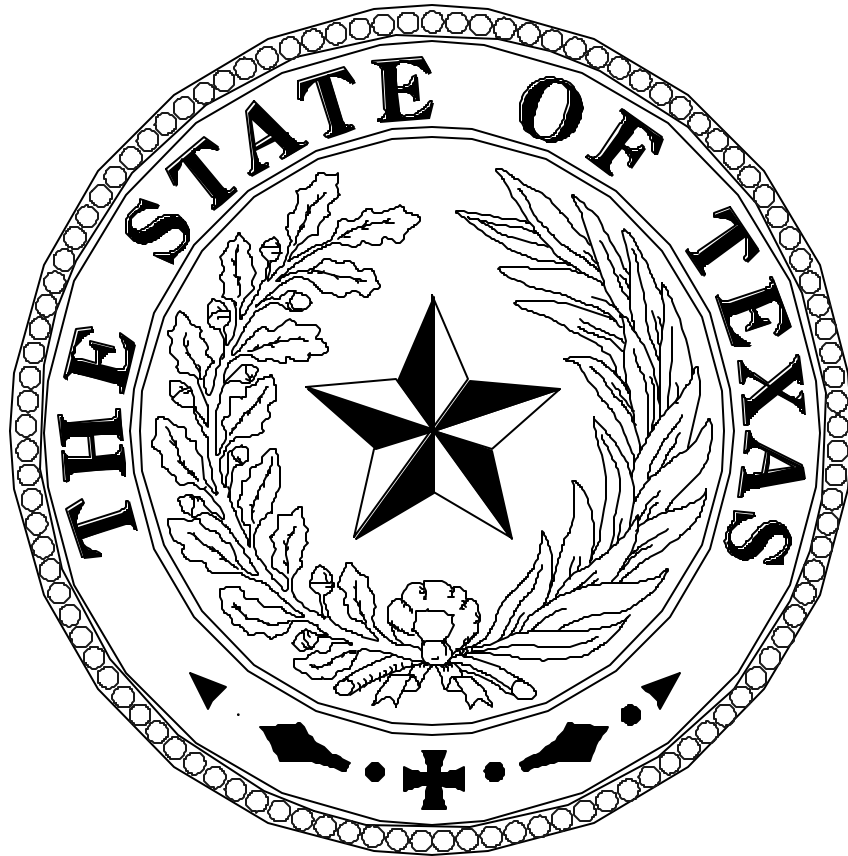


Thursday Morning
February 23, 2006
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

In 2003, Cole and Kim were engaged in the practice of law in a general partnership named Cole & Kim in Waco, Texas. The partnership owed \$50,000 to Texas Bank.

In November 2004, Ashley, a prominent and wealthy local lawyer, joined Cole & Kim and became a general partner.

In December 2004, Cole, as a general partner, bought \$30,000 worth of office equipment in the ordinary course of business for the general partnership. This was bought on credit from Office Store without discussing it in advance with any of the partners.

In January 2005, Ashley borrowed \$6,000 for personal purposes and signed a security agreement with Friendly Bank to give the bank a security interest in Ashley's one-third interest in the general partnership's equipment.

In February 2005, Kim, without Cole's and Ashley's knowledge or consent, sold some shares of stock belonging to a client without the client's consent. This resulted in a loss of \$7,000 to the client.

In March 2005 Ashley, persuaded Kim and Cole to dissolve the general partnership and form a limited partnership and insisted that it be named "Ashley, Kim & Cole, L. P." Ashley and Cole were limited partners and Kim was named as the general partner.

In April 2005, Kim, as general partner and after consulting with and obtaining the approval of Ashley and Cole, borrowed \$80,000 from Owner to purchase Owner's building.

The foregoing debts all remain unpaid. Ashley, Cole & Kim, L.P. is now insolvent. Cole and Kim have no property outside of the partnership.

1. **What are Ashley's liabilities, if any,**
 - a. **To Texas Bank for the \$50,000 owed by Cole & Kim in 2003? Explain fully.**
 - b. **To Office Store for the \$30,000 purchase of equipment by the general partnership in December 2004? Explain fully.**
 - c. **To the client for \$7,000 for the wrongful sale of stock by Kim in February 2005 without the other partners' knowledge or consent? Explain fully.**
 - d. **To Owner for the \$80,000 purchase of the building in April 2005 by the limited partnership? Explain fully.**

2. **Was the security agreement signed by Ashley effective to give Friendly Bank a security interest in a one-third undivided interest in the office equipment purchased by the limited partnership? Explain fully.**

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

AbbyCourt Company was a Texas business corporation that sold tennis equipment. Jennifer, Dan and BJ served as the directors. In addition to these directors, there were 10 other shareholders.

In 2004, the directors gave notice by e-mail to all shareholders that the directors intended to hold a Board of Directors meeting to consider a resolution (1) disposing of all AbbyCourt's property by sale not in the regular course of business and on such terms and conditions as the Board of Directors approved and (2) adopting Articles of Conversion converting AbbyCourt from a Texas business corporation to a Texas registered limited liability partnership ("LLP").

Two of the directors, Jennifer and Dan, were not present at the meeting, but had given written proxies to BJ to vote in their stead for the proposed resolution.

The meeting went forward and, justifying the decision in part on a memorandum from AbbyCourt's corporate legal counsel opining that the tax treatment of LLPs was more favorable generally than the tax treatments of corporations, BJ cast three votes in favor of the resolution. The minutes of the meeting reflected that the resolution had been adopted and that the directors were going to proceed to sell the property and convert to an LLP.

The other 10 shareholders object to the action taken by the Board of Directors and seek to have it declared invalid.

- 1. What grounds, if any, do the shareholders have for objecting to the way the Board called the meeting and the action taken by the Board? Explain fully.**
- 2. Assume that all proper steps have been taken to carry out the proposed sale of all of AbbyCourt's property, what rights, if any, do any dissenting shareholders have?**
- 3. Under state and federal tax laws, are there any tax advantages applicable to being organized as a Texas LLP as compared to being organized as a Texas business corporation? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

Trixy White sold Rudolph Red a pair of earrings for five dollars. Rudolph gave Trixy a check for \$5.00 drawn on his account at State Bank as payment for the earrings. Rudolph filled in the body of the check, leaving spaces after the numbers \$5.00 and a large blank space after the word “*five*,” and signed the check as follows:

“Pay to the order of _____ Trixy White _____ \$ 5.00 _____
_____ five _____ dollars”
Rudolph Red

Trixy altered the amount shown on the check so that it read:

“Pay to the order of _____ Trixy White _____ \$ 500.00 _____
_____ five hundred and 00/100 _____ dollars”
Rudolph Red

Trixy indorsed the check and cashed it at Green Grocery. Green Grocery indorsed the check and deposited it in its account at Ace Credit Union (“Ace”), which credited Green Grocery’s account with \$500. Ace presented the check to State Bank. State Bank paid the check and charged \$500 to Rudolph’s account. When Rudolph received his bank statement, he promptly complained, telling State Bank that the check was only written for \$5.00 and demanding that State Bank re-credit his account with \$495.

Under the U.C.C. as found in the Texas Business and Commerce Code, what are the rights and obligations of the following on the check? Explain each fully.

- 1. Rudolph?**
- 2. Ace Credit Union?**
- 3. Green Grocery?**
- 4. State Bank?**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Elmer started up a retail computer store business as a sole proprietorship to sell computers to the general public. On January 13, 2005 he borrowed \$20,000 from Bank to purchase inventory and use as working capital. At the same time, he signed a security agreement giving Bank a security interest in “all of the business’ inventory, equipment, accounts, and all other property now owned or hereafter acquired.” On the same day, Bank filed a financing statement with the Texas Secretary of State stating Elmer’s and Bank’s names and mailing addresses and indicating that it had a security interest in “all of Elmer’s assets.” On January 15, 2005, Elmer used the loan proceeds to purchase eight computers for resale and a credit card authenticating machine for use in processing his sales.

On March 1, 2005, Iona, knowing of Bank’s security interest in the computers, purchased four of the computers from Elmer.

On April 1, 2005, Elmer purchased five additional computers on credit from Manufacturer, for which he signed a promissory note for \$5,000 and security agreement Manufacturer giving Manufacturer a security interest in the five computers. Manufacturer filed a financing statement with the Texas Secretary of State stating Elmer’s and Manufacturer’s names and addresses and properly describing the collateral as the five computers but did not otherwise notify anyone.

On May 1, 2005, Harry, who was unaware of any of these security interests, purchased from Elmer the credit card authenticating machine and three of the computers Elmer had acquired from Manufacturer.

On June 1, 2005, Elmer closed his business and left town for parts unknown. He did not pay Bank or Manufacturer any of the amounts owed to them and left the remaining unsold computers (four of the ones he had originally purchased and two of the ones he had later purchased from Manufacturer) on the business premises.

Bank claims that it is entitled, as against all others, to take possession of all the items of property described above.

What rights, if any, does Bank have in:

- 1. The four remaining unsold computers that Elmer had originally purchased? Explain fully.**
- 2. The two remaining unsold computers that Elmer had later purchased from Manufacturer? Explain fully.**
- 3. The four computers purchased by Iona? Explain fully.**
- 4. The three computers and the credit card authenticating machine purchased by Harry? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

Paul, a small business owner in Lubbock, Texas, contacted Jones Alarm Company (“Jones”) about the purchase and installation of a burglar and fire alarm system. Jones was an authorized sales representative of SAFE Co. (“SAFE”), a manufacturer of such alarm systems.

SAFE expressly warranted its alarm systems were designed to “use existing telephone lines to call local police directly in the event of unauthorized entry and local firefighters directly in the event of a fire.” When the Jones salesperson went to Paul’s place of business for a demonstration of how the system worked, he told Paul that it was one of SAFE’s “advanced” models. The salesperson simulated a fire and break-in and showed Paul how it called the local police and fire departments directly. In fact, the system the salesperson used for the demonstration was not manufactured by SAFE.

Paul, convinced by the demonstration that the system would produce 15- to 20-minute response times from the local police and fire departments, agreed to purchase the system. The salesperson told Paul that Jones would “stand by” the SAFE warranty and service the device. Unknown to Paul, but known to Jones’s salesperson, the SAFE alarm system actually called a telephone service center in Tulsa, Oklahoma, and the service center in turn called the local police or fire departments in the event of an unauthorized entry or a fire. Jones’s technicians came back the next day and installed a SAFE system.

One night, burglars broke into Paul’s place of business. The burglars used lighted candles so they could better see what they were doing. One of these candles tipped over and ignited supplies in the maintenance closet and a devastating fire resulted. The SAFE alarm unit detected the unauthorized entry and fire and called the service center in Tulsa. The service center failed to call the fire department and delayed calling the local police for 30 minutes. The burglars were in and out of Paul’s building within 15 minutes, taking with them a number of Paul’s computers. When the police arrived 45 minutes later, the burglars were gone and the building was on fire. Paul lost \$25,000 in stolen computers and suffered \$50,000 in fire damage.

Paul wrote letters to SAFE and Jones, explaining that Jones’s salesperson had misrepresented the capabilities of the SAFE system Jones had installed and demanding payment for his losses. SAFE replied, denying responsibility for the loss. Jones did not respond at all.

Assume that Paul is a “consumer” as defined in the Texas Deceptive Trade Practices Act (“DTPA”).

- 1. In an action by Paul against SAFE under the DTPA, what causes of action and remedies are available to Paul, what defense, if any, might SAFE assert, and what is the probable result? Explain fully.**

- 2. In an action by Paul against Jones under the DTPA, what causes of action and remedies are available to Paul, what defense, if any, might Jones assert, and what is the probable result? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

In January 2004, Tom, a wealthy Texan, created an express written trust, the purpose of which was to provide a lifetime income to his disabled wartime buddy, David, and David's descendants. The trust property (the principal) consisted of \$750,000 in cash, a warehouse that produced an annual rent of \$12,000, and 200 head of cattle due to be sold at market price in the ordinary course of cattle sales.

The trust instrument named Capital Bank as trustee, and provided as follows:

The income from the trust principal shall be accumulated during 2004 and thereafter paid to David commencing in 2005 and continuing during his lifetime. Upon David's death, the income shall be paid to David's descendants until the death of the last of such descendants. Upon the death of the last of David's descendants, the principal of the trust shall be distributed to David's sister, Martha or to such of her descendants who survive her.

David is widower. He has one child, who is 21 years old, is single, and has no children. Martha is unmarried and has no children.

During 2004, Capital Bank reported the following facts: (a) the cash account earned \$35,000 in interest; (b) the warehouse earned \$10,000 in rent until it was condemned by the state; (c) the state paid the trust \$150,000 for title to the warehouse; (d) 50 head of cattle were sold for \$45,000, of which \$20,000 was profit of; (e) another 40 head of cattle, while being transferred to another pasture, were killed in a truck wreck, for which loss the trucker's insurance company paid \$30,000. All of these funds were collected by Capital Bank as trustee and held in the trust's bank account.

Tom died intestate in January 2005. After unsuccessful negotiations intended to settle Tom's estate, Tom's heirs sued to have the trust declared invalid. David and Martha opposed the action and asked the Court to do what is necessary to preserve the trust. In addition, Martha sought to have the Court declare that all the funds accumulated by Capital Bank during 2004 should be added to and held by the Bank as principal.

- 1. On what ground could Tom's heirs properly base their claim that the trust should be invalidated? Explain fully.**
- 2. What remedy should David and Martha seek in order to have the Court preserve the trust, and how would the trust property eventually be distributed? Explain fully.**
- 3. How should the Court classify as between income and principal each category of the funds collected by Capital Bank during 2004? Explain fully.**

This concludes the morning portion of the Texas Essay exam.