 and July 1, 2007 payments. On July 5, 2007, Bank sent Wilma written notice that she was in default and that it would accelerate all payments due under the promissory note unless Wilma paid the past due amounts within ten days. Wilma received the notice on July 6, 2007. When no payments were received by July 16, 2007, Bank sent Wilma a notice that all amounts due under the promissory note, $9000, were due and, if not paid within five days, Bank would take action to repossess the collateral. Wilma received the notice on July 17, 2007.

Wilma made no payments. On July 24, 2007, Lester, a Bank employee, pursuant to instructions from Bank, found the automobile in Wilma's driveway. Lester was able to start the automobile. As Lester drove out of Wilma's driveway, Wilma ran out shouting at Lester to bring back her automobile.

Wilma immediately called Bank and offered to pay in cash the June and July past due payments and any other costs incurred by Bank as a result of her default. Bank refused but unconditionally proposed to keep the automobile in full satisfaction of the debt and offered to send Wilma a written proposal to that effect. Since the fair market value of the automobile was only $8,900, Wilma said "OK" and told the Bank to send her the proposal, which Bank did on July 24, 2007.

On July 26, 2007, Wilma received the proposal, wrote on the proposal the word "REJECTED", and returned it to the Bank. Bank nevertheless kept the automobile in satisfaction of the debt and so informed Wilma.

1. **Did the Bank's repossession of Wilma's automobile comply with the requirements under the UCC as enacted in Texas? Explain fully.**

2. **What rights, if any, can Wilma assert against the Bank? Explain fully.**

3. **Assuming that the Bank breached its obligations to Wilma, what are the elements of the damages, if any, that Wilma can seek? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

Cal owned three contiguous lots – Lots 1, 2, and 3 – in the Office Park Subdivision in Brazos County, Texas. Each lot had a small office building on it. Lots 1 and 3 were leased to others, with the leases expiring on July 15, 2007.

Tom, who operated a computer software business, expressed interest in buying two of the lots for use as office space for his expanding business. Cal said that only Lot 2 was currently available but that the leases on the other lots would expire on July 15, 2007. Instead of buying Lot 2, Tom agreed to enter into a valid written and recorded lease on Lot 2 for the period ending July 15, 2007.

When Tom sent Cal the first monthly lease payment, he included a document he had prepared and signed entitled "Option Agreement," which stated:

> **Cal hereby grants to Tom an exclusive option to buy Lot 2 in the Office Park Subdivision and another lot to be determined later. Tom shall have the right to exercise this option as to Lot 2 no later than July 15, 2007 and, as to such other lot, at such time as the lease on such other lot terminates.**

Cal telephoned Tom and said, "Your option agreement is fine with me. I'll let you know when one of the other lots becomes available."

Anticipating the expansion of his business and the purchase of the lots, Tom purchased additional computer equipment on credit from Laura in June 2007. As security for the debt, he gave Laura a deed of trust covering all his interest in Lot 2. The deed of trust was properly executed and recorded, but Tom did not tell Cal or seek his approval for the deed of trust.

On July 1, 2007, Tom learned that Cal's tenant in the building on Lot 3 had terminated her lease early and moved out. Tom immediately sent a letter to Cal stating, "I hereby exercise my option to purchase Lots 2 and 3."

Cal responded by telephone, stating, "You have no purchase agreement with me. I have an agreement to lease all three buildings to the tenant currently occupying Lot 1 and will require you to vacate Lot 2 as soon as your lease expires on July 15, 2007."

Tom vacated Lot 2 on July 15, 2007 and has failed to pay Laura for the computer equipment.

1. **Can Tom prevail in an action to require Cal to sell any of the lots to Tom? Explain fully.**

2. **Does Laura have any lien interest in Lot 2 that she can enforce by foreclosing on her deed of trust? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

On May 1,1995, Mark conveyed Blackacre, a 300-acre tract of land in Sabine County, Texas to Sarah. The warranty deed, which was properly executed and recorded, contained the following reservation:

> Mark reserves for himself an undivided one-half of all oil, gas, and other minerals in and under and that may be produced from Blackacre for a term of ten years from the date of this deed and for as long thereafter as oil, gas, and other minerals are being produced in paying quantities from Blackacre.

On March 1, 2004, Mark and Sarah entered into a valid oil and gas lease with Big Oil that provided the following:

- Big Oil would pay a royalty of one-fifth (1/5) from any production.
- The lease was for a term of two years from March 2004 and as long thereafter as oil, gas, or other minerals were being produced.
- If drilling operations did not begin within one year of the date of the lease, the lease would terminate unless Big Oil paid $2,500 as delay rental.
- If a gas well capable of producing in paying quantities was drilled but for any reason shut in, the lease would terminate unless Big Oil paid an amount equal to the delay rental ($2,500) as the annual shut-in royalty payment within 90 days of the time the well was shut in. This shut-in payment would be considered the equivalent of a royalty payment for actual production.
- For a shut-in well with no actual production, the maximum term of the lease would be two years from the time the well was shut in, provided, however, that Big Oil makes a timely second shut-in royalty payment within one year after the first such payment.

On May 30, 2004, Big Oil successfully drilled a gas well capable of production in paying quantities but had to shut it in because it lacked a pipeline connection. On May 31, 2004, Big Oil sent Mark and Sarah a check for $2,500 identified as "the first shut-in royalty payment."

On May 5, 2005, Sarah notified Big Oil that any future payments should be sent to her and that Mark was no longer entitled to any payments.

Big Oil was unable to complete a pipeline connection, so, on May 15, 2005, it sent a check for $2,500 payable only to Sarah and identified as "the second annual shut-in royalty payment." Mark claimed to be entitled to a share of that payment.

As of March 1, 2006, Big Oil had not yet completed a pipeline connection and its only well on Blackacre was still shut in. Sarah sent Big Oil a letter stating, "Since the only well you have drilled on Blackacre remains shut-in, I consider that your lease has terminated and request that you vacate the property."

Big Oil completed the pipeline connection on March 15, 2006 and began actually producing gas in paying quantities. Big Oil claims that its lease remains in effect.

1. **Is Mark entitled to a share of the second payment sent by Big Oil? Explain fully.**

2. **Is Sarah's position that Big Oil's lease terminated correct? Explain fully.**

3. **If Big Oil is successful in establishing that its lease has not terminated, how long can the lease remain in effect? Explain fully.**

This concludes the morning portion of the Texas Essay exam.