

Thursday Afternoon  
July 29, 2004  
Essay Questions 7 - 12



## TEXAS BAR EXAMINATION

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# ANSWER QUESTION 7 IN THE RED ANSWER BOOK

## QUESTION 7

Owner owned Graphics, Inc. Joe Jones was Graphics' general manager and had authority to purchase supplies and sign documents necessary to bind Graphics. Both Owner and Joe had authority to sign checks on Graphics' account at Bank.

On May 3, Joe purchased 25 cases of duplicating paper from Supply Co. In payment, Joe signed and delivered a promissory note for \$500 payable to the order of Supply Co. The note was due on May 30 and was signed simply "Joe Jones." Supply Co. knew Joe was Graphics' general manager and understood that Graphics was the party that would pay the note.

On May 6, Joe opened the shipment of paper from Supply Co. and found that the paper was water stained and not suitable for use as duplicating paper. In that condition, it had scrap value of only \$100. Supply Co. was unaware of the water damage.

At noon on May 6, while having lunch with Karl, an officer of Bank, Joe described to Karl the problem with the duplicating paper and told Karl he had given Supply Co. a \$500 promissory note that he was now going to have to rescind.

At 1:00 p.m. on May 6, Supply Co. met with Eli, another officer of Bank, endorsed the note, and sold it to Bank for \$350.

On May 10, Joe paid Graphics' utility bill by sending to Utility Co. a Graphics company check for \$240 drawn on Graphics' checking account at Bank. Joe signed the check simply "Joe Jones." At the time, there was enough money on deposit to cover the check.

On May 11, Owner, without Joe's knowledge, withdrew all the funds from the checking account at Bank and used them to pay creditors. On May 12, Utility Co. presented the \$240 check to Bank for payment, and it was dishonored because there were insufficient funds in the account.

Graphics is now insolvent and out of business.

- 1. What effect, if any, does Joe's having told bank officer Karl about the problem with the shipment of paper have on Bank's right to recover against Graphics on the note? Explain fully.**
- 2. What liability, if any, does Joe have to Bank on the promissory note? Explain fully.**
- 3. What liability, if any, does Joe have on the check to Utility Co.? Explain fully.**

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

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

## **QUESTION 8**

On May 1, Warren started a business as a sole proprietor and leased a \$5,000 computer system from Leasco. The written lease, which was the only document generated in the transaction, provided for monthly payments for five years, with the right to purchase the system at the end of the term for \$1.00.

On June 1, Warren borrowed \$10,000 from Bank, with the understanding that \$3,000 of the loan proceeds were to be used to purchase telephone equipment and \$7,000 were to be used for working capital. Warren signed a promissory note to Bank payable on December 1. To secure the note, Warren executed a security agreement giving Bank a security interest in all of his office equipment now owned or thereafter acquired. Bank promptly perfected its security interest by filing a financing statement on June 3.

On June 2, Warren purchased and installed the telephone equipment.

On November 30, Warren purchased business video equipment for \$2,000 on credit from A-1 Video Co. (“A-1”) and signed a promissory note payable to A-1 in twelve monthly installments. Warren executed a security agreement giving A-1 a security interest in the video equipment to secure the installment payments and took possession of the equipment on November 30.

Warren was unable to pay the Bank note when it became due on December 1. On December 5, Warren persuaded Bank to extend the note’s payment for thirty days. To induce the Bank to do so, Warren gave Bank a stock certificate he owned for 100 shares of Dotcom Computer as additional collateral. Bank took immediate possession of the certificate.

On December 12, Warren filed a petition in bankruptcy for liquidation under Chapter 7 of the Bankruptcy Code.

On December 13, having learned of Warren’s bankruptcy filing, A-1 quickly filed a financing statement with the intent of perfecting its security interest in the video equipment.

**Which party among Leasco, Bank, A-1, and the Bankruptcy Trustee has the superior interest in the**

- 1. Computer system? Explain fully.**
- 2. Telephone equipment? Explain fully.**
- 3. Video equipment? Explain fully.**
- 4. 100 shares of Dotcom stock? Explain fully.**

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

# ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

## QUESTION 9

Gloria owns fee simple title to Blackacre, a farm located in Walker County, Texas. Her fee simple is subject to Ken's 1/16<sup>th</sup> royalty interest in oil and gas produced.

In January 2002, Gloria and Ken signed an oil and gas lease with ABC Oil Co. ABC properly recorded the lease. The lease provided that ABC would pay a royalty of 1/8<sup>th</sup> of the oil produced from Blackacre. The lease was silent concerning the obligation of any party to plug wells when production ended.

In March 2002, Ken sold part of his royalty interest to Gloria and delivered a royalty deed that described the ABC lease and conveyed to Gloria "1/32<sup>nd</sup> of all oil, gas, and other minerals produced from Blackacre under the ABC lease, said conveyance being limited to the duration of the ABC lease and having no effect if the lease terminates for any reason." Gloria properly recorded the royalty deed in Walker County and sent a copy to ABC.

In April 2002, ABC drilled a producing well. Thereafter, ABC sent a division order to Ken. This division order reflected an ownership interest of a 1/16<sup>th</sup> royalty by Ken.

In September 2002, Ken showed Terry the division order. Terry, relying on the division order, accepted in satisfaction of a debt owed by Ken a warranty deed from Ken conveying to Terry "a royalty of 1/16<sup>th</sup> of all the oil, gas and other minerals produced from Blackacre." The warranty deed made no reference to the ABC lease, and Terry did not check the Walker County Clerk's records.

Terry properly recorded the warranty deed in Walker County and sent a copy to ABC. ABC then sent Terry a copy of the March 2002 royalty deed from Ken to Gloria. This was the first notice Terry had of that deed.

- 1. If oil production continues under the current ABC lease, who is entitled to royalty payments and in what proportions? Explain fully.**
- 2. If the current ABC lease terminates and is replaced with a new lease providing for a 1/8<sup>th</sup> royalty, who is entitled to the royalty payments under the new lease and in what proportions? Explain fully.**
- 3. If the current ABC lease terminates, does Terry have any right to negotiate a new lease or any obligation to plug the well? Explain fully.**

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

# ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

## QUESTION 10

Lots 1, 2, and 3 are contiguous improved parcels of land located in the city limits of Pasadena, Harris County, Texas. The aggregate size of the lots is less than 10 acres.

Son owned Lot 1, which was improved with a small commercial office building. He conveyed fee simple in Lot 1 to Mother with a warranty deed providing in part:

Son does grant, sell, and convey Lot 1 to Mother as long as Lot 1 is used by Mother as an office for the practice of law. If Mother ceases to use Lot 1 as a law office, Lot 1 shall automatically revert to and be owned by Son without the necessity of any further action on the part of Son.

Mother has at all times used Lot 1 as her law office and continues to do so.

Company owned Lot 2, which was improved with a single family home. Son purchased Lot 2 from Company and delivered a promissory note to Company in payment for Lot 2. The warranty deed conveying fee simple from Company to Son described the promissory note as the consideration and contained the following provision:

Company and Son agree that Company retains a vendor's lien and superior title in Lot 2 to secure the obligations of Son until the promissory note is fully paid, at which time this warranty deed shall become absolute.

Son resides in the home on Lot 2. The City of Pasadena provides police, gas, sewer, and water services to the property.

Mother owned Lot 3, which is improved with a small commercial building. Lot 3 lies to the east of and adjoins Lot 2. By warranty deed, Mother conveyed to Son the following estate in Lot 3:

An estate with full possession, benefit, and use for the life of Son, with the remainder over at the death of Son retained and reserved by Mother.

Son, an accountant, is the sole occupant of the building on Lot 3, and he operates his accounting business there.

All three of the deeds mentioned above were validly executed and delivered and properly recorded in the Official Public Records of Real Property in Harris County.

After the deeds were recorded, Bank obtained a judgment against Son on past due credit card debt and recorded an abstract of judgment with the Harris County Clerk. Son has also defaulted on the promissory note held by Company.

1. **If Bank sues to foreclose the judgment lien created by its abstract of judgment, against what interests of Son in each of Lots 1, 2, and 3, if any, can Bank enforce its lien? Explain fully.**
2. **What rights and remedies does the vendor's lien retained by Company in Lot 2 give Company upon Son's default, and how can Company enforce its rights? Explain fully.**

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

# ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

## QUESTION 11

Husband and Wife married in 1990. During the marriage, Wife never worked outside the home.

In 1995, Wife was seriously injured in a fall that left her with substantial physical impairment. After her injury, Wife was unable to keep the couple's residence as clean as Husband desired. Husband became physically abusive to Wife. Wife told Husband she was going to divorce him, and Husband threatened to beat her if she did.

Wife filed for divorce in 2003. The only significant asset in the community estate is the couple's residence. Neither spouse has any separate property. Husband's income is \$10,000 a month. Wife has no means to pay attorney's fees. Wife wants to continue to reside in the home while the divorce is pending.

1. **What relief may Wife seek, and what is the likelihood that she will obtain relief for**
  - a. **Husband's threat to beat her if she files for divorce? Explain fully.**
  - b. **Her lack of any means of support during the pendency of the divorce action? Explain fully.**
  - c. **Her inability to pay attorney's fees? Explain fully.**
  - d. **Her desire to continue to reside in the home while the divorce is pending? Explain fully.**
  
2. **Assume that Wife seeks to obtain maintenance as part of her final divorce decree:**
  - a. **What must wife establish to be awarded maintenance as part of the final divorce decree? Explain fully.**
  - b. **What limits, if any, are likely to be placed on the extent and duration of any such maintenance? Explain fully.**

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

# **ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK**

## **QUESTION 12**

In 1995, Harry purchased Greenacre, located in Dallas County, Texas. The deed of conveyance named Harry as the sole grantee. Harry's wife, Betty, agreed to use \$100,000 from their joint savings account to purchase Greenacre, and she was present at the closing. Betty and Harry never lived on Greenacre, and they never claimed it as homestead.

In 1999, John, the son of Betty and Harry, married Sue. Shortly after their wedding, Sue and John purchased Greenacre from Harry. Betty was not a signatory to the deed from Harry to Sue and John.

In 2000, Sue and John built a home on Greenacre and began living there.

In 2001, Sue initiated divorce proceedings against John. Sue listed Greenacre as a community asset of her marriage to John as the result of the conveyance from Harry. Betty promptly intervened in the divorce suit, seeking a declaratory judgment that the deed Harry signed and delivered was ineffective to pass title to Sue and John. Harry is unavailable to testify.

- 1. How is the court likely to characterize the nature of the ownership of Greenacre as originally conveyed to Harry? Explain fully.**
- 2. How is the court likely to rule on Sue's claim that Greenacre is a community asset of her marriage to John? 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.**