

Thursday Morning
July 28, 2005
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

Jerry and Pauline divorced in 1995. The divorce decree named Pauline as managing conservator and Jerry as possessory conservator of the couple's minor child, Ken. The court determined that Jerry's net resources, generated from his small business, were \$2500 a month and ordered Jerry to pay child support in the amount of \$500 per month.

In 1999, Jerry married Ann, a widow who had substantial income from investments she had inherited. Before their marriage, Jerry and Ann signed a premarital agreement. The premarital agreement specified that the property each of them owned before the marriage would remain their separate property, and that any income or property generated by that separate property during the marriage would remain each spouse's separate property. After his marriage to Ann, Jerry continued to operate his small business and continued to make regular child support payments to Pauline.

In 2002, Pauline petitioned the trial court to modify Jerry's child support obligation. In her petition, she alleged that "circumstances of the child or a person affected by the order to be modified have materially and substantially changed and support payments previously ordered should be increased and paid until the child graduates from college."

At the hearing on Pauline's petition, Pauline argued that the Texas Family Code prohibited Jerry from relying on his premarital agreement to escape paying child support from the proceeds of one half of Ann's income. Pauline argued that one half of Ann's income should be characterized as community property and included in Jerry's net resources. Jerry argued his premarital agreement with Ann precluded the characterization of income from Ann's separate property as community property. He proved that his own net resources were still \$2500 a month. Jerry argued that any increase in his child support obligation would be in violation of the statutory guidelines and that, in any event, his obligation would cease when Ken turned 18, not when Ken finishes college.

Pauline presented no evidence at the hearing that Jerry was underemployed or that he hid his business income by diverting it to Ann or by paying household expenses with business funds. She claimed only that, adding Ann's income to his, Jerry was now wealthy enough to have his child support obligation increased and to be required to support Ken until he graduated from college.

The trial court added Ann's income to Jerry's income in determining Jerry's net resources in calculating Jerry's child support obligation and, based on that substantially greater value of the resources, increased Jerry's monthly support obligation to \$1500 and ordered Jerry to make monthly support payments until Ken graduated from college.

- 1. Was it error for the court to combine Ann's income with Jerry's in determining Jerry's net resources? Explain fully.**
- 2. Was it error for the court to deviate from the child support guidelines? Explain fully.**
- 3. Was it error for the court to order child support payments beyond age 18? Explain fully.**

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

Bob and Claire met in January 1999 and began to date regularly. In March 1999, Claire moved into Bob's home in Dallas, Texas. She resided in Bob's home but retained her old P.O. Box mailing address.

In January 2000, Claire told Bob, "We don't have to get married to be married. You've had problems with your credit. Let's get your debts straight and then we'll do it right."

Bob and Claire separated in January 2001. In January 2004, Bob sued Claire for divorce. In his complaint, he quoted Claire's January 2000 remarks as evidence of their alleged agreement to be married and alleged further that they had ceased to live together as husband and wife in January 2001.

At trial, Bob presented the following evidence and nothing more:

- He understood from Claire's statement, as quoted above, that he and Claire were married, albeit not ceremonially.
- He agreed to marry Claire and considered himself her husband.
- Claire never said she did not want to marry him; rather, she said she did not want to have a ceremony because she wanted to keep her own name to protect her credit.
- They cohabited in Texas continuously from March 1999 through January 2001.

At the close of Bob's case, Claire presented no evidence, rested, and moved for an instructed verdict. In her motion, Claire asserted (a) under the Family Code she is not required to present evidence because of a presumption in her favor, and (b) in any event, Bob's evidence fails to establish a common law marriage.

How should the court rule on each assertion of Claire's motion? Explain fully.

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

In January 1999, John's son, Sam, took Carl's automobile without Carl's permission and, while driving it, caused \$500 in damage to the automobile. Carl claimed the damage to the car was in the amount of \$800 and demanded that John pay him \$800 for these damages. John refused to pay it. Carl threatened to have Sam prosecuted for theft unless John paid. Because of the threat, John signed and delivered to Carl the following promissory note:

February 1, 1999

I promise to pay to the order of Carl out of my savings State Bank account number 20045, at any time within one year of the date of this note, \$800 with interest at the discount rate set by the Federal Reserve in effect at the time of payment. If I pay this note within nine months of its date, no interest shall be due.

/s/ John

On May 1, 1999, Carl indorsed the promissory note and sold it to Anna for \$700 cash. Anna was unaware of the circumstances surrounding the making of the note.

Anna forgot about the note until June 1, 2005, when she made demand upon John for payment. John refused to pay. On July 1, 2005, Anna filed a suit against John to recover on the note.

John asserts the following defenses: (a) Anna cannot enforce the note because Carl misrepresented the amount of damages to the automobile; (b) the applicable statute of limitation bars enforcement of the note; and (c) the note was void from the time of its making because it was executed under duress.

- 1. Was the note signed and delivered by John a negotiable instrument? Explain fully.**
- 2. Do John's three defenses have merit? Explain fully as to each.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

On July 1, 2004, Ralph bought on credit and took delivery of a \$5,000 pool table from Tex-Pool for personal use in his family home in Austin, Texas. At the same time, Ralph signed a security agreement giving Tex-Pool a security interest in the pool table to secure the debt. Tex-Pool did not file a financing statement or the security agreement.

On July 4, 2004, Ralph bought on credit from BigBox and took delivery of a new \$900 television for personal use at his home and a new \$3,000 computer system for use in his computer consulting business in Austin, Texas. At the same time, Ralph signed a security agreement giving BigBox a security interest in the television and computer system to secure the debt.

On July 21, 2004, Ralph sold the television and computer system to Harold in exchange for cancellation of a \$4,000 debt Ralph owed Harold. Harold installed the television and computer system in his home for personal use. Harold was unaware of any security interest that Big Box claimed in these items.

On July 22, 2004, BigBox filed a proper financing statement with the Texas Secretary of State listing the television and computer system.

On July 24, 2004, Quincy bought the pool table from Ralph for \$2,500 cash. Quincy installed it in his Bar & Grill for use by his customers. Quincy was unaware of Tex-Pool's security interest.

Ralph has now defaulted on his obligations to Tex-Pool and BigBox.

1. **As between Tex-Pool and Quincy, which one has the superior right to the pool table? Explain fully.**
2. **As between, BigBox and Harold, which one has the superior right to:**
 - (a) **The television? Explain fully.**
 - (b) **The computer system? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

In 1929, the State of Texas sold the surface of Redacre, a parcel of public free school land, to Larry. Redacre is a 100-acre peninsula that projects northward into the south end of Kirby Lake in Taylor County, Texas. In 1929, Redacre was classified as mineral land, and the State had at that time retained a statutory mineral reservation under the Relinquishment Act.

In 1951, Larry built a fishing cabin at the north tip of Redacre and a gravel road for access to the cabin from the public road along the lakeshore at the south end of Redacre. The gravel road was in a low-lying area of Redacre and would flood two or three days a year during heavy rains.

In 1990, Larry and Oil Co. entered into an oil and gas lease covering the south half of Redacre. The lease, which provided for a 1/16th royalty to Larry and a 1/16th royalty to the State, was properly executed and filed and met all the requirements of the Relinquishment Act. Oil Co. drilled a producing oil well and began paying the agreed-upon royalty to Larry and the State.

Larry died in 2002. In his valid will, he bequeathed Redacre to Nancy and Sylvia as tenants in common. Nancy and Sylvia entered into a valid partition agreement vesting ownership of the north half of Redacre in Nancy and the south half in Sylvia.

The partition agreement was silent concerning rights to the gravel road, but, for several months after the partition, Sylvia allowed Nancy to use the road freely for access to the cabin. Nancy wanted to build a new road on higher ground to avoid the periodic flooding, but Sylvia refused to grant permission. A few months later, Sylvia put a lock on the gate at the entrance from the public road and refused to give Nancy a key. After that, Nancy could reach the cabin only by boat.

Oil Co. continued to produce oil on the south half of Redacre and to pay the 1/16th royalty to Sylvia. In 2003, Sylvia sold her 1/16th royalty rights to Andy by a written and duly recorded assignment. She furnished a copy of the assignment to Oil Co.

In 2004, Nancy entered into a written and duly recorded agreement with Andy purporting to sell to Andy a fee interest in oil, gas, and minerals under the north half of Redacre.

- 1. What rights, if any, does Nancy have to (a) continue using the gravel road and (b) build a new road? Explain fully.**
- 2. Are the 1990 lease between Larry and Oil Co. and the 2003 assignment between Sylvia and Andy valid and effective? Explain fully.**
- 3. Was the 2004 agreement between Nancy and Andy effective to transfer a fee interest in oil, gas, and minerals to Andy? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

Freda owned Greenacre, a 10-acre parcel in Dimmit County, Texas. Greenacre was improved with a house that Freda had rented to Tom since May 2004 under a written lease with a term ending in December 2005.

On September 15, 2004, Freda contracted with Bob to build a garage adjacent to the house. In preparation for the construction, Bob delivered a load of lumber and deposited it alongside the house.

At about the same time, Freda asked Diego for a \$10,000 loan, which she intended to use to pay for the construction of the garage. Before agreeing to make the loan, Diego inspected Greenacre and noticed the lumber that Bob had delivered and part of the framing for the foundation. To show Diego that she would have regular rental income from Tom with which to repay the loan, Freda provided Diego with a copy of her written lease with Tom.

Diego made the loan. On October 15, 2004, Freda executed a note and a properly signed and acknowledged Deed of Trust granting Diego a lien on Greenacre to secure payment of the loan. The Deed of Trust was properly filed of record with the Dimmit County Clerk in October 2004.

In November 2004, Bob completed the garage except for the door, and Freda hired Greg to furnish and install the garage door and the electric garage door opener. Greg completed the installation on November 15, 2004.

In the meantime, Freda had incurred some extraordinary medical bills. She used the \$10,000 Diego had loaned her and the rental income from Tom to pay those bills. As a result, she was unable to pay Bob and Greg or make the payments due on the loan from Diego.

On December 1, 2004, Bob and Greg timely and properly filed with the Dimmit County Clerk affidavits claiming mechanic's liens and immediately properly served copies of the affidavits upon Freda by certified mail.

Believing that Diego would agree, and without consulting him, Freda decided that, instead of making the monthly payments to Diego as required by the note, she would convey to Diego a two-acre unimproved tract worth \$12,000 out of Greenacre.

On January 5, 2005, Freda properly executed, filed, and recorded a "Deed in Lieu of Foreclosure" conveying the two acres to Diego and sent it to him with a letter stating, "I can't pay you the money I owe you, so I have conveyed these two acres to you in full satisfaction of the \$10,000 you loaned me." She did not inform Diego that Bob and Greg were unpaid or that they had filed mechanic's lien claims. Diego received the Deed in Lieu but did not communicate further with Freda about it.

On January 10, 2005, Bob and Greg each filed suit against Freda to foreclose their respective mechanic's liens. In his petition, Greg also asserted that he was entitled to remove and regain possession of the garage door and the door opener that he had furnished. At the same time, Diego provided notice to Freda of his intention to initiate non-judicial foreclosure of the lien granted to him in the Deed of Trust from Freda.

Answer the following questions in the TAN answer book.

- 1. What is the effect, if any, of the Deed in Lieu that Freda sent to Diego to satisfy her debt to Diego upon Diego's right to foreclose on his lien under the October 2004 Deed of Trust? Explain fully.**
- 2. If Diego properly completes the non-judicial foreclosure before any judgments are entered in the suits filed by Bob and Greg, what will be the effect, if any, upon the rights of Bob, Greg and Tom? Explain fully.**

This concludes the morning portion of the Texas Essay exam.