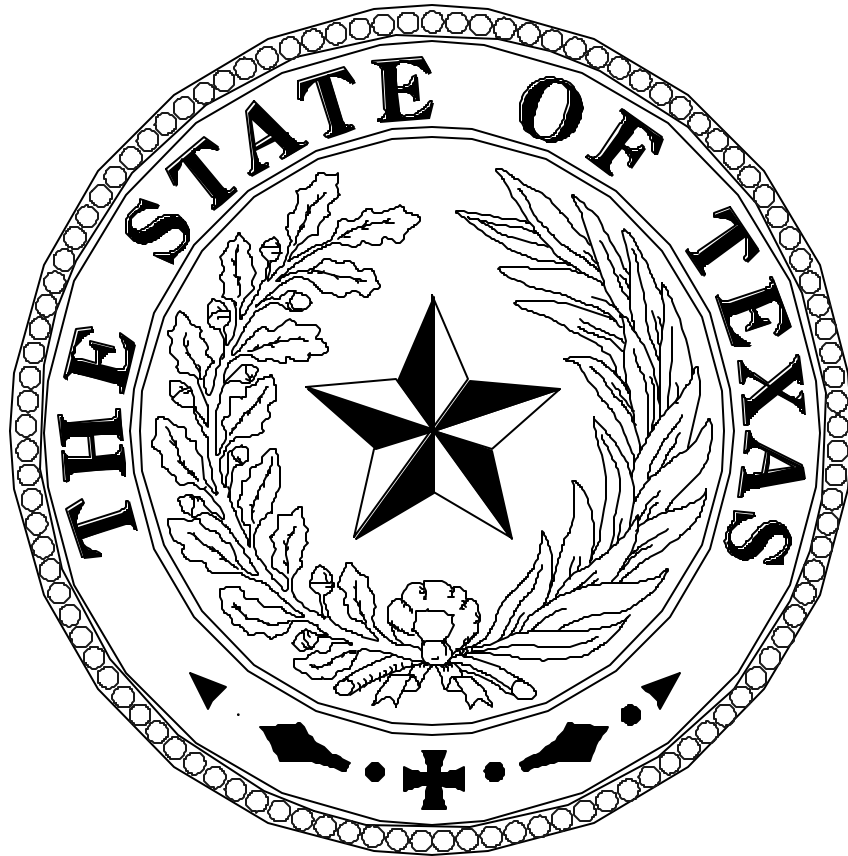


Thursday Afternoon  
February 23, 2006  
Essay Questions 7 - 12



## TEXAS BAR EXAMINATION

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# ANSWER QUESTION 7 IN THE RED ANSWER BOOK

## QUESTION 7

In 1975, Bill and Sue, residents of Harris County, Texas, both executed a single document, which stated in part as follows:

We, Bill and Sue, husband and wife, of Harris County, Texas, each being of sound mind and for the purpose of making the disposition of our worldly possessions, do hereby make and publish this our Last Will and Testament. Tom shall be the Independent Executor of our joint estate.

It is our will that the survivor of us shall have a life estate in all real and personal property of our estate.

We hereby give, devise and bequeath all our property and estate of which the survivor of us may be seized and in possession, both real and personal, at the time of his or her death to our good friend, Tom.”

In 1996, Sue, without the knowledge or consent of Bill, executed and signed entirely in her own handwriting a holographic will giving her entire estate to Mary, her daughter from a previous marriage.

Bill and Sue died simultaneously in a truck/car accident in December 2004 in Harris County, Texas.

Mary filed an application to probate Sue’s 1996 holographic will. Tom filed an opposition to this application and filed an application to probate the 1975 will of Bill and Sue.

**Which will should be admitted to probate, and to whom should the property of Bill and Sue be distributed? Explain fully.**

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

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

**QUESTION 8**

On December 12, 2005, Harry, a single man, executed a valid attested, self-proved will. The will devised all of his property, both real and personal, to his sister, Teresa.

Unknown to Harry, Teresa had died two days before Harry executed his will. Teresa was survived by three adult children, Pat, Rick and Walter.

On December 14, 2005, Rick stabbed and killed Walter after a bitter argument and violent fight. Walter was unmarried and had no children at the time of his death. Rick has one child, Jimmy. Harry died on December 20, 2005, leaving an estate consisting of \$1,000,000 in cash, securities and bonds and real estate with a value of \$2,000,000.

Rick was convicted of Walter's murder before Harry's will was probated.

**To whom should Harry's estate be distributed? Explain fully.**

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

# ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

## QUESTION 9

Mary sold Blackacre, a 70-acre parcel in Tarrant County, Texas, to Steve. In the warranty deed by which she conveyed Blackacre, Mary reserved “all oil, gas, and other minerals on, under, and that may be produced from Blackacre.”

Steve, intending to subdivide and develop Blackacre into an office and warehouse complex, applied to the Railroad Commission of Texas (the “Commission”) to have Blackacre designated as a qualified subdivision. He submitted a plat showing the lots in the subdivision and designating a specific two-acre operations area (the Ops Area”) for mineral operations. Mary received proper notice of Steve’s application, and, without objection from Mary, the Commission approved it.

Steve built the main road at the entrance to the development and a decorative fountain alongside the road. On Lot 1, which was adjacent to the Ops Area, he built a warehouse. Accidentally, the fence separating Lot 1 from the Ops Area was built six feet inside the Ops Area boundary.

Mary and ABC Oil Co. (“ABC”) entered into and duly recorded an oil and gas lease on Blackacre. The lease contained no provisions regarding ABC’s restoration obligations. ABC immediately began exploration activities, using the main road for access.

At about the same time, Steve leased the warehouse to Tammy for the storage of building materials used in her business. The written lease was for a one-year term.

Before long, the normal day-to-day use of the main road by ABC’s heavy trucks damaged the main road, making access by other tenants difficult. Also, one of ABC’s truck drivers, while working, negligently collided with the decorative fountain and damaged it severely.

To provide more room to carry on the exploration activities within the Ops Area, ABC dismantled the fence that separated Lot 1 from the Ops Area and stacked the dismantled fencing materials alongside the warehouse.

Upset that the fence removal and the damage to the fountain and main road was making the development unsightly and undesirable, Tammy stopped paying rent to Steve after the third month of her lease and threatened to abandon the warehouse. Steve changed all the locks on the warehouse doors, refused to give Tammy a key, and told Tammy that he would keep the building materials unless she paid the unpaid rent.

- 1. What liability, if any, does ABC have to Steve for damage to the road, removal of the fence, and damage to the fountain? Explain fully.**
- 2. Was Steve within his rights to change the locks and deny access? Explain fully.**
- 3. What judicial procedure, if any, might Steve use to pursue a claim against the building materials to obtain payment of the rent, and on what legal theory should he base this claim against the building materials? Explain fully.**

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

# ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

## QUESTION 10

Sid owned Blueacre, a 50-acre tract of land in Bell County, Texas, on which he raised chickens. Karl, a citizen and resident of Canada, owned Redacre, the adjoining 20-acre tract.

On September 1, 2001, Sid orally agreed to rent a building on Redacre as a chicken house for \$500 per month, payable on the first of each month, for a term of three months ending on November 30, 2001. Sid gave Karl a \$500 security deposit and paid the September and October rent.

Sid failed to pay the November rent. On November 30, 2001, Karl learned that, in addition to using the building Sid had rented, Sid was letting his chickens run free on Redacre. Karl wrote Sid a letter demanding that Sid remove all the chickens and vacate the property. Karl refused to return Sid's security deposit and, as of January 31, 2002, had not returned the security deposit or given Sid any written accounting to explain his retention of the security deposit.

On January 31, 2002, Sid sold Blueacre to Amy for \$30,000. Sid's warranty deed to Amy included restrictive covenants that prohibited any sale of Blueacre to a Canadian citizen and prohibited the use of Blueacre as a hog farm. At the time of the sale to Amy, Sid had still not removed his chickens from Redacre. Sid told Amy that he might have some "squatter's rights" to Redacre and, for \$50, Sid quitclaimed to Amy all of his "right, title and interest in Redacre." Amy recorded the properly executed Deed and the Quitclaim with the Bell County Clerk.

Beginning on January 31, 2002 and for the next three years and eight months, through September 30, 2005, Amy used both Redacre and Blueacre for grazing goats and paid all ad valorem taxes on both tracts.

On a visit to Redacre on September 30, 2005, Karl saw that Amy was using Redacre and told her to remove her goats. Karl offered to buy Blueacre from Amy, explaining that he intended to operate a hog farm on both Redacre and Blueacre. Amy was interested in selling. However, she was unsure whether she could sell Blueacre to Karl.

- 1. On January 31, 2002, what were the obligations, if any, of Karl to Sid regarding the security deposit? Explain fully.**
- 2. As of September 30, 2005, what rights, if any, did Amy have in Redacre? Explain fully.**
- 3. Did the restrictive covenants in the warranty deed from Sid to Amy prevent Amy from making a valid conveyance of Blueacre to Karl? Explain fully.**

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

# ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

## QUESTION 11

Lewis and Jennifer married in January 1990. Ben, the only child of their marriage, was born in 1992. Lewis filed for divorce in January 2002.

From the time of his birth, Ben suffered from a health condition that caused him to experience frequent seizures. As the result of this condition, Ben required constant parental attention. In February 2002, Ben underwent an operation that was intended to cure him. From the time of the operation until the divorce trial in January 2003, Ben experienced no seizures.

At the divorce trial, Jennifer gave the following testimony: (a) that because of Ben's health condition, he requires substantial care and personal supervision; (b) Ben requires two hours of therapy on a daily basis; (c) as a result, Jennifer is unable to accept full-time employment; (d) the best job she has been able to obtain under the circumstances is as a bus attendant with the school district, which pays \$100 per week; (e) her monthly expenses, post-divorce, will be \$3,000; and (f) the \$400 she earns per month means that her monthly income is about \$2,600 less than her monthly expenses.

Lewis testified that Ben has had no seizures since his operation and that Jennifer and he were planning to reduce Ben's medications over a period of time, until at some point the medications may no longer be necessary. Lewis acknowledged that his net monthly resources are \$6,000.

Ben's physician testified that Ben seems to be functioning as well or better now than he was before the operation, although he could not guarantee that the seizures would not recur.

Based on the foregoing testimony and, without any further findings, the trial court awarded semimonthly spousal maintenance payments of \$650 to Jennifer for one year and ordered Lewis to pay \$1,500 in monthly child support.

- 1. Based on the provisions of the Family Code governing spousal maintenance, did the Court err in making the award of spousal maintenance? Explain fully.**
- 2. Based on the provisions of the Family Code governing child support, did the Court err in making the award of child support? Explain fully.**

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

# ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

## QUESTION 12

Joe and Linda married in 1978. Soon after the marriage, Joe started up a business called Management Services, over which he had sole management and control, including sole control over the income generated by the business. Linda had no involvement in or knowledge of the Management Services. During the 1980's and 1990's, Joe earned a very high income through the operation of Management Services.

In 1981, Joe met Missy and commenced a romantic affair that continues to date. Missy knew all along of Joe's marriage to Linda.

In 1995, Joe purchased a house for Missy and made the \$160,000 down payment and all subsequent mortgage payments with funds drawn on Management Services' business account. In 2004, Joe purchased an expensive sports car for Missy.

When Linda learned of the affair in January 2005, she sued Joe for divorce. She also sued Joe and Missy to recover for herself the entirety of the property and funds Joe had given to Missy during his marriage to Linda.

By way of defense, Joe asserted that, (1) to the extent that the money and payment for the property came from his income from Management Services, he was free to dispose of it as he saw fit, (2) in any event, the court had no power to award more than half of the property in dispute to Linda, and (3) as to the house and sports car, he was within his rights to make gifts to persons outside the marriage.

At the trial, Missy testified that she opened an account in her own name at State Bank in 2004 with a single deposit of \$300,000. Missy admitted that this money came from Joe. Missy also testified that she had an account in her own name at County Bank and that, from January to June of 2004, her deposits to that account totaled \$100,000. Neither Missy nor anyone else testified concerning the source of the \$100,000. Missy also testified that, from 1981 to the present, she did not have a job and had no independent means of support.

The trial court granted the divorce and awarded Linda a joint and several liability judgments against Joe and Missy in the amount of \$400,000, representing the total of the deposits in the two banks.

The Court also awarded to Linda the sports car and Missy's house.

- 1. In light of the defenses asserted by Joe, did the Court err in awarding Linda the joint and several liability judgments and the house and sports car? Explain fully.**
- 2. What form of remedy should the Court impose to secure the return of the money, the house, and the car to Linda? 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.**