

Thursday Morning  
July 27, 2006  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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# ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

## QUESTION 1

John and Sue married in 1980 and resided their entire lives in Texas. One child, Bob, was born during their marriage. In 1993, Sue executed a valid, attested, self-proved will in which she devised her estate in equal shares to her husband, John, and their son, Bob.

In 1997, Tim, the orphaned minor son of Sue's deceased friend, Ann, moved in and began living with John and Sue. John and Sue had promised Ann on her deathbed that they would adopt Tim, but they never did. Tim used John and Sue's surname at school, customarily referred to John and Sue as his "parents," and called them "Mom" and "Dad." John and Sue customarily called Tim their "son."

John died in 2004 without ever having made a will. Sue died in 2005 without ever having changed her will. She was survived by Bob and Tim.

- 1. What portion, if any, is Tim entitled to receive from John's estate? Explain fully.**
- 2. How is Sue's estate to be distributed? Explain fully.**

**Answer the next question in the GRAY answer book.**

# **ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK**

## **QUESTION 2**

Fred, a very wealthy single man and a lifelong resident of Texas, executed a valid, attested, self-proved will in 2003 at the age of 65. Fred had two siblings: Clara, a sister with whom he had a close relationship; and Joe, a brother with whom he had always had a troubled relationship. In the will, Fred named Clara as the Independent Executrix of his estate and left all but one dollar of his estate to Clara. In the will, Fred stated that he was intentionally leaving only one dollar to Joe because of the animosity and jealousy that had existed between them since childhood.

Fred died in January, 2005, survived by Clara and Joe. Fred's original executed will was last seen on Christmas Day, 2004, when Fred's maid overheard an argument between Fred and Joe, and saw Joe angrily waving the original of Fred's will. That was the last time anyone saw the original executed will. Fred usually kept the original in the safe in his office, but, despite a diligent search, the original will could not be found. A photocopy of the executed will was found in Fred's bedroom in the nightstand next to Fred's bed.

Clara filed the photocopy of the will for admission to probate. Joe filed a timely will contest objecting to the probate of the photocopy on two grounds: (i) that Fred had destroyed the original of the will with the intention of doing so and (ii) that Clara is presumed to have unduly influenced Fred to leave Joe only one dollar. Joe claims that, as a result, Fred must be deemed to have died intestate and that Joe is therefore entitled to one-half of Fred's estate.

- 1. What must Clara prove in order for the photocopy of Fred's will to be admitted to probate? Explain fully.**
- 2. What must Joe prove in order for his contest to the probate of the photocopy of Fred's will to be successful? Explain fully.**
- 3. How should Fred's estate be distributed? Explain fully.**

**Answer the next question in the BLUE answer book.**

# ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

## QUESTION 3

In 2002, Bear, Ella, and Astro organized and incorporated Bear Bank Company (“BBC”) under the Texas Business Corporations Act to sell sports memorabilia. The reason for calling it Bear Bank Company was to capitalize on Bear’s name because he was a famous sports celebrity. Before adopting this name, the organizers did not make inquiry about the legality or availability of the name.

The Articles of Incorporation: (1) specified that BBC’s sole business was the sale of sports memorabilia; (2) named Bear, Ella, and Astro as the initial directors; and (3) authorized the issuance of 1,500 shares of \$5 par value common stock. After receiving advice from an experienced stockbroker employed by BBC that it would be proper to do so, the directors voted to sell 500 shares each to the three employees of BBC: Courtney, Dan, and Wyatt. The shares were issued to Courtney in consideration of the services she had performed in organizing the corporation. Dan paid \$3,000 cash for the shares issued to him. The shares issued to Wyatt were in consideration of services to be performed by him under a written contract with the corporation.

In 2003, Bear bought Dan’s 500 shares for \$2,500, the then fair market value. In 2004, before his term on the board of directors expired, Bear, a Texas resident, died intestate, survived by his wife and only heir, Mary. Mary claimed that the 500 shares were community property and that, as Bear’s successor and current owner of the shares, she has the right to be appointed to succeed to Bear’s seat on the BBC board of directors.

The two surviving directors mutually agreed that directors’ meetings could be called on the basis of notice given electronically, i.e., by e-mail. The directors gave electronic notice of a directors’ meeting and, by unanimous vote and over objection by Mary, elected Julia, Wyatt’s wife, to fill the vacancy on the board.

- 1. What procedures, if any, should the organizers of BBC have taken to determine the legality of adopting Bear Bank Company as the name of the corporation and was the selection of the name Bear Bank Company a legally permissible name? Explain fully.**
- 2. Did the directors act lawfully in authorizing and pricing the BBC shares and in issuing them to Courtney, Dan, and Wyatt for the consideration received from each of them? Explain fully.**
- 3. What rights did Mary’s sole ownership of the shares confer on her regarding the right to succeed Bear on the board of directors? Explain fully.**
- 4. Was the election of Julia as a director properly conducted by the remaining board members? Explain fully.**

**Answer the next question in the PINK answer book.**

## **ANSWER QUESTION 4 IN THE PINK ANSWER BOOK**

### **QUESTION 4**

Kim, Cole, and Madisen legally and properly created a limited partnership called BowWowMeow, Ltd. (“BWM”) to operate a pet shop. Kim was the general partner. Cole and Madisen were limited partners and did not involve themselves in the day-to-day management of the business.

In 2002, Kim, without discussing it with Cole and Madisen, contracted with Ashley for the purchase of \$1,000 worth of pet food to feed the animals in BWM’s shop. Kim signed the contract “BowWowMeow, Ltd. by Kim,” and Ashley delivered the pet food. BWM did not then have \$1,000 and has never paid Ashley. Ashley filed suit against BWM, Kim, Cole, and Madisen for the \$1,000 debt.

In 2003, Madisen withdrew from BWM as a limited partner, and BWM lawfully admitted Elizabeth as a new limited partner. At that time, Ashley amended her complaint to add Elizabeth as a defendant.

In 2004, BWM properly registered and complied with the applicable requirements of the Texas Revised Partnership Act to become a registered limited liability partnership and adopted the name KCE Ltd., LLP (“KCE”). Kim was the general partner, and Cole and Elizabeth were limited partners of KCE. At that time, Ashley further amended her complaint to add KCE as a defendant.

In 2005, Elizabeth, while working alone in the pet shop, negligently allowed a dog that had bitten several customers on prior occasions to run loose in the store. The dog bit and injured Jen, a customer who was in the store to buy pet supplies. Jen sued KCE, Kim, Cole, and Elizabeth for negligence and damages.

- 1. What is the liability, if any, of each of the defendants in Ashley’s lawsuit (BWM, Kim, Cole, Madisen, Elizabeth, and KCE) for the \$1,000 pet food debt? Explain fully.**
- 2. What is the liability, if any, of each of the defendants (KCE, Kim, Cole, and Elizabeth) to Jen for her injuries? Explain fully.**

**Answer the next question in the DARK GREEN answer book.**

# ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

## QUESTION 5

On January 9, 2006, John dated a check “1/9/06” for \$100 drawn on the State Bank and gave it to Carl as a birthday present. Because John wanted to make sure that only Carl got the money, John crossed out the words “to the order of” on the preprinted check so that the check read “Pay ~~to the order of~~ Carl”. The check was signed by John and otherwise normal in all respects.

Carl wanted to build his body strength and reduce his waistline. Carl asked Sharon, his wife’s dietary weight loss consultant, for some suggestions. Sharon told Carl that she had bought and used the “Miracle Machine”, a metal-frame exercise device that she used to strengthen her abdominal muscles. Sharon told Carl that, although she was not a physical fitness trainer, she thought the machine might work for him, but that he would have to take his own chances. Sharon offered to sell it for \$100.

**On January 10, 2006, Carl agreed to buy the “Miracle Machine” and as payment gave Sharon the check he received from John which Carl restrictively indorsed as follows: “Pay to the Order of Sharon /s/ Carl.” When Sharon attempted to cash the check on February 15, 2006, at State Bank, it was dishonored because John had closed his account on January 31, 2006.**

On February 16, 2006, while Carl was using the “Miracle Machine” the metal frame broke. Carl discovered that the frame was badly rusted and the paint concealed the rust.

On February 17, 2006, Sharon demanded that Carl pay her the \$100 for the purchase price. Carl refused and told Sharon that the “Miracle Machine” did not work because he had been using it religiously for five weeks and had not lost any inches and it was defective because it had broken.

1. **Is Carl liable to Sharon for the \$100 check? Explain fully.**
2. **What claims, if any, might Carl assert against Sharon under the UCC? Explain fully.**
3. **Is John liable to Sharon for payment on the check? Explain fully.**

**Answer the next question in the TAN answer book.**

# ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

## QUESTION 6

On January 1, 2005, Bob, a cabinet maker, loaned Tommy \$4,000, and in return Tommy signed a negotiable promissory note (“Tommy’s Note”) payable to the order of Bob at six percent per annum interest.

On February 1, 2005, Bob borrowed \$1,000 from Wilson. Bob signed a promissory note made payable to the order of Wilson and a security agreement giving Wilson a security interest in Tommy’s Note. Wilson did not file anything to perfect this security interest.

On February 12, 2005, Bob borrowed \$10,000 from Little Bank. Bob signed a promissory note made payable to the order of Little Bank and a security agreement giving Little Bank a security interest in all of his current and after acquired inventory, the proceeds thereof, and in Tommy’s Note. Little Bank immediately filed a proper financing statement with the Secretary of State to perfect this security interest.

On February 15, 2005, Wilson became concerned and asked Bob if he could take possession of Tommy’s Note. Bob gave him Tommy’s Note.

On March 1, 2005, Bob borrowed \$5,000 from Big Bank. Bob signed a promissory note made payable to the order of Big Bank and a security agreement giving Big Bank a security interest in all of his accounts receivable. Big Bank immediately filed a proper financing statement with the Secretary of State to perfect this security interest.

On March 1, 2005, Bob began making custom cabinets ordered by Homebuilder using the inventory of wood Bob had on hand. On April 1, 2005, Bob delivered the cabinets and invoiced Homebuilder for \$3,000, which Homebuilder failed to pay Bob.

Bob defaulted on his promissory notes to Wilson, Little Bank and Big Bank.

- 1. Which creditor, Wilson or Little Bank, has the superior security interest in Tommy’s promissory note? Explain fully.**
- 2. Which creditor, Little Bank or Big Bank, has the superior security interest in the \$3,000 Homebuilder account receivable? Explain fully.**
- 3. Under the UCC, who has the superior interest in the cabinets Bob delivered to Homebuilder? Explain fully.**

**This concludes the morning portion of the Texas Essay exam.**