

Thursday Morning
February 24, 2005
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

In May 2003, Bill, a widower, executed a will that had been prepared by his lawyer. Two friends, Helen and Martha, properly witnessed Bill's execution of the will in Bill's presence. Bill's lawyer was also present at the time. The will stated in part the following:

1. I hereby devise to my sister, Ann, my home in Houston and my savings account at First Bank, provided that, in the event my sister, Ann, fails to survive me by 60 days, the share of my estate that would have gone to Ann shall become part of my residuary estate.
2. I hereby devise all the rest, residue, and remainder of my estate to my friend, Helen.

On July 1, 2003, Bill died of a heart attack. On August 1, 2003, Bill's sister, Ann, died in a head-on auto/truck accident.

Bill and Ann were survived by their brother, Fred. Ann was divorced at the time of her death. Ann left no will and was also survived by her son, Tom. Both witnesses, Helen and Martha, and Bill's lawyer are still alive.

1. **How, if at all, does the fact that Helen witnessed the will affect the validity of the will, and can the will be admitted to probate without Helen's testimony? Explain fully.**
2. **If Bill's will is admitted to probate, to whom should Bill's estate be distributed? Explain fully.**

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

Tim, a resident of Dallas, Texas, typed a letter to Sue, his sister and only kin, and signed it “Love, Tim.” Just below his signature, he added the following handwritten note: “I don’t feel so good. I want to give you everything I own when I die. Last Will.”

A few days later, while on his way to pay Sue a surprise visit at her home in San Antonio, Tim became ill and was admitted to the intensive care unit of a hospital in Austin. A doctor told Tim that he had only a few days to live. Tim tried to call Sue by telephone to tell her he was in the hospital and dying and became very upset when he could not reach her. Unknown to Tim, Sue had left San Antonio on vacation.

At a time when two nurses and an attendant were in Tim’s hospital room, Tim called them to his bedside and said to the three of them, “I can’t find my sister Sue to tell her I’m dying. I’m so upset with her that I now want to give my home and all its contents to my housekeeper, Gladys, when I die.”

Immediately, at Tim’s request, each nurse and the attendant separately wrote and signed a statement containing a recitation of exactly what Tim had said and gave the statements to the hospital Administrator.

Tim died two days later while still in the hospital. The Administrator immediately forwarded the written statements of the nurses and the attendant to a probate court in Dallas. Sue produced in the probate court the typed, signed letter she had received from Tim and offered the handwritten note at the end as Tim’s will. There are no other documents regarding the disposition of Tim’s property.

Tim’s estate consists of his Dallas home, its contents, and a brokerage account containing stocks and bonds.

- 1. Will the handwritten portion that appears below the signature on Tim’s typed letter to Sue be admitted to probate as Tim’s will? Explain fully.**
- 2. What effect, if any, should the probate court give the written statements of the nurses and the attendant? Explain fully.**
- 3. To whom should Tim’s estate be distributed? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK
QUESTION 3

Ella owned two five-acre parcels of land in El Paso County, Texas: Blackacre, improved with a home, and Redacre, a fenced pasture with a stable. Ella rented both parcels to Pam, who resided on Blackacre and kept horses on Redacre. Under an oral arrangement with Ella, Pam paid a total of \$900 rent per month (\$500 on Blackacre and \$400 on Redacre).

Ella died in 1990 and left Blackacre and Redacre to her brothers, Gus and Leo, in equal shares as tenants in common. Leo, who lived at some distance, asked Gus, who lived locally, to handle all responsibilities related to the management of Blackacre and Redacre.

Until then, Pam had paid the rent she had agreed to with a single monthly check of \$900. At Gus's request, Pam began paying with two checks, sending a \$400 check for the rent on Redacre to Leo and a \$500 check for the rent on Blackacre to Gus. Gus and Leo had agreed that Gus would receive the larger check from the rents to compensate him for his services in managing the parcels.

In 1993, Gus told Pam that, because of her long and loyal friendship with Ella, he was giving her Blackacre free and clear and she could stop paying him rent. Although Gus put nothing in writing, Pam assumed that Leo and Gus had agreed between themselves to divide Ella's estate so that Leo kept Redacre and Gus kept Blackacre and was therefore free to give it to her. Pam wrote Gus a letter dated January 2, 1993, saying, "Thank you for your generous act of giving me Blackacre as a gift. You've been a very good landlord, but I'm happy no longer to be paying rent and to be a homeowner instead."

Thereafter, although Pam made no improvements on Blackacre, she lived in the house on Blackacre and paid all ad valorem tax bills on Blackacre for the next 12 years. She also continuously kept her horses on Redacre and paid the rent on Redacre to Leo.

By January 2005, the stable on Redacre was in poor repair. Pam asked Leo to pay for the cost of repairing it, and Leo refused. Pam said she would not pay the rent until Leo fixed the stable. Leo told her that, if she did not pay the rent, he would kick her off Redacre and increase the rent on Blackacre. Pam told him that he could not kick her off Blackacre because Gus had given Blackacre to her 12 years ago and she now owned it. That was the first notice Leo had of Gus's gift to Pam.

- 1. Was Gus's gift to Pam effective to transfer any interest in Blackacre to Pam? Explain fully.**
- 2. Can Pam successfully claim any interest in Blackacre on a basis other than Gus's gift to Pam? Explain fully.**
- 3. If Leo wishes to regain possession of Redacre from the tenant Pam by judicial process and recover his attorney's fees, what initial steps must Leo take before filing suit, what type of action should he file, and what court would have jurisdiction over his suit? Explain fully.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Bill acquired fee simple title to Greenacre, a tract of land in Brazos County, Texas. Greenacre had never been mined for oil, gas or other minerals.

On June 1, 2003, Bill signed an oil and gas lease with Ace Oil Co. (“Ace”) as lessee. The lease provided, among other things, that: (i) Ace would pay Bill a nominal bonus payment and a specified royalty for any minerals produced from the property; (ii) if Ace did not commence drilling operations within a year after the date of the lease, the lease would terminate unless Ace paid, within the first year, a specified sum as a delay rental; (iii) unless production occurred within two years after the date of the lease, the lease would expire at the end of two years; and (iv) in the event of any conveyance of Greenacre by Bill, Bill would send Ace a copy of the recorded deed.

On January 1, 2004, Bill deeded Greenacre “to Laura for life, then to Laura’s son, Ron.” In the deed, Bill did not retain any interest in the minerals or the Ace lease. Bill mailed a copy of the recorded deed to Ace.

Anticipating a delay in drilling operations, Ace decided to pay the required delay rental. On February 15, 2004, Ace’s bookkeeper erroneously mailed the check to Ron, the remainderman. Ron immediately sent the check back with a letter saying that the check should go to Laura. Because of an oversight, Ron’s letter and the check were ignored until January 2, 2005, when Ace sent the check to Laura. At the time the check was mailed, no drilling operations or production had occurred on Greenacre.

On January 5, 2005, Laura received the check from Ace. On the same day, she also received an offer from Giant Oil Co. (“Giant”) to lease the oil and gas rights to Greenacre. The lease proposed by Giant provides for a royalty, a delay rental payment, and a bonus that are all greater than those provided in the Ace lease. Laura has not yet accepted the tardy check for the delay rental payment sent to her by Ace, and she has not responded to Giant’s offer.

What rights, if any, does Laura have to retain for herself the delay rentals, royalties, and bonus payment under the following circumstances:

- 1. She accepts the delay rental payment from Ace (acting with Ron’s consent), and Ace drills a producing well during the remaining term of the lease? Explain fully.**
- 2. She rejects Ace’s late tender of the delay rentals, she and Ron sign a new lease with Giant, and Giant drills a producing well during the term of the lease? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

Dan's first marriage ended in divorce. Dan was ordered to pay monthly child support to his ex-wife, Cindy, for the continuing care of their son Ben, who is profoundly disabled.

Dan's second wife died shortly after the birth of their daughter, Ann.

In 2001, Dan, a resident of Fort Worth, Texas, created two trusts:

Trust I. Dan is the trustee and sole beneficiary of this express, written trust, which is funded with \$250,000 in cash. The trust instrument provides that income from the trust is to be paid to Dan for life. At his death, the corpus is to be distributed to his heirs, if any; otherwise, the corpus goes to the University of Virginia. The trust is expressly declared to be irrevocable, and it contains a spendthrift clause.

Trust II. Bank is the trustee of this second express, written trust, which is funded with stocks, bonds, and cash worth \$500,000. The trust instrument provides that income from the trust is to be paid to Ann for the life of Dan. At Dan's death, the corpus of the trust is to be distributed to Ann or her heirs, if any; otherwise, to the First United Methodist Church of Fort Worth. The trust contains a spendthrift clause.

Dan died in 2003, survived by Ann and Ben. Dan's valid will left his entire non-trust estate to Ben.

At the time of his death, Dan had the following debts:

- \$25,000 owed to Cindy for outstanding child support;
- \$500,000 owed to Loanco on an unsecured note that was executed in 2002;
- \$25,000 credit card balance owed to Visa;
- \$50,000 owed to the IRS in unpaid income taxes.

1. **Can any or all of Dan's four creditors reach the assets of Trust I to satisfy the debts owed them? Explain fully.**
2. **Can any or all of Dan's four creditors reach the assets of Trust II to satisfy the debts owed them? Explain fully.**
3. **What are the rights, if any, of Ann and Ben to the assets of Trust I and Trust II? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

Sam decided to sell his house and contacted a real estate agent named David. David inspected the house. He accurately measured the square footage to be 2,900 square feet, and he found evidence of an old, inactive termite infestation. David reported this information to Sam and recommended a selling price for the house.

Sam did not like David's estimate of the recommended sales price for the house and hired real estate agent Rita instead. Rita did not go to the house, but simply accepted Sam's representation that the estimated square footage was 3,800 square feet. Rita put the 3,800 square foot estimate in the Multiple Listing Service Information Sheet ("the information sheet"), and Sam signed the information sheet, which also disclaimed any current or previous termite damage. The information about the house was added to the local computer real estate listing service.

When David saw the listing, he called Rita to advise her that the square footage for the house was wrong and that the house had had termites at one time.

Paula contacted Rita about buying Sam's house. During their walk through inspection, Rita told Paula, "This house is priced right and is a very good value." Paula noticed the termite damage but said she was not concerned because it appeared to be an old infestation.

The average sales price for houses in this area was \$75 per square foot and Paula therefore bought the house for \$285,000 (3,800 x \$75). Paula never talked with Sam before completing the purchase of the house. Six months later, Paula was shocked to learn that the actual square footage of the house was only 2,900 square feet.

Three years later, Paula decided to sell the house. Her real estate agent, Todd, confirmed to Paula that the house had only 2,900 square feet, not 3,800 square feet. Todd also told Paula that the termite damage would be an impediment to the re-sale of the house (even though the damage was old) and that it would reduce the expected price by \$9,000. Paula decided to sell the house anyway.

1. **What are Paula's rights and remedies, if any, under the Texas Deceptive Trade Practices Act ("the DTPA") against:**
 - a. **Sam?**
 - b. **Rita?**

Explain fully.

2. **What DTPA defenses, if any, are available to Sam or Rita or both? Explain fully.**

This concludes the morning portion of the Texas Essay exam.