

Thursday Afternoon
July 28, 2005
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

COPYRIGHT © 2005 TEXAS BOARD OF LAW EXAMINERS
THIS MATERIAL, OR ANY PORTION HEREOF, MAY NOT BE REPRINTED WITHOUT THE ADVANCE
WRITTEN PERMISSION OF THE TEXAS BOARD OF LAW EXAMINERS

ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

Dan and Pat divorced. Dan immediately wrote to National Credit Card Company (NCC) instructing NCC to cancel the credit card NCC had issued in Dan's name. NCC acknowledged receipt of the letter and took steps to cancel the card.

However, before NCC could finalize the cancellation, Pat charged merchandise up to the credit card's maximum of \$10,000. Pat made no payments on the account. Under applicable Texas law, Dan had no liability for this debt.

NCC sent a letter to Dan demanding payment of the outstanding \$10,000. This was Dan's first notice of the credit card balance. Dan wrote a letter disclaiming his responsibility for the balance and explaining that Pat had, without his authorization, charged the entire amount after the divorce. Although NCC received the letter, it reported the account as a bad debt on Dan's record with the local credit reporting bureau in Dan's home town.

NCC assigned the account to Capital Collection Agency (Capital) for collection. Capital repeatedly called Dan at work and claimed he owed \$10,000 to one of its clients. Capital refused to identify the client and refused to give Dan Capital's address and phone number.

Capital sent a letter to Dan at work stating falsely that it had a judgment against him and had filed a judgment lien against him in his county's deed records. Capital told Dan's business partner that Dan was guilty of fraud and that it intended to pursue criminal charges against Dan.

As a result of Capital's assertions, Dan's partner dissolved the partnership, causing Dan to lose his livelihood. Dan had an extreme anxiety attack, saw a doctor, and had to be hospitalized. He incurred medical bills in the amount of \$10,000.

Lawyer, an attorney hired by Capital, sent a demand letter to Dan and his attorney. Dan's attorney convinced Lawyer that the alleged debt was not Dan's responsibility. Although Lawyer advised Capital and NCC that the debt was Pat's, not Dan's, NCC refused to correct the inaccuracy at Dan's local credit reporting bureau and refused to cease collection efforts against Dan.

- 1. What conduct or actions, if any, of NCC and/or Capital were violations of the Texas Debt Collection Practices Act? Explain fully.**
- 2. What remedies, if any, are available to Dan under the Texas Debt Collection Practices Act and the Texas Deceptive Trade Practices Act? Explain fully.**

Answer the next question in the LIGHT GREEN answer book.

ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK

QUESTION 8

David, a widower, died. He was survived by a 14-year-old son, Sonny. Sonny's mother died when he was 11 years old. Since his mother's death, Sonny had spent most of his weekdays with and had been cared for by his grandmother, Grandma, a retired waitress.

David was also survived by a sibling, Brother, who was living in South America where he worked as a chef. Brother returned to the United States to handle David's funeral arrangements but planned to return to South America.

David's best friend was Friend, who was the manager of a local securities brokerage firm and managed David's portfolio and bank accounts worth an aggregate of \$200,000.

David left a will bequeathing his entire estate to Sonny, but it made no provision for a guardian for Sonny.

Brother, Grandma, and Friend all applied to be appointed guardian of both Sonny's person and Sonny's estate. Sonny wrote a letter to the court stating that he wanted to continue living with Grandma.

- 1. What findings must the court make and what evidentiary standard must the court apply in determining whom to appoint as a guardian for Sonny? Explain fully.**

- 2. When the court appoints a guardian, (a) what factors should the court consider; (b) what deference should the court give Sonny's letter; and (c) as among Brother, Grandma, and Friend, whom should the court appoint as guardian of (i) Sonny's person and (ii) Sonny's estate? Explain fully.**

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

In 2001, Jim, a single man, executed a valid, attested self-proved will. Jim named his second cousin, Bill, to serve as independent executor under this will. Jim's will devised all of his property, both real and personal, at the time of his death in equal shares to "my heirs at law who survived me."

In 2002, Jim executed a second duly attested self-proved will that devised all of his property, both real and personal, to a religious sect, the True Believers. Mark, who was President of True Believers, had become Jim's "spiritual counselor" in October 2002. Jim named Mark as the independent executor under his second will. At the time he executed the second will, Jim was hospitalized and in and out of consciousness. Mark had frequently discussed making a second will with Jim and was at Jim's hospital bedside while the will was being executed. Two adult True Believers were also present and served as witnesses.

Jim died in January 2003, survived only by his second cousin, Bill, and his adult niece, Sue. In March 2003, the following took place:

- Mark filed an application to admit Jim's second will to probate and for letters testamentary.
- In his capacity as the named independent executor of Jim's estate under Jim's first will, Bill filed a will contest objecting to the probate of Jim's second will on the ground that Jim lacked testamentary capacity to execute his second will.
- Bill filed an application to admit Jim's first will to probate and for letters testamentary.
- Sue also filed a will contest objecting to the probate of Jim's second will on the ground that Mark had exerted undue influence over Jim.
- Mark filed motions to dismiss (a) the will contest filed by Bill, (b) Bill's application for probate of the first will, and (c) the will contest filed by Sue.

How is the court likely to rule on each of Mark's motions, and to whom is the court likely to distribute Jim's estate? Explain fully.

Answer the next question in the BLUE answer book.

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

In 2001, Phillip, a single man, executed a valid will that devised $\frac{4}{5}$ ^{ths} of his estate to his adult daughter, Tiffany, and $\frac{1}{5}$ th of his estate to his adult foster son, David. In 2003, Phillip legally adopted David.

In 2004, Phillip died without changing his will. David claims he is entitled to more than $\frac{1}{5}$ th of Phillip's estate because he was adopted by Phillip.

While looking through Phillip's papers, David discovered the identity of his birth mother, Kathy. David hired an investigator to locate Kathy. The investigator reported that Kathy died in 2004, survived by her husband, Tim, and two adult children. David learned that Kathy left no will and that her estate has not yet been probated. David also learned that Kathy's estate consisted of the home she and Tim owned and resided in, which has a fair market value of \$450,000; stocks and bonds worth \$20,000; cash in her personal bank account of \$5,000; personal property with a value of \$15,000; and no debts.

- 1. Is David entitled to more than $\frac{1}{5}$ th of Phillip's estate? Explain fully.**
- 2. Is David entitled to a share in Kathy's estate? Explain fully.**
- 3. What are two of the methods available under the Texas Probate Code for distributing Kathy's intestate estate without appointment of a personal representative? Explain fully.**

Answer the next question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

QUESTION 11

Caster, Inc. (“Caster”) is a corporation incorporated in 2000 under the Texas Business Corporation Act. Caster is not a closely held corporation, nor is it subject to the Sarbanes-Oxley Act. Its principal business is buying interests in real property for resale.

Elizabeth, Caster’s president, was duly authorized by a resolution of the board of directors to purchase and sell real property on such terms as she deemed fair and appropriate.

In 2002-2004, Elizabeth, without consultation or further direction from the board of directors, took the following actions:

- (a) She sold all the real property Caster had in its inventory in order to pay the overhead and to continue in business;
- (b) She authorized a loan of \$20,000 from the corporation at a reasonable interest rate and repayment terms to one of the three directors to be used to pay that director’s tuition for an intensive course of study in real estate marketing;
- (c) To raise additional money to purchase real property for resale, Elizabeth created and issued an option to purchase 25,000 unissued shares of Caster’s common stock, and sold the stock to Madisen, an outsider, who paid fair market value for it; and
- (d) She sold the building owned and used by Caster as its offices and headquarters, which was the sole remaining corporate asset.

Did Elizabeth have the authority to take these actions, and, as to each action, why or why not? Explain fully.

Answer the next question in the PURPLE answer book.

ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

QUESTION 12

In January 2004, Abigail and Courtney, interior decorators, purchased a small shopping center as tenants in common, each contributing half the money to pay for and maintain the shopping center. They agreed to share equally in the gross rental receipts. They shared a small office in one corner of the shopping center from which they independently conducted their interior decorating businesses.

In February 2004, Abigail, while doing some shopping center maintenance, negligently damaged property belonging to Kim, one of the shopping center tenants.

In March 2004, Abigail and Courtney associated to jointly carry on an interior decorating business under the name of AC Décor. They agreed to contribute equal amounts of start-up capital and to share equally in the control and in all profits of the business, and to share equally all profits of AC Décor. They did not agree to share any losses they might incur in the business.

In May 2004, Abigail failed to timely complete a decorating job for Nicole, a customer of AC Décor. This delay caused Nicole's business to sustain a loss of sales.

In June 2004, with the consent of both Abigail and Courtney, Dan paid them 1/3 of the amount they had contributed as start up capital, and became an equal owner of AC Décor.

In August 2004, Abigail, Courtney and Dan properly formed a limited liability company and thereafter conducted an interior decorating business as CAD, LLC. Abigail, Courtney, and Dan were each members of CAD, LLC, and Abigail was named as manager.

In September 2004, Abigail, in her capacity as manager, purchased in the name of CAD, LLC a paint sprayer on credit from Jennifer for use by CAD, LLC.

In October 2004, Abigail contracted with CAD, LLC to pay herself as manager a salary of \$500 per month for extra work she does. The \$500 was fair compensation for the amount of work involved.

The claims of Kim and Nicole and the debt to Jennifer remain unpaid.

1. **What liability, if any, do Abigail, Courtney, Dan, and CAD, LLC each have for:**
 - a. **The damage to Kim's property? Explain fully.**
 - b. **Nicole's loss of sales? Explain fully.**
 - c. **The unpaid debt to Jennifer? Explain fully.**
2. **Did Abigail have authority to pay herself a salary for the extra work she did as manager? 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.