

Thursday Afternoon
February 26, 2004
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

Bill, an unmarried man, had his lawyer prepare the following contract, which he signed in May 2001:

“Whereas, I have never been married but have two adult children, Sue and Tom, from my long-standing relationship with their mother, Ann;

“Whereas, Sue and Tom have shown me love and respect as their birth father, notwithstanding that I never married their mother; and

“Whereas, I do not have a will at the present time.

“For the above consideration, I hereby agree that I will not make a will. Instead, I hereby agree that, upon my death, any property I own shall be given to Sue and Tom or their heirs, to be equally distributed among them. This gift is subject to the condition that Sue and Tom agree upon a division of my ten-acre ranch in Refugio, Texas so that Sue’s part shall be two-thirds and Tom’s part shall be one-third. If Sue and Tom refuse to carry out this condition, they shall forfeit the land to the State of Texas.”

Bill died without a will at a Dallas hospice on June 1, 2002. The next day, Sue and Tom died in an automobile accident while traveling to Bill’s funeral. Sue and Tom were both single, and neither had children. Both died intestate.

Bill died with no parents, grandparents, siblings, or descendants of siblings surviving him. His estate was valued at over \$2,000,000. The State of Texas seeks to escheat the property on the grounds that Bill died “having no heirs.” Ann claims the estate as the sole heir of Sue and Tom.

- 1. What is the effect of Bill’s contract on the rights of inheritance of Sue and Tom? Explain fully.**
- 2. To whom should Bill’s estate 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

Mary, a widow, had two adult children, Ron and Gerry. Ron was a devoted son who came to visit his mother often. Gerry rarely visited his mother and had been in trouble with the law off and on throughout his life.

Mary became seriously ill in June 2002 and was admitted into the intensive care unit of a hospital in San Antonio, Texas. Mary's prognosis was very poor, and she told her lawyer, Jack, to prepare her last will and testament.

Mary told Jack that she wanted to leave \$950,000 of her \$1,000,000 estate to Ron and \$50,000 to Gerry, but only on condition that Gerry would forfeit his share if he contested her will. Jack drafted the will accordingly.

Mary further told Jack that she wanted her lifelong friends, Tom and Shirley, to witness her will, but that she did not want them to know what they were witnessing. She feared they might tell her sons what she wanted to do with her property at her death.

In July 2002, Tom and Shirley accepted Mary's invitation to visit her in the hospital to celebrate her 70th birthday. Jack was also present.

Despite her illness, Mary appeared to be alert and happy, and she thanked everyone for coming. Jack gave Mary's will to Tom and Shirley and said, "I'm handling some paperwork for Mary. Will you two witness her signature on this document?" Tom and Shirley were not aware they were signing as witnesses to Mary's will.

Shirley signed the document at Mary's bedside. Tom went to the nurse's station to sign the document, although he remained close enough for Mary to see him and be aware of what he was doing. Then, Mary signed the will. Mary died three days later.

Gerry challenges the will on the grounds that (1) it was not properly executed and (2) that he is entitled to one-half his mother's estate.

How should the court rule on each of the grounds of Gerry's challenge? Explain fully.

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

Liz, Inc., a Texas corporation, was incorporated in January 2000, under the *Texas Business Corporation Act* to carry on an automobile painting business. Kim is the president and owns 80% of the stock of Liz, Inc. Ashley owns the other 20% of the Liz, Inc. stock. Kim and Ashley have been the sole directors of Liz, Inc. at all times. Kim is the only one of the two who is active in the business. Kim started the business with \$5,000 in the bank, but has less than \$1,000 in assets now. Ashley knows nothing about the financial condition of the company or its debts, and no board of directors meetings were held in 2003.

In the regular course of business, Kim as President, made purchases of painting supplies on credit from Courtney as follow: (1) on July 1, 2003, she purchased \$5,000 worth, with payment due on July 31, 2003; and (2) on August 10, 2003, she purchased \$1,000 worth, with payment due on August 31, 2003. No payments have been made on either purchase.

Kim knew at the time she placed both orders with Courtney that the liabilities of Liz, Inc., exceeded its assets and the corporation did not have the cash to pay the current bills, but Kim did not reveal this to Courtney.

The corporate records also reflect that Kim had failed to pay the franchise taxes due on the corporation and that Liz, Inc.'s, right to do business in Texas had been forfeited on July 31, 2003.

What liability, if any, do the following have for the unpaid amounts on each of the two purchases of the painting supplies:

- (a) **Liz, Inc.? Explain fully.**
- (b) **Kim? Explain fully.**
- (c) **Ashley? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Dan owns all rights to develop, manufacture and sell a new computer he believes will perform better and cost less than other computers of equal capacity. Dan has two wealthy friends, Wyatt and Mark, who are interested in investing in this business with him. Each would invest \$100,000, for a total of \$300,000. There may be a substantial risk of loss in this new business, and the investors do not want to risk their family fortunes in it. In setting up the business there are three principal objectives the investors want to accomplish:

- (1) To limit the liability of each investor to the \$100,000 that each contributed;
- (2) To give each investor assurance of an equal voice in the management and operation of the business without exposing them to personal liability beyond the amount of their investment; and
- (3) To ensure that the profit and loss resulting from the business can be reported as income or taken as a deduction directly on the individual federal income tax returns of the investors without being taxed first to the entity.

The investors wish to consider the following three forms of business entities:

- (a) Limited partnership;
- (b) Limited liability company; and
- (c) Texas business corporation.

What are the relative advantages and disadvantages of each entity with respect to each of the investors' stated objectives, and which of the entities would you recommend that the investors choose? Explain fully.

Answer the next question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

QUESTION 11

Mary, an 85-year-old widow, lived in the same town as her adult son, John, in Travis County, Texas. She had no other children.

For the past year, Mary had been frequently and regularly exhibiting unusual behavior. She would wander the streets talking to herself wearing clothing inadequate to protect her from inclement weather. Despite John's daily delivery of hot meals, Mary would go days without food or nourishment. She would also make regular cash withdrawals from Bank, with which she had a long-term customer relationship and where she had over \$500,000 in certificates of deposit and savings and checking accounts. Mary would make sizeable cash gifts to strangers she met on the sidewalk.

John had dropped out of school in the fifth grade. All his life, John had worked odd jobs as a day laborer. He had no experience managing or investing money. He had never had a checking or savings account. In 1985, John was arrested for aggravated assault, but the charges were later dismissed.

After John and the Bank became aware of Mary's behavior, they each filed necessary papers with the local probate court, which had proper jurisdiction and venue, petitioning the court for appointment as guardian of Mary's estate and person.

- 1. Applying the statutory factors in the Texas Probate Code that the court must consider, should the court appoint a guardian for Mary's estate and person? Explain fully.**

- 2. Assuming that the court decides a guardian should be appointed, which of the two petitioners—John or Bank – would the court be most likely to appoint as guardian of Mary's estate and of Mary's person? Explain fully.**

Answer the next question in the PURPLE answer book.

ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

QUESTION 12

Carlos had a personal savings account at Bank, which, according to his records, contained a balance of \$13,000. He went to Bank to withdraw the entire balance and close the savings account. Bank's teller told Carlos that the balance in the account was \$23,000 and gave him a cashier's check in that amount. Before accepting the check, Carlos asked the teller to verify the amount, because Carlos' records reflected a different balance. The teller checked and assured Carlos that \$23,000 was the correct amount.

Two days later, Bank discovered it had made a mistake and sent Carlos a letter demanding immediate return of the \$10,000 overpayment. The letter accused Carlos of having committed fraud and theft and threatened to file a criminal action unless the funds were returned within 24 hours. In addition, at the Bank's request, Bank's law firm ("Law Firm"), which ordinarily did not get involved in debt collection matters, sent Carlos a separate letter containing the identical accusations and threat contained in Bank's letter to Carlos.

Carlos was shocked and humiliated by the letters. Carlos immediately returned the \$10,000. He lost sleep. He developed an anxiety condition that required medication, which required him to take unpaid time off from his job as a dental assistant. The actions by Bank resulted in a substantial disruption of Carlos' daily routine.

What rights and civil remedies, if any, does Carlos have under the Texas Debt Collection Act and the Texas Deceptive Trade Practices Act

- 1. Against Bank? Explain fully.**
- 2. Against Law Firm? 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.**