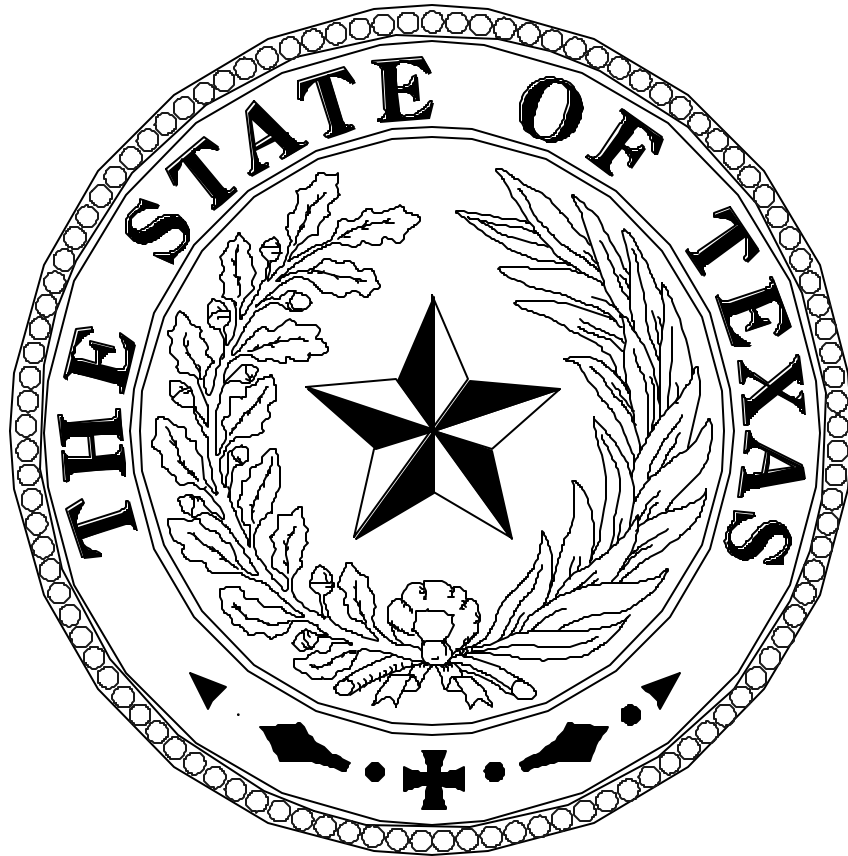


Thursday Afternoon  
July 27, 2006  
Essay Questions 7 - 12



## TEXAS BAR EXAMINATION

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# ANSWER QUESTION 7 IN THE RED ANSWER BOOK

## QUESTION 7

Smith died in 2000. Smith's probated will established a testamentary trust, which directed that the following property be transferred to the "Smith Trust:" 50,000 shares of XYZ common stock; \$100,000 in cash from his account at First Bank; and a cotton warehouse with a fair market value of \$500,000, which yielded annual income of approximately \$48,000.

The "Smith Trust" named Dan as trustee and directed that the income from the trust be paid to Dan for life and, upon Dan's death, the corpus be distributed to Blanche, Smith's granddaughter.

Dan said he did not want to be the trustee but that he would "take care of things until someone else would agree to be trustee." He undertook to transfer the property to the Smith Trust, to collect the income from the trust assets, regularly pay the income out to himself, and file federal tax returns.

Dan took the following actions: (i) he sold 10,000 shares of the XYZ stock, which for 30 years had paid a modest dividend, and used the proceeds to buy stock in Global Company, which had paid very high dividends for the past 10 years; (ii) he obtained a personal loan from State Bank and pledged as collateral for the loan 10,000 shares of the Smith trust's XYZ stock, (iii) at a substantial savings on the warehouse insurance (and a corresponding increase in the trust income Dan paid himself), he increased the amount of the deductible from \$5,000 to \$100,000 per occurrence.

In 2005, Global Company unexpectedly collapsed, rendering its shares valueless. A fire in the cotton warehouse caused a loss of \$250,000. The insurance company paid the Smith trust \$150,000, the difference between the amount of the loss and the deductible. Dan claimed that this \$150,000 was income, and he paid it out to himself. Dan defaulted on his loan at State Bank, and the bank foreclosed on the XYZ stock.

Blanche has sued Dan for breach of his duties as trustee. Dan moved to dismiss Blanche's suit on the ground that he has no liability because he never agreed to be trustee.

- 1. How should the Court rule on Dan's motion to dismiss the suit? Explain fully.**
- 2. What rights and remedies are available to Blanche, if any, for the following acts of Dan:**
  - a. Sale of 10,000 shares of XYZ stock and purchase of the Global Company stock. Explain fully.**
  - b. Pledging the 10,000 shares of XYZ stock as collateral for his loan from State Bank. Explain fully.**
  - c. Increasing the deductible in the warehouse insurance policy. Explain fully.**
  - d. Treating as income the \$150,000 paid by the insurance company for the warehouse loss. Explain fully.**

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

# **ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK**

## **QUESTION 8**

Blake instructed Rob, his insurance agent, to obtain premises liability and property damage insurance on a residence and detached workshop, including the contents, on a farm that Blake owned in Texas. Rob delivered to Blake an insurance policy issued by Insurance Co. (Insko), which Rob said included liability and property damage coverage for the residence, the workshop, and the contents of each. Blake paid the premium.

The Insko policy contained premises liability coverage for both the residence and the workshop, including a provision requiring Insko to defend at its own expense all lawsuits involving claims for personal injuries arising under the policy. However, the policy only included property loss coverage for the residence and its contents and expressly excluded property loss coverage for the workshop and its contents.

When Blake noticed the exclusion of property loss coverage for the workshop and its contents, he called and explained the problem to Alice, Vice President of Marketing for Insko. Alice told Blake that Insko would issue an endorsement (i.e., an amendment) adding that coverage to the policy and advised him of an increase in the premium. Blake paid the additional premium. However, Insko never issued such an endorsement because, under the State Department of Insurance regulations, no such property loss coverage was available for detached workshops on farms. Insko never disclosed this to Blake.

A month later, a failure in the electrical wiring in the workshop caused a fire, which spread to the residence, completely destroying both structures and their contents. A firefighter who responded to the fire was severely burned by an electrical shock from the faulty workshop wiring. The firefighter sued Blake to recover for his burn injuries.

Blake submitted timely claims to Insko for the property loss to the residence, the workshop, and their contents. He also tendered the defense of the firefighter's personal injury suit to Insko.

Initially, Insko denied Blake's property loss claims, asserting that the fire was the result of arson, even though the Fire Marshal had issued a ruling that it was an accidental electrical fire. Insko also initially refused to pay for Blake's defense in the firefighter's suit, asserting that there was no coverage because the injury occurred in the workshop, not the residence.

Only after Blake hired an attorney, did Insko agree to take over and pay for Blake's defense in the firefighter's suit. However, Insko refused to reimburse the \$15,000 Blake had so far paid his attorney. Insko also agreed to pay Blake's property loss claim for the residence and its contents. However, Insko refused to pay the property loss claim on the workshop and contents, relying on the express policy exclusion of such coverage.

Assuming that Blake is a "consumer" for all purposes:

- 1. What rights and remedies, if any, does Blake have against Rob and Insko under applicable Texas consumer rights statutes? Explain fully.**
- 2. What defenses, if any, might Rob and Insko assert? Explain fully.**

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

# ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

## QUESTION 9

Bill and Jane married in 1985. They had one child, Wanda, who was born in 1990. Jane filed a Petition for Divorce in 2005, at which time Bill and Jane's community property, totaling \$1,500,000, consisted of their homestead (valued at \$350,000), two automobiles (each valued at \$50,000), Bill's retirement account (valued at \$750,000) and an investment portfolio (valued at \$300,000). All assets were acquired during the marriage.

The only ground for divorce Jane alleged in her Petition was that the marriage had become insupportable because of a discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation. Jane sought a "just and right" division of the community property.

At the trial, the evidence showed that (1) the couple's minor child, Wanda, is 15 and attends a private high school which requires her parents to pay a substantial tuition (although the dollar amount was never testified to); (2) Wanda has a learning disability which requires a private tutor at a cost of \$500 per month; (3) Wanda requires substantial dental work likely to exceed \$15,000 before she reaches the age of 18; (4) Bill worked as a petroleum engineer during the marriage and continues in the same occupation; (5) Bill is 57 and is in excellent health; (6) Bill's net resources are \$10,000 per month; and (7) Jane has a high school education, has not worked outside of the home since the marriage, has had difficulty finding employment since the separation, and is handicapped by a finger injury. At trial there was also evidence of Bill's adultery during the marriage and evidence that Bill physically abused Jane.

The trial judge awarded as a "just and right" division two-thirds of the community estate to Jane and one-third of the community estate to Bill. The court also ordered Bill to pay \$2,000 per month child support.

- 1. Did the court have the power to award Jane a disproportionate share of the community estate, and, if so, what considerations justify the disproportionate award? Explain fully.**
- 2. Did the trial court err in the amount of child support it ordered Bill to pay? Explain fully.**

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

# ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

## QUESTION 10

Debbie and Charles married in 2001. In 2005, they filed for divorce. The trial court, in dissolving the marriage, must characterize various items of property held by the couple. The items of property and the only evidence adduced at trial relating to them are as follows:

1. **Blackacre.** In 2002, Debbie's mother, Linda, conveyed Blackacre to Debbie by a deed, which recited:  
"For good and valuable consideration, Linda does hereby grant, sell and convey unto Debbie, as her sole and separate property and estate, Blackacre."

Charles claims Blackacre is community property because it was conveyed to Debbie during the marriage.

2. **Funds from a Personal Injury Settlement.** In 2003, Charles was injured in a car accident. Charles filed a personal injury lawsuit alleging the right to recover damages for mental anguish, physical impairment, lost wages, and lost earning capacity. In 2004, Charles settled the lawsuit for \$190,000.

During the divorce trial, the court admitted into evidence the following release of Charles' claims in the personal injury suit:

"It is understood and agreed that this is a full and complete release and includes all sums of any kind or character, including by way of illustration, but not by way of limitation: actual damages sustained by claimant; exemplary damages; medical, hospital, drug or nursing bills; property damages; loss of income or of profits; mental anguish; and physical impairment."

At the time of the divorce trial, \$69,000 remained in Charles' possession from that settlement.

3. **A 2000 Mercedes Automobile.** Charles bought a Mercedes and obtained a car loan in 2000, one year before the marriage. Commencing in 2001, the loan payments were made with community funds and the lien was released and final title was acquired during the marriage.

4. **Royalty Income.** At the time of their marriage, Charles owned oil and gas mineral interests in real property he had inherited. The primary source of income for the couple's living expenses over the term of the marriage were Charles' royalty payments from the inherited mineral interests, which continue to provide \$10,000 a month on average. Charles did not expend any significant time, talent or labor with regard to these royalty payments during the marriage.

How should the trial court characterize these properties (as separate or community property)?

1. **Blackacre. Explain fully.**
2. **The remaining funds from the personal injury settlement. Explain fully.**
3. **The Mercedes. Explain fully.**
4. **The continuing royalty income. Explain fully.**

Answer the next question in the ORANGE answer book.

# ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

## QUESTION 11

Chris owned two adjoining lots in Brazoria County, Texas: Lot 1 on the north and Lot 2 on the south. Chris also owned Greenacre, a 50-acre tract just outside of town.

Chris lived in a small house (his legal homestead) on the northern lot, Lot 1. The southern lot, Lot 2 had a large house on it.

When Chris first acquired Lots 1 and 2, he had commissioned a survey. The surveyor inadvertently switched the lot numbers so that the survey erroneously described the southern lot as Lot 1 and the northern lot as Lot 2.

In April 2004, Chris sold the southern lot (Lot 2) for \$80,000 to Pat. Because of the surveying error, the property description in the warranty deed by which he conveyed the property to Pat erroneously described the property as "Lot 1." Pat duly recorded the deed and moved into the large house on what was actually Lot 2.

In May 2004, Chris borrowed \$10,000 from Sue to buy a boat and delivered to Sue his promissory note due and payable in November 2005. To secure the payment of the note, Chris properly signed and acknowledged a deed of trust granting Sue a lien on Greenacre. Sue neglected to record this deed of trust.

In February 2005, Chris sold Greenacre for \$25,000 to Larry, who was not aware of Sue's deed of trust. Chris conveyed Greenacre to Larry by a properly executed and acknowledged warranty deed, which properly described Greenacre. Larry duly recorded the deed in Brazoria County.

In March 2005, when Sue learned of the sale of Greenacre, she complained to Chris. Rather than dispute Sue's right to demand immediate payment of the note, which was not yet due, Chris agreed to give her a new deed of trust on his homestead on Lot 1. Again, because of the surveying error, the property description that Chris attached to the new deed of trust erroneously described the property as Lot 2. Sue duly recorded the new deed of trust in Brazoria County.

Later, Pat discovered that his home was actually located on Lot 2, not Lot 1 as described in the deed he had received from Chris. Pat now seeks to confirm his interest in Lot 2.

Chris failed to pay Sue when the note matured, and Sue now seeks to foreclose on the new deed of trust Chris had given her.

- 1. What are the respective rights and remedies of Pat, Chris, and Sue in Lots 1 and 2? Explain fully.**
- 2. What are the respective rights of Larry and Sue in Greenacre? Explain fully.**

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

# ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

## QUESTION 12

In 2005, Scott conveyed Blackacre, a 50-acre tract of land in Liberty County, Texas, to Ken. In the warranty deed to Ken, Scott reserved “one-half of the royalty under any mineral lease now or hereafter covering Blackacre.” The warranty deed to Ken was properly recorded in the Liberty County real property records.

Ken later executed a mineral warranty deed to Mindy that stated that Ken conveyed “all oil, gas and other minerals on, under and that may be produced from Blackacre, except that Ken reserves one-fourth of the royalty under any mineral lease now or hereafter covering Blackacre as a reservation for Ken and Ken’s heirs, successors and assigns forever.” The mineral warranty deed did not mention Scott’s prior reservation. Mindy properly recorded this deed in the Liberty County real property records. Ken retained all surface rights to Blackacre.

Mindy entered into a contract that allowed Concrete Co. to excavate and remove sand from Blackacre. Ken objected when Concrete Co. started to dig a sand pit on Blackacre.

In a lease entered into between Oil Co. and Mindy, Oil Co. agreed to pay “a one-fifth royalty from production on Blackacre.” Oil Co. drilled a producing oil well on Blackacre and made the first royalty payment by dividing the one-fifth royalty as follows: (i) one-half of the one-fifth to Scott, (ii) one-fourth of the one-fifth to Ken, and (iii) one-fourth of the one-fifth to Mindy.

Initially, Scott, Ken and Mindy signed a division order that accepted Oil Co.’s division of the first royalty payment. After the first payment, Mindy sent a letter to Oil Co. revoking her consent to the division order, demanding that Oil Co. recalculate the first payment and remit to her the amount Oil Co. had paid Ken, and directing Oil Co. to make all future royalty payments “in accordance with the legal rights of the parties under the recorded conveyances.” Ken told Mindy that, if his share were reduced, he would sue to invalidate the lease to Oil Co. on the grounds that he had never signed it and that Mindy was not empowered to be the sole lessor signatory.

1. **How should Oil Co. divide future royalty payments? Explain fully.**
2. **What claims, if any, do Mindy and Ken have against one another? 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.**