

Thursday Afternoon  
February 24, 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

Jack and Karen, both residents of Dallas, Texas, started dating in 1999 and began living together in 2000. Their relationship was stormy. Jack was suspicious and jealous and lost his temper regularly. Karen left him several times after he hit her, but she returned when Jack apologized.

Jack and Karen married in Dallas in 2001, following the birth of their son, Larry. Jack's physical violence against Karen escalated. In August 2003, Karen finally called the police after Jack dragged her across the room by her hair. Karen took Larry and moved in with a friend who had an apartment in Dallas.

In September 2003, a Dallas County District Judge found that Jack had committed family violence and entered a protective order against him for the benefit of Karen and Larry.

In October 2003, Karen filed suit for divorce. Karen sought to be appointed sole managing conservator of Larry and asked for child support in the amount of \$2000 a month. She attached a copy of the protective order to her petition. Jack answered the suit and asked to be appointed joint managing conservator of Larry.

In November 2003, Jack went to the apartment where Karen was living and threatened to beat her and her friend. In December 2003, after Jack pleaded no contest, the Dallas County District Court found him guilty of violating the protective order.

In February 2004, a trial was held on the petition for divorce. Karen offered, and the court admitted into evidence, a certified copy of the December 2003 judgment and sentence reflecting Jack's conviction for violation of the protective order. Karen testified that she earned \$1000 a month working part time and that she had no other means of support. She stated she owed her friend \$750 a month for her share of the apartment rental and that child care cost her \$500 a month.

In his trial testimony, Jack acknowledged he had committed family violence against Karen during the course of their relationship. Evidence established that Jack's income was \$6000 a month.

- 1. What is the primary consideration the court must take into account in determining the issue of Larry's conservatorship, and can the court properly name Jack and Karen joint managing conservators in this case? Explain fully.**
- 2. What factors should the court consider in awarding child support, and what amount is the court likely to order? Explain fully.**

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

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

## **QUESTION 8**

Husband and Wife married in 1995. Shortly after their wedding, Husband's father gave Husband and Wife 5,000 shares of Y Corp. stock, evidenced by a certificate issued to "Husband and Wife as their community property."

During the marriage, Husband and Wife divided the Y Corp. dividends equally. Wife contributed her half of the dividends toward the couple's living expenses. Husband placed his half of the dividends in a savings account that he opened in his own name. No other funds were deposited into the savings account by Husband or Wife.

Husband and Wife acquired a residence in 1996 at a purchase price of \$250,000. Wife's mother gave Wife \$50,000 to use as a down payment. Husband and Wife co-signed a bank note for the remaining \$200,000. All payments on the bank note were made from Wife's earnings from her job during the marriage.

In 1999, Husband and Wife purchased a ranch. Both of them signed the promissory note to the seller to finance the entire purchase price of \$400,000. Title to the ranch was taken in Husband's name alone.

In 2000, Wife inherited \$100,000. Wife contributed \$25,000 of her inheritance to build a new barn on the ranch and \$75,000 to pay down the principal on the \$400,000 note. Other than the \$75,000 payment, the remaining payments on the ranch note have come from Husband's earnings from his job during the marriage.

In 2003, Husband filed suit for divorce. The assets of Husband and Wife consist of the following:

- (1) 5,000 shares of Y Corp. stock;
- (2) The savings account;
- (3) The residence, currently valued at \$400,000; and
- (4) The ranch, currently valued at \$600,000.

1. **For purposes of division of marital property, how should the court characterize the ownership of these four assets? Explain fully.**
  
2. **Upon division of the property, what rights of reimbursement, if any, does Wife have with respect to the following claims for economic contributions she made during the marriage, and what would be the measure of any such reimbursement:**
  - a. **The \$50,000 down payment on the residence? Explain fully.**
  - b. **The payments made on the \$200,000 bank note on the residence? Explain fully.**

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

# **ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK**

## **QUESTION 9**

In 1999, Dan and Wyatt properly formed a Texas limited partnership to practice law in Texas. Dan was designated the general partner, and Wyatt, the limited partner. The partners agreed to share all fees equally, after payment of expenses.

In 2000, Dan, after consulting with and receiving affirmative advice from Wyatt, signed as general partner of the limited partnership a ten-year lease for office space at the cost of \$10,000 per year.

In 2001, Dan, with Wyatt's consent, executed and filed an application for their firm to become a Texas registered limited liability partnership. The Texas Secretary of State approved the application in January 2002. Dan was designated as the managing partner, and the limited liability partnership thereafter complied with all formalities and legal requirements.

In December 2002, Dan awarded himself a small salary of \$500 per month to compensate himself for the extra work he does as managing partner. The partnership agreement is silent on salary compensation for the partners, and Dan did not consult Wyatt on this matter. To date, however, Dan has not paid any of the salary to himself.

In 2003, Dan hired Abby, a young attorney to work as an associate for the partnership under Dan's supervision and direction. In the course of performing work in which Dan was directly involved for a client named Madisen, Abby committed malpractice. The malpractice caused Madisen \$40,000 in damages. Wyatt first became aware of the malpractice after it occurred and too late to prevent or cure it.

Also in 2003, while consulting with a client named Courtney on regular firm business, Wyatt negligently dropped a printer on Courtney's foot. Courtney suffered injury and \$10,000 in damages.

The partnership has no assets and was dissolved in 2004.

- 1. Are Dan and Wyatt, or either of them, personally liable to**
  - (a) The landlord on the office lease? Explain fully.**
  - (b) Madisen for damages resulting from Abby's malpractice? Explain fully.**
  - (c) Courtney for damages resulting from the injury to her foot? Explain fully.**
  
- 2. Is Wyatt liable to Dan for the unpaid \$500 per month salary? Explain fully.**

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

# ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

## QUESTION 10

Mad Corp is a Texas general business corporation. Elizabeth is Mad Corp's sole director.

In March 2002, Jen acquired 500 shares of Mad Corp stock, which then constituted 10% of Mad Corp's authorized and issued stock.

In January 2003, upon proper and timely notice given to all shareholders of record, a joint meeting of the shareholders and the director of Mad Corp was properly called to consider a resolution to issue and sell 5,000 shares of authorized but unissued no-par value shares of stock of the corporation. At the meeting, the resolution was adopted, and Elizabeth then announced that the 5,000 shares would be issued and sold within 30 days to a major customer of Mad Corp at a reasonable price determined by Elizabeth.

Jen asserted that Mad Corp was operating illegally by having just one director. Jen made a written demand that she: (1) be permitted to inspect the books and records for the purpose of gaining information necessary for her (Jen) to call a special shareholders meeting to vote on a resolution that would require the corporation to have at least two directors; and (2) be permitted to buy 10% of the newly issued shares. Mad Corp refused both of Jen's demands.

In March 2003, Jen bought a tract of land called Greenacres that was adjacent to Mad Corp's headquarters. Jen knew that Mad Corp had publicly indicated that it was interested in trying to buy Greenacres to expand its operations, but Jen bought the property anyway. Elizabeth asserted that the opportunity to purchase the property was a corporate opportunity that Jen, as a significant shareholder of Mad Corp, should have first offered to Mad Corp.

- 1. Does Jen have the right to acquire any of the newly issued 5000 shares of Mad Corp stock and, if so, what would she have to do to exercise that right? Explain fully.**
- 2. Does Jen have the right to inspect the books and records of Mad Corp? Explain fully.**
- 3. Was Mad Corp required to have more than one director, and, if not, does Jen have the right to call a special shareholders meeting to vote on a resolution to require more than one director? Explain fully.**
- 4. Did Jen owe any duty to Mad Corp to first offer Mad Corp the opportunity to acquire Greenacres before she personally bought Greenacres? Explain fully.**

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

# ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

## QUESTION 11

**Note A:** On July 1, 2003, Bob, a resident of Dallas, Texas, purchased telephone equipment from SwitchCo for use in his business. He paid for the equipment by executing and delivering to SwitchCo a negotiable promissory note, Note A. This note was payable to the order of SwitchCo in the principal amount of \$2,000 with interest at the rate of 6% per annum. The note was payable in 12 monthly installments of interest only due on the first of each month, with the principal and any accrued interest payable in full on July 1, 2004. Bob failed to make the March and April 2004 interest payments.

On May 1, 2004, SwitchCo sold Note A to Bank for \$1,200 and told Bank that the March and April interest installments were past due. Bank notified Bob of its acquisition of Note A and directed him to make the interest payments to Bank.

Also on May 1, 2004, the telephone equipment Bob had purchased ceased operating because of a design flaw, and Bob has not been able to get SwitchCo to remedy the flaw. Bob has not made any interest payments since February 1, 2004.

On July 1, 2004, Bank presented Note A to Bob, who refused to pay.

**Note B:** In October 2003, Bob purchased a deluxe riding lawnmower from Mac's Hardware for use in mowing the lawn at his family residence. He also intended to use it occasionally to mow the lawn in front of the office building he owned and where he operated his business.

Bob paid for the lawnmower by executing and delivering to Mac's Hardware a negotiable promissory note, Note B. This note was in the amount of \$1,500, payable on February 1, 2004. Note B, which was the only documentation reflecting the transaction, did not contain any language to the effect that the note was subject to all claims and defenses which the consumer/debtor could assert against the seller of the goods.

Later in October, the lawnmower ceased operating because the transmission failed. Mac's Hardware promised to get the parts necessary to repair it but never did.

In November 2003, Mac's Hardware needed cash for operating capital. Mac's took what for it was the unusual step of making a bulk sale to LiquidationCo of all the promissory notes Mac's Hardware had taken from its customers in payment for goods sold. This bulk sale included Bob's Note B. LiquidationCo knew at the time it bought the notes from Mac's Hardware that the majority of Mac's business came from financing sales of goods to individual homeowners for home/family use. LiquidationCo did not know of the problem with Bob's lawnmower at the time it acquired Note B.

On February 1, 2004, LiquidationCo presented Note B to Bob for payment. Bob refused to pay.

1. **Can Bank enforce Note A against Bob? Explain fully.**
2. **On what grounds can Bob defend his refusal to pay Note B, and what is the likely outcome on each ground? Explain fully.**

Answer the next question in the PURPLE answer book.

# ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

## QUESTION 12

In July 2003, Walter, while a resident of Ardmore, Oklahoma, borrowed \$15,000 from Bank, located in Dallas, Texas. He borrowed the money to pay off suppliers of his refrigerator repair business in Ardmore. He signed a promissory note for the \$15,000 and a security agreement giving Bank a security interest in a savings deposit account Walter maintained at Bank in Dallas, Texas. Bank did not file any documentation regarding this security interest either centrally or locally.

In August 2003, Walter borrowed an additional \$5,000 from Bank. He signed a promissory note for the \$5,000 and a security agreement giving Bank a security interest in all equipment now owned or hereafter acquired. Bank properly perfected this security interest by filing a financing statement centrally in Oklahoma. At that time Walter owned a pneumatic paint sprayer that he used in his business.

In January 2004, Walter moved to Dallas, Texas and relocated his refrigerator repair business and equipment there. On March 2, 2004, Walter borrowed \$10,000 from FinanceCo for operating capital. He signed a promissory note for the \$10,000 and a security agreement giving FinanceCo a security interest in all his equipment and in the same savings deposit account maintained at Bank in Dallas, Texas. FinanceCo filed the security agreement with the Texas Secretary of State on March 3, 2004. On June 1, 2004 Walter purchased a hydraulic hoist for use in his business.

It is now January 2005 and Walter has defaulted on both loans, and both Bank and FinanceCo claim a superior security interest in the savings deposit account, the paint sprayer and the hydraulic hoist.

**Which creditor has the superior security interest in the following:**

- a. the savings deposit account?
- b. the paint sprayer?
- c. the hydraulic hoist?

**Explain fully as to each.**

**This concludes the Texas Essay portion of the exam.**

**Be certain that you write the pledge on the back of your PURPLE answer book.**