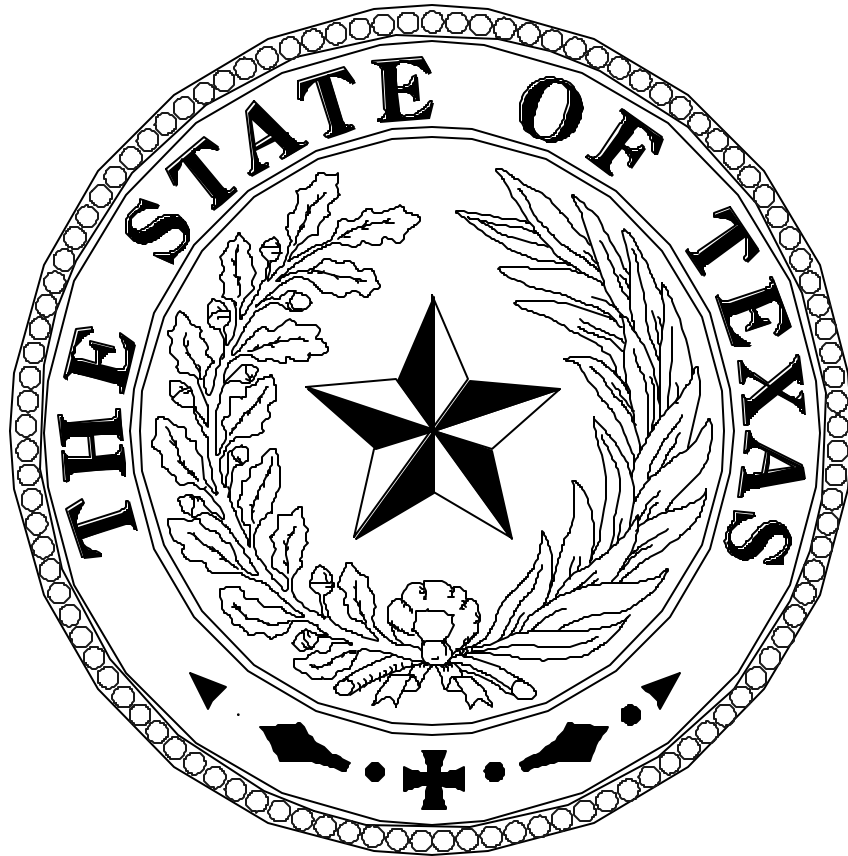


Thursday Morning  
February 26, 2004  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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## **ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK**

### **QUESTION 1**

Bob and Sally were married. Their only child, Allison, is five years old. On her way to pick up Allison at school one day, Sally was struck and killed by a car. For several years before the accident, Bob had subjected Sally to physical and mental abuse.

Sally had confided Bob's conduct to her mother, Martha, Allison's maternal grandmother. Shortly after Sally's death, Martha, fearing for Allison's physical health and welfare, seeks visitation rights to Allison.

Martha has Sally's diary, in which Sally described an episode where Bob had threatened her with a gun. Martha also has affidavits from friends of Sally that describe other incidents of abuse by Bob over a long period of time.

Martha does not know whether Bob's abuse of Sally extends to Allison as well.

- 1. Does Martha have standing to sue for visitation rights to Allison? Explain fully.**
- 2. Under the Texas Family Code, what must a court find in order to issue a valid order granting Martha visitation rights? Explain fully.**
- 3. What grounds, if any, under the U.S. Constitution can Bob assert to limit Martha's ability under the Texas Family Code to obtain visitation rights? Explain fully.**

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

## **ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK**

### **QUESTION 2**

Carol and William divorced in 1996. During their marriage, they had one child, Ben. Carol is the managing conservator and William is the possessory conservator of Ben. Carol and Ben live in Texas. After the divorce, William moved to California. William has not made any attempt to visit Ben or pay child support since the divorce.

In 2000 Frank moved in with Carol and Ben. In 2002 Carol and Frank were married. Frank expressed an interest from the beginning in adopting Ben, who is now 12 years old.

Carol consents to the adoption. William's attitude about it is unknown. Ben does not wish to be adopted.

- 1. What impediments, if any, under the Family Code would have prevented Frank from adopting Ben while he and Carol were living together unmarried? Explain fully.**
- 2. What steps must Frank take and what must he establish in order to adopt Ben now? Explain fully.**

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

## ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

### QUESTION 3

Greenacre is a tract of land located in Panola County, Texas. Rex owned a one-eighth nonparticipating royalty interest, and Sara owned the surface and all other mineral interests in Greenacre.

In January 1998, Sara sold Greenacre to Ben for \$50,000, subject to Rex's royalty interest. In payment, Ben gave Sara a promissory note secured by a deed of trust, which contained a power of sale. The single-payment note was due in full on July 1, 1998. The deed of trust was properly recorded in the Panola County Real Property Records. Ben failed to pay the note when it became due on July 1, 1998 and has not paid anything since then.

Ben was interested in acquiring Rex's royalty interest in Greenacre. In May 2001, Ben prepared a form of deed that contained in its small print words conveying Rex's royalty interest and mailed it to Rex along with a check for \$1,000. In the accompanying letter, Ben wrote only the following: "If this check is acceptable, please sign the enclosed document before a notary and return it to me." Rex did not understand the royalty deed and thought it was a division order. After signing and acknowledging the royalty deed, Rex mailed it back to Ben and cashed the check. In March 2002, Rex learned that the \$1,000 payment was not the result of production of oil and gas on Greenacre, but was a payment for the sale of the royalty interest.

Also in March 2002, Sara instructed Ted, the trustee under the deed of trust, to begin foreclosure proceedings against Ben. On April 3, 2002, after Ben failed to respond to a letter that demanded payment, Ted sent a letter to Ben by certified mail that included a Notice of Foreclosure Sale. Ted also posted a copy of the letter in the area designated for such notices at the Panola County Courthouse. The letter stated that the foreclosure sale would take place at the Panola County Courthouse on May 7, 2002, the first Tuesday in May, but did not state the time of the sale. Ted did not file the Notice with the county clerk.

On April 30, 2002, Ben filed a petition for bankruptcy under Chapter 13 of the Bankruptcy Code. Ted cancelled the foreclosure sale. Ben did not take further action in the bankruptcy case, so the Court dismissed the bankruptcy case on August 30, 2002.

Rex believes the amount he received from Ben for the royalty interest was unfair and in September 2002 decided to sue Ben.

- 1. If Ted had proceeded with the sale on May 7, 2002 (prior to the dismissal of the bankruptcy), on what bases under federal and state law could Ben have caused the foreclosure sale to be set aside? Explain fully.**
- 2. Could Sara (through Ted) have resumed her efforts to conduct a foreclosure sale against Ben after August 30, 2002, and, if so, what time limits would she have faced? Explain fully.**
- 3. What time limits, if any, would Rex face for bringing suit against Ben, would Rex be likely to prevail in a timely suit against Ben, and, if so, what could he recover? Explain fully.**

Answer the next question in the PINK answer book.

## ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

### QUESTION 4

George Lee acquired a two-acre lot and a five-acre lot, in Harris County, Texas as grantee under a 1991 deed. Exhibit A, a single sheet of paper that was attached to the deed, contained the legal descriptions of the two lots. George kept the deed in the bottom drawer of a desk that he and his co-worker, Brenda, shared at the clinic where they worked.

George recently received an inquiry from Ed, who expressed interest in buying the two lots. Ed explained that he did not yet have the money to buy the lots but that he was expecting soon to receive a distribution from his deceased uncle's estate. He was not sure how much money he would receive or when he would receive it.

George signed and sent the following letter to Ed:

Dear Ed,

When you have the money, I will sell you one of the two lots that I own in Harris County, Texas at a mutually agreeable price. If you still want to buy, sign this letter and return it to me.

/s/ George Lee

Ed signed and returned the letter to George.

During a conversation one day, Brenda told George that she was planning to form a nonprofit corporation to be called Pet's Rest, Inc. and that, when she did, she would need a parcel of land to use as a pet cemetery. George told Brenda he would be happy to donate the smaller of the two lots to Pet's Rest, Inc., and he drafted and signed the following document:

#### GIFT DEED

Know all men by these presents, that I, George Lee, for and in consideration of my intent to make a charitable contribution, have granted, given and conveyed, and by these presents do grant, give and convey unto Pet's Rest, Inc. the land described in Exhibit A attached to this Deed. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said Pet's Rest, Inc., its successors and assigns.

And I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend the said premises unto the said Pet's Rest, Inc., its successors and assigns, against the claim of every person whomsoever lawfully claiming or to claim the same or any part thereof.

/s/ George Lee

George did not attach Exhibit A to the Gift Deed. George then put the Gift Deed in the bottom drawer of the shared desk.

One day while she was looking for something in the desk, Brenda found the 1991 deed and the Gift Deed. Without George's knowledge or consent, Brenda removed Exhibit A from the 1991 deed and attached it to the Gift Deed, believing it effectively conveyed the property to Pet's Rest, Inc., which she intended to incorporate in the future. She then put the Gift Deed in her bank safe deposit box.

1. Is the letter signed by George and Ed a binding contract requiring George to sell one of the two lots to Ed when Ed obtains the money? Explain fully.
2. Is the Gift Deed in Brenda's possession effective to convey title to the two lots to Pet's Rest, Inc.? Explain fully.

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

## ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

### QUESTION 5

In January, Zeb purchased an abandoned gas station (the lot and the improvements upon it) in Dallas, Texas that he intended to remodel into a convenience store.

On May 1, Zeb borrowed \$50,000 from Bank to finance the remodeling, and, to secure this debt, he gave Bank a deed of trust (construction mortgage) that was properly recorded in the real property records of Dallas County, Texas on May 2.

On June 1, Zeb bought 150 sheets of wallboard for \$2,000 on credit from Gypsum Co. He intended to use the wallboard for partitioning rooms in the remodeled store. Gypsum Co. secured this debt with a security agreement in which Zeb gave a security interest that was reflected in a document describing the debtor, the secured party, the amount of and the type of collateral (wallboard) and the legal description of the gas station property. On June 3 Gypsum Co. filed the document in the real property records of Dallas County, Texas. The wallboard was installed later during the month of June.

On June 15, Zeb bought two sinks and commodes for \$1,000 on credit from A-One Plumbing for the restrooms in the building. A-One secured this debt with a security agreement in which Zeb gave a security interest that was reflected in a document describing the debtor, the secured party, the amount and type of collateral (the sinks and commodes), and the legal description of the gas station property. On June 20, A-One filed the document in the real property records of Dallas County, Texas. The sinks and commodes were permanently installed on June 18.

On June 29, Zeb bought a credit card verification machine/reader for use in the convenience store from Credit Equipment Co. on credit for \$2,500. The parties executed a security agreement giving Credit Equipment Co. a security interest in the machine. On June 30, Credit Equipment Co. filed a financing statement with the Texas Secretary of State. The machine was installed in July. The machine and its metal conduit were bolted onto a built-in counter but were readily removable by unscrewing the bolts.

On July 10, Zeb bought fluorescent lighting appliances from Light Co. on credit for \$1,900. The parties executed a security agreement giving Light Co. a security interest in the appliances. The appliances were installed later on July 14. On July 20, Light Co. filed a financing statement with the Texas Secretary of State.

On July 15, Finance Co. obtained a judgment against Zeb for an unpaid loan. On August 20, Finance Co. properly recorded an abstract of the judgment in the real property records of Dallas County, Texas.

**Which of the following creditors has the superior security interest under the Texas UCC as between:**

- 1. Bank and Gypsum Co. with respect to the wallboard? Explain Fully.**
- 2. Bank and A-One Plumbing with respect to the two sinks and two commodes? Explain Fully.**
- 3. Bank and Credit Equipment Co. with respect to the credit card verification reader/machine? Explain fully.**
- 4. Finance Co. and Light Co. with respect to the fluorescent lighting appliances? Explain fully.**

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



## ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

### QUESTION 6

Alfred hired Robert to prepare and file his tax returns. On March 3, in exchange for Robert's services, Alfred executed three undated promissory notes – Note A, Note B, and Note C – each in the amount of \$500. Each note was payable to the order of Robert and had a due date of May 30.

On April 1, Robert indorsed all three notes making them payable to Carl as payment for Carl's having painted Robert's house.

Robert failed to timely file or to obtain an extension for filing Alfred's tax return. Robert filed the return on April 20, causing Alfred to incur a penalty of \$300. On April 30, Carl learned of Robert's late filing and the \$300 penalty incurred by Alfred when he overheard an angry conversation between them.

**Note A:** On June 1, Carl presented Note A to Alfred and demanded payment. Alfred refused to pay.

**Note B:** On April 25, Carl indorsed Note B making it payable to his daughter, Linda, and gave it to her as a gift. On May 30, Linda presented Note B to Alfred and demanded payment. Alfred refused to pay.

**Note C:** Also on April 25, Carl indorsed Note C making it payable to his son, Dave, and gave it to him as a gift. On June 2, Dave indorsed Note C making it payable to Barbara in exchange for a pearl necklace he had bought for his wife.

Prior to accepting Note C from Dave, Barbara had learned about Robert's failure to file Alfred's tax return on time and the \$300 penalty.

**What liability, if any, does Alfred have on each of the three notes? Explain fully.**

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