

Thursday Morning
March 1, 2007
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

In December 2004, Abby and Wyatt entered into a written profit sharing agreement to jointly conduct a business for profit. The business was called “Money Management,” and Abby and Wyatt agreed to share control and profits. The profit sharing agreement expressly stated that: the parties did not agree to share losses; neither of the parties would be liable for the debts or liabilities of the other; and, under no circumstances, would the business be considered to be a partnership.

In January 2005, Abby, acting in the ordinary course of Money Management business, negligently caused \$5,000 in damage to Courtney’s property.

In July 2005, Abby and Wyatt decided to incorporate Money Management. They prepared Articles of Incorporation and filed them with the Secretary of State of Texas to incorporate the business under the name “Money Management.” Abby was elected president and given authority to incur indebtedness in the ordinary course of business. Wyatt was elected secretary and treasurer.

Thereafter, without taking other action, Abby, as president, while working for Money Management in the ordinary course of business, purchased \$2,500 worth of office supplies from Courtney for Money Management.

Courtney has not been paid for the \$5,000 damage to her property or the \$2,500 indebtedness for the office supplies.

- 1. What type of business entity, if any, was formed by Abby and Wyatt in December 2004? Explain fully.**
- 2. Assuming that Money Management was properly incorporated:**
 - (a) What persons or entities are liable to Courtney for the \$5,000 in damage done by Abby to Courtney’s property and in what capacities? Explain fully.**
 - (b) What persons or entities are liable for the \$2,500 indebtedness to Courtney for office supplies and in what capacities? Explain fully.**

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

Jendan L.C. is a Texas limited liability company. It was formed in 2004 when its members filed articles of organization with the Secretary of State of Texas. Jendan, L.C.'s three sole members at the time of formation were Ashley, Madisen, and Lizzie.

The articles of organization stated that the members agreed to be equal owners and to contribute \$10,000 each to provide operating capital for Jendan, L.C. The articles of organization were silent as to who was to manage Jendan, L.C. None of the members ever made the \$10,000 contributions they had agreed to make.

Without calling an official meeting, the members met and talked about whom to appoint as manager of Jendan, L.C. Ashley and Madisen voted to appoint Cole as manager. Cole was neither a Texas resident nor a member of Jendan, L.C. Lizzie dissented. Ashley and Madisen signed written agreements consenting to Cole's appointment under the circumstances. Lizzie declined to sign any such consent.

In 2005, Cole undertook management of Jendan L.C., and her first act was to sign a five-year lease with Landlord for an office building to house Jendan L.C. She signed the lease, "Cole, Manager of Jendan L.C." The rent was \$5,000 a month.

Also in 2005, Cole, acting in the ordinary course of business, negligently handled a transaction, which caused a loss of \$30,000 to Bates, a customer.

In 2006, Ashley, without requesting consent of the other members, assigned her membership interest in Jendan L.C. to Kim.

The rent on the office building is \$30,000 in arrears. Bates has not been compensated for his loss. Jendan L.C. is now insolvent.

- 1. Was Cole legally appointed the manager of Jendan L.C.? Explain fully.**
- 2. Assuming Cole was legally appointed as manager, who is liable, and in what capacity, for (a) the lease rental and (b) the \$10,000 loss to Bates? Explain fully.**
- 3. Who, if anyone, can enforce the agreement of the members to make their agreed-upon \$10,000 contributions the members agreed to make or release them from that obligation? Explain fully.**
- 4. What rights, if any, did Kim acquire by the assignment of the membership from Ashley? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

Soapy owned and operated a car wash business as a sole proprietorship. Soapy had purchased a gumball dispensing vending machine for his customers' use from the Jawbreaker Company for \$400. Jawbreaker gave Soapy a warranty limited to the repair or replacement of the machine, at the seller's option.

A defect in the machine caused it to take the customers' coins but not dispense any gumballs. Soapy wrote a letter to Jawbreaker demanding the return of his \$400. Jawbreaker estimated that the repair of the machine would cost \$350. Rather than go through the trouble of providing the repair, Jawbreaker sent Soapy a check in the amount of \$200 along with a cover letter that included the following language, "*The enclosed check is being sent to you as payment in full satisfaction of your claim.*" The letter was printed in a font the same size as that used in this question, but the above quoted language was italicized. The check itself contained no such language.

Willie, Soapy's bookkeeper, opened the letter containing the check. Willie was authorized to open all of the mail and to indorse and deposit all checks into Soapy's account. Willie also was authorized to write checks and make withdrawals on Soapy's bank account. Willie indorsed the Jawbreaker check by signing Soapy's name and deposited it into Soapy's bank account. Willie did not read Jawbreaker's cover letter and failed to show it to Soapy.

Two months after the deposit of Jawbreaker's check, Soapy noticed the \$200 deposit and read the cover letter. Soapy immediately wrote a letter to Jawbreaker in which he stated that he had not seen the cover letter and that he had not indorsed the \$200 Jawbreaker check. Soapy reiterated his demand for the \$400 and enclosed his check for \$200 payable to Jawbreaker as a return of the \$200 Jawbreaker check which had been deposited into his account.

- 1. Did Jawbreaker's letter tendering the \$200 check and Willie's receipt and deposit of the check operate as an accord and satisfaction of Soapy's claim? Explain fully.**
- 2. What is the effect, if any, of Soapy's letter responding and tendering his \$200 check to Jawbreaker? Explain fully.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

On December 19, 2005, Quigley purchased a billiard table as a Christmas present for his family from Andy Amusements Co. ("AAC") for \$2,500. Quigley paid \$500 down and financed the \$2,000 balance by signing a promissory note payable in six months at an interest rate of 10% per annum. Quigley also signed a security agreement giving AAC a security interest in the billiard table.

Quigley had not paid anything on the note and on July 1, 2006, AAC sent Quigley a notice of default and demanded that he pay all amounts due. Quigley failed to pay and on August 1, 2006, AAC notified Quigley that it wanted to repossess the billiard table. Quigley allowed AAC to repossess the billiard table. After obtaining possession of the billiard table, AAC sent Quigley a written notice on August 4, 2006, by U.S. mail that the billiard table would be sold at a private sale in its storeroom sometime after August 12, 2006. The text of the notice contained all other information required by law and was received by Quigley on August 7, 2006.

On August 20, 2006, AAC itself purchased the billiard table for \$2,000 (which was a good faith estimate of the fair market value for a used billiard table) by crediting Quigley's account for that amount. AAC did not assess any deficiency against Quigley and provided Quigley an accounting.

Quigley thought that the billiard table ought to have been worth the amount he paid for it, \$2,500, and made demand upon AAC to refund him the \$500 down payment. AAC refused.

- 1. Did AAC fail to comply with any provisions of the UCC in repossessing and selling the collateral? Explain fully.**
- 2. Assuming that AAC failed to comply with the UCC, what damages, if any, would Quigley be entitled to recover? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

May, an 82-year-old widow, lived in her house with her grandson Sam in College Town, Texas. Her late husband left her an estate of \$2,000,000. For many years May and her husband had banked at First Bank, where May maintained the entire estate in a checking account and a securities management account. May had always been able to make all of her own financial decisions.

Sam completed one year of college and worked at Big Box Retailers as an assistant auto parts manager, where he seemed to have a secure position. Sam was devoted to his grandmother. He ran all her errands, drove her to the doctor and to the bank, prepared all the meals except lunch, and did the laundry and the grocery shopping. In his finances, Sam had been adjudicated bankrupt in 2004, he had failed to pay his student loans, and his two current credit cards were charged up to their maximum limit. Tom, a trust officer at First Bank, had a long relationship with May and her late husband. After her husband's death, Tom took May to lunch every Sunday after they attended church. In 2005, May executed a witnessed and self-proved document entitled "Suggestion of Guardian," which named Tom as the person she wanted to be the guardian of her person and her estate if she ever needed one. Some time after May executed the "Suggestion of Guardian," Tom was convicted of bank fraud and terminated by First Bank.

In 2006, May had a severe stroke that left her mentally and physically impaired. Her doctor's prognosis was that, although May would recover sufficiently to be able to go home, she would never again be able to take care of herself or manage her affairs. Tom filed in court an application to be appointed guardian of both May's person and estate. He attached the "Suggestion of Guardianship" May had signed in 2005 to his application.

Sam also filed an application to be appointed guardian of both May's person and estate.

First Bank filed an application to have First Bank appointed guardian of May's estate only.

- 1. What facts would a guardianship applicant have to establish, and by what burden of proof, in order to qualify to serve as guardian of May's person and estate? Explain fully.**
- 2. What is the legal effect of the Suggestion of Guardianship on the judge's decision whom to appoint as guardian? Explain fully.**
- 3. Which of the guardianship applicants would the judge be most likely to appoint as guardian of May's person and guardian of May's Estate, and why would the judge exclude the applicant(s) he chose not to appoint? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

Ace Used Cars (Ace) sold a 2005 pickup truck to a customer who abandoned it after it was extensively damaged in a wreck. Ace repossessed the pickup, repaired it, and returned it to the lot for sale.

Ace advertised as follows with signs at its lot, in the newspaper, and in the phone book:

Best lot in town for previously owned cars and trucks

All cars and trucks have low mileage

We have the best prices in town

We stand behind our cars and trucks

Money back guarantee

Tom, looking to buy a pickup, went to Ace's lot, where Bill, an employee of Ace, showed him the repaired 2005 pickup. Bill told Tom, "This is a beautiful truck. It is in pristine condition and even has a new, custom paint job. At \$24,000, it is priced right and is a great buy." Tom inquired about buying an extended warranty to cover engine repairs. Bill told him that the pickup was still under factory warranty and that he did not think Tom needed an extended warranty. Tom said, "OK, I'll take it."

Bill prepared the paperwork, including the sales contract, which stated in large print that the sale was "AS IS. NO WARRANTIES". Tom asked Bill if the pickup had been in any kind of collision and Bill replied that he did not know of any wrecks. Bill told Tom that he could bring the pickup back to Ace for any reason within 10 days of the purchase "for an adjustment". Tom signed the contract, paid Ace \$24,000, and took possession of the pickup.

Seven days later, Tom noticed a strange noise in the engine and took the pickup to the local dealership. The dealership told Tom that he had a major engine problem that would require \$5,000 to repair and that the pickup was not drivable without the repair.

At the dealership, Tom learned that the factory warranty had expired two months earlier and that the pickup had been in a serious collision within the last six months. The collision, however, is not what caused the engine problem. The dealership told Tom that the value of the pickup, before the engine problem and assuming that it had not been in a collision, was at most \$20,000.

Tom towed the pickup back to Ace and demanded his money back. The manager told Tom that Bill had been fired, so he could not vouch for what Bill had told Tom, but that Ace would not take the pickup back and refund Tom's money. He reminded Tom that the sale was "as is" and that Ace not responsible for the engine repair. The only "adjustment" Ace would make would be to let him trade up to another vehicle and allow him \$12,000 for his pickup as a trade-in.

Assume that Tom is a consumer under applicable Texas consumer laws.

- 1. Standing alone, did Ace's advertising statements violate Texas consumer laws and give Tom any remedies thereunder? Explain fully.**
- 2. What acts or omissions of Ace and its employee Bill in connection with the sales transactions violated Texas consumer laws and what remedies are available to Tom for those acts or omissions? Explain fully.**

This concludes the morning portion of the Texas Essay exam.