Thursday Afternoon
March 1, 2007
Essay Questions 7 - 12

TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE <u>RED</u> ANSWER BOOK

QUESTION 7

In 1981 Tom and Sue married. In 1985 Tom purchased a personal life insurance policy in the amount of $2,000,000 designating Sue as the beneficiary. No children were born of their marriage.

In 1997 Tom and Sue divorced. The divorce decree did not mention Tom's life insurance policy, and Tom did not change the beneficiary of his life insurance policy after his divorce from Sue.

In February 2004, Tom married Amanda. In December 2005, Tom executed a valid attested self-proved will, in which Tom devised his entire estate, including specifically the proceeds from his life insurance policy, to Amanda. Tom's will also named Amanda to be executrix.

In July 2006 Tom died. Amanda filed Tom's will for probate in a Texas probate court. Sue timely filed a will contest in the probate court challenging the probate of Tom's will on the ground that she was entitled to the proceeds from Tom's life insurance policy. Sue also filed suit in state district court to enjoin the insurance company from distributing the proceeds from Tom's insurance policy to Amanda and requiring it to distribute the proceeds to Sue.

1. **How should the probate court rule on Sue's challenge to the probate of Tom's will? Explain fully.**

2. **How should the state district court rule on Sue's suit to enjoin the insurance company? Explain fully.**

3. **What part of Tom's estate, if any, are Sue and Amanda each entitled to receive? Explain fully.**

<u>Answer the next question in the LIGHT GREEN answer book.</u>

ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK

QUESTION 8

Don was wrongfully convicted of a felony and began serving a 10-year sentence in 2004. Don's brother, Jeff, was aware that their widowed mother, Martha, had executed a valid attested self-proved will in 1986 that left her entire estate to Don, named Don as executor, and stated that Jeff was to receive nothing under her will because Jeff had failed to attend college as Martha had desired.

Martha, because of her advanced age and her physical and mental disabilities, was unaware that Don had been sent to prison. Jeff misrepresented to Martha that Don had died in an auto accident. Jeff demanded on a daily basis for over a year thereafter that Martha execute a new will leaving her entire estate to him. Martha finally gave in to Jeff's demands and, in May 2006, wrote out a new will entirely in her own handwriting leaving her entire estate to Jeff.

While in prison, Don became aware that Jeff has misrepresented to Martha that Don had died. Newly discovered evidence showed that Don had not committed the crime for which he was convicted. As a result, Don was released from prison on July 10, 2006. Don's attorney began the process to have Don receive a pardon.

Martha died on July 11, 2006, before Don was able to contact her. Jeff filed Martha's handwritten will for probate. Don filed Martha's 1986 typewritten will for probate and filed a challenge to the probate of Martha's handwritten will.

1. **How should the court rule on Don's challenge to the probate of Martha's handwritten will? Explain fully.**

2. **How should Martha's estate be distributed? Explain fully.**

3. **If Martha's first will is admitted to probate, is Don eligible to serve as executor? Explain fully.**

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE <u>YELLOW</u> ANSWER BOOK

QUESTION 9

Albert owned Greenacre, a house in Williamson County, Texas. On February 1, 2003, Albert leased Greenacre to Tammy under a written lease in which Tammy agreed to pay $1,000 per month in rent for a term of three years. The lease required Albert, as landlord, to pay for all roof repairs and for any other repairs costing more than $500.

Soon afterwards, Albert conveyed by a valid deed a life estate in Greenacre to his sister, Beth, with the remainder over to his other sisters, Carrie and Dana, as tenants in common. The deed also stated that, "This conveyance includes all rights and obligations under my lease to Tammy dated February 1, 2003, including the right to receive rent from Tammy, and obligates the grantees to assume the obligations of the landlord in said lease."

In November 2005, Beth hired Roofco to fix a leak in the roof of the house and asked Tammy to pay the $400 cost for the repair. Tammy refused. Also, Tammy fell behind in the rent and did not pay rent to Beth for December of 2005.

On December 31, 2005, Beth died. At the time of her death the $400 due Repair Company was unpaid, and $900 in 2005 ad valorem taxes on Greenacre were due. The executor of Beth's estate wrote a letter to Carrie and Dana asking them to pay Roofco and the $900 ad valorem taxes, since they were now receiving the benefit of the repair and the use of the land. Carrie and Dana refused.

Beginning in January of 2006, although there was no express agreement between Dana and Carrie, Dana undertook to manage Greenacre. At the end of the lease term in January 2006, Tammy moved out and paid $2,000 to Dana, $1,000 for the past due December 2005 rent and $1,000 for the January 2006 rent.

Over the next few months, Dana made the following expenditures:

- She paid the $600 premium for the property insurance on Greenacre.
- The sink in the bathroom sprung a leak that would have cost $250 to repair. Rather than simply hire a plumber to repair the leak, and without the consent of Carrie, she took the opportunity to remodel the entire bathroom at a cost, including the plumbing repair, of $8,000. The bathroom remodel increased the value of Greenacre by $4,000.

Dana sent Carrie a bill asking for reimbursement of $4,300, covering one-half of the bathroom remodel, including the plumbing repair, and one-half of the property insurance premium.

1. **Who is obligated to pay the $900 in 2005 ad valorem taxes and the $400 due Roofco? Explain fully.**

2. **Who is entitled to the $2,000 Dana received from Tammy for the December 2005 and January 2006 rent? Explain fully.**

3. **What part, if any, of the bill Dana sent Carrie for reimbursement is Carrie obligated to pay? Explain fully.**

<u>Answer the next question in the BLUE answer book.</u>

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Ken owns Blackacre, a 20-acre tract of land in Chambers County, Texas. Ken signed an oil and gas lease with Oilco on March 1, 2004. The essential provisions of the lease were these:

- The term of the lease was 1 year from March 1, 2004 and so long thereafter as oil and gas is produced from Blackacre or land with which Blackacre is pooled.
- Oilco, at its option, had the right to pool (i.e., combine) Blackacre for oil and gas development purposes with any other land in the immediate vicinity of Blackacre if Oilco deemed it necessary or advisable in order to properly explore or develop Blackacre.
- If, at the end of the primary term (February 28, 2005), no oil or gas was being produced but Oilco was then engaged in operations preparing for drilling on Blackacre or any land pooled with Blackacre, the lease would remain in force for a period of 60 additional days.
- If drilling during that 60-day period resulted in oil or gas production, then the lease would remain in force as long thereafter as oil or gas was produced.
- Oilco was obligated to pay Ken a $1/6^{th}$ royalty.

Redacre is a 30-acre tract of land adjacent to Blackacre and also subject to a lease to Oilco. The leases of both Blackacre and Redacre provided for pooling. Oilco formed a unit by pooling Blackacre and Redacre.

On February 21, 2005, Oilco received a drilling permit and began to prepare a site on Redacre for drilling a well. All of the equipment required for drilling was set up on the site by the end of February, but actual drilling did not begin until March 5, 2005. Oilco completed the well on April 5, 2005, and the well began to immediately produce in paying quantities. The oil production from the well on Redacre did drain oil from Blackacre.

Oilco made the first three monthly royalty payments to the owner of Redacre, but inadvertently neglected send any royalty payments to Ken. When Oilco discovered the mistake, Oilco immediately sent Ken all the missed royalty payments.

Ken has not decided whether to accept the payment because he is unhappy about the drainage of oil from Blackacre and about Oilco's failure to develop a well on Blackacre, and he is contemplating notifying Oilco that the lease is no longer in effect.

1. **What arguments, if any, does Ken have to contend that the lease of Blackacre terminated? Will these arguments be successful? Explain fully.**

2. **Assuming Ken does not seek to terminate the lease, does Oilco have any obligation to Ken under the lease to avoid drainage of oil from Blackacre or to develop a well on Blackacre? Explain fully.**

Answer the next question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE <u>ORANGE</u> ANSWER BOOK

QUESTION 11

Rob and Jane, residents of Texas, married in 2004. Rob works as a C.P.A., and Jane works as a schoolteacher.

Jane maintains a checking account ("Checking Account") on which she is the sole signatory and against which she regularly writes checks to pay the couple's living expenses and other obligations. Jane deposits her teaching salary into the Checking Account. Rob deposits his earnings as a C.P.A in a savings account ("Savings Account"), over which Rob maintains sole management and control.

Rob owns some rental property he acquired prior to the marriage. The rental property generates revenue of $5,000 per month ("Rental Revenue"). Since the marriage, Rob has deposited the Rental Revenue into the Checking Account.

In 2005, Jane slipped and fell at her local grocery store and recovered $25,000 for her loss of income in the settlement of her personal injury claim. Jane invested this money in stocks and bonds, which are held solely in her name in a stock portfolio ("Stock Portfolio").

Rob and Jane have the following debts: In 2000, Victim obtained a judgment in a personal injury suit against Rob resulting from Rob's negligence. In 2005, Rob, on his sole signature, borrowed money from Bank for use in his C.P.A. business. That loan is now in default. Jane is the sole signatory and cardholder on a credit card account she opened in 2005 with Credit Card Company ("CCC"). That account is now in default.

Which of the couple's assets (the Rental Revenue, the Checking Account, the Savings Account, and the Stock Portfolio) can the following creditors reach to satisfy the debts owed to them:

1. **Victim?**

2. **Bank?**

3. **CCC?**

Explain fully.

<u>Answer the next question in the PURPLE answer book.</u>

ANSWER QUESTION 12 IN THE <u>PURPLE</u> ANSWER BOOK

QUESTION 12

Mickey and Linda, Texas residents, married in 2004. In 2006, Mickey signed a contract to play professional baseball with Club. The contract provided that, "In consideration of the performance of Mickey's services and the promises herein, Club will pay Mickey the following sums: $4,000,000 for the 2006 season; $5,000,000 for the 2007 season; and $10,000,000 to be paid as a lifetime annuity commencing in 2015. The payments for the 2006 and 2007 seasons are guaranteed unless Mickey refuses to render services. The annuity shall be paid as scheduled in any event."

Following the 2006 baseball season, Mickey filed for divorce from Linda. At the divorce trial, held in November 2006, Linda claims that Mickey's 2007 salary and the annuity are community property subject to division between the parties.

1. **What arguments should Linda make to support her claims? Explain fully.**

2. **What defenses should Mickey assert? Explain fully.**

3. **How would the court likely rule? 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.