Thursday Morning
July 29, 2004
Essay Questions 1 - 6

TEXAS BAR EXAMINATION

ANSWER QUESTION 1 IN THE <u>GOLD</u> ANSWER BOOK

<u>QUESTION 1</u>

Antonia and her real estate agent, Diego, engaged in the following transactions affecting two tracts of real property in Goliad County, Texas:

<u>Tract I</u>: Antonia owned Tract I, consisting of several rental properties. She executed a written conveyance of Tract I to Diego. The conveyance provided that Diego was to hold Tract I as trustee for the benefit of Antonia's three children.

While Antonia was on an extended trip abroad, Diego pledged Tract I as collateral for a personal loan of $50,000 and deposited the rental income from Tract I in his personal checking account.

<u>Tract II</u>: Antonia also owned Tract II. She executed a written conveyance of Tract II to Diego. Antonia authorized Diego to sell Tract II, and they agreed that 90% of the proceeds would go to Antonia and 10% to Diego.

While Antonia was on an extended trip abroad, Diego sold Tract II for $100,000. He used the $100,000 to purchase another parcel of land, which he sold 30 days later for $150,000.

Diego has refused to account to Antonia for any of his actions.

1. **What types of trusts, if any, arise from each of the transactions involving Tracts I and II, and which of them, if any, are governed by the Texas Trust Code? Explain fully.**

2. **What civil remedies are available to Antonia to enforce her rights under her arrangements with Diego regarding Tracts I and II? Explain fully.**

<u>Answer the next question in the GRAY answer book.</u>

ANSWER QUESTION 2 IN THE <u>GRAY</u> ANSWER BOOK

<u>QUESTION 2</u>

Paul bought a car and financed it with a loan from Bank. In connection with the loan, Paul bought a credit life insurance policy issued by Insco, an insurance company. The policy provided that, in the event of Paul's death, Insco would pay the outstanding balance on the Bank loan and hold harmless Paul's estate and heirs. Bank agreed to include the cost of the insurance in the loan to Paul.

Soon after making his first payment on the car loan, Paul was killed in an automobile accident involving a drunk driver. The police arrested the driver at the scene. They filed a report stating that the driver was drunk and that he swerved outside his lane of traffic, causing the accident. At the time of the accident, the balance still outstanding on the loan was $20,000.

Bank and Paul's wife, Widow, filed claims against Insco for payment under the policy. Without securing a copy of the police report or conducting a thorough investigation, Insco erroneously concluded that Paul was drunk at the time of the accident. Six months after the claims were filed, Insco denied them without explanation.

Bank wrote a letter appealing Insco's denial and presented a copy of the police report to support the claim of accidental death. Insco replied that its investigation was complete and that it was denying the claims on the speculative theory that Paul was heavily in debt and committed suicide due to financial pressures.

Bank then demanded payment in full from Widow and Paul's estate. Widow became so distraught that she had to seek psychiatric care and was hospitalized for three weeks. She also had to hire an attorney to represent her.

What are the rights and remedies, if any, of Bank and Widow against Insco under Texas consumer protection laws? Explain fully.

<u>**Answer the next question in the BLUE answer book.**</u>

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

Kim, as incorporator, signed and filed Articles of Incorporation ("Articles") for DanCo, Inc., a Texas business corporation. Kim was the only director named in the Articles. The Secretary of State issued a certificate of incorporation in January 2003.

Three subscription agreements were attached to the Articles filed with the Secretary of State, wherein Nicole, Ashley, and Elizabeth each agreed separately to buy 100 shares of DanCo stock without par value for $1,000.

In February 2003, while out of state and without sending notice to anyone, Kim held an organizational meeting, adopted bylaws, and, in accordance with those bylaws, elected herself president and secretary of the corporation. Kim owned no DanCo stock, and she had not collected any funds in payment for stock from anyone. Kim was the only person in attendance at the organizational meeting. She kept no minutes of the meeting.

Kim, as Director, took the following actions after the organizational meeting:

- She issued a stock certificate for 100 shares to Ashley in return for Ashley's transfer to DanCo of a $1,000 bank certificate of deposit maturing one year later;
- She issued a stock certificate for 100 shares to Elizabeth in return for an agreement made by Elizabeth to perform $1,200 worth of services for DanCo within the next two years;
- She cancelled Nicole's subscription 120 days after the Articles were filed, and she refused to issue stock to Nicole. Kim took this action in good faith, believing it was in the corporation's best interest. When asked about it by Ashley and Elizabeth, Kim slandered Nicole by stating that Nicole had a criminal record. In fact, Nicole had no criminal record.

Nicole has sued DanCo and Kim, individually, for breach of contract, slander, and a determination that DanCo does not exist because Kim did not properly elect officers and follow other corporate formalities.

1. **Was the organizational meeting legally held, and were the necessary officers properly elected? Explain fully.**

2. **Can Nicole's attack on the corporate existence of DanCo succeed? Explain fully.**

3. **Assuming the corporation DanCo legally exists, were the shares issued to (a) Ashley and (b) Elizabeth legally issued? Explain fully.**

4. **Assuming the corporation DanCo legally exists, what potential liability, if any, does Kim personally have to Nicole? Explain fully.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Jenny Jones, Madisen Jones, and Wyatt Smith decided to form a Texas limited partnership and to call it Jones, Ltd. Each of them contributed $25,000 to the partnership and agreed in writing to contribute an additional $10,000 within a year. The Certificate of Limited Partnership was properly prepared and signed. Jenny was named as the general partner, and Madisen and Wyatt were named as the limited partners. However, because of an oversight by their attorney, the Certificate did not get properly filed. Believing that the Certificate had been properly filed, Jenny, Madisen, and Wyatt started doing business as Jones, Ltd.

Jenny and Wyatt worked as employees of Jones, Ltd. Madisen was not an employee. Jenny identified a building owned by Seller that she thought was desirable for use as the offices of Jones, Ltd. Wyatt inspected the building and found it suitable. Madisen then requested a partnership meeting. The meeting to discuss the building was attended by all three partners, and Madisen advised Jenny to buy the building.

Seller knew that Jenny, Madisen, and Wyatt were partners in Jones, Ltd. but had no particular knowledge or belief as to whether they were general or limited partners. Jenny told Seller that each of the partners was committed to contributing another $10,000 to Jones, Ltd. within a year. Relying on the prospect of a later infusion of cash into the business, Seller agreed to sell the building to Jones, Ltd. on credit. Jenny gave Seller a promissory note to cover the purchase price. She signed the note "Jenny Jones, for Jones, Ltd."

After the purchase of the building, Jenny discovered that the Certificate had not been filed, and she caused it to be filed with the proper authorities.

Thereafter, Jones, Ltd. became insolvent. The partners voted to release each other from the obligation to make the additional $10,000 contribution, ceased doing business, and defaulted on the promissory note.

What liability, if any, does *each* of the following persons have to Seller on the note and on their agreements to contribute the additional $10,000 capital?

1. **Jenny? Explain fully.**

2. **Madisen? Explain fully.**

3. **Wyatt? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE <u>DARK GREEN</u> ANSWER BOOK

QUESTION 5

Jim, a popular sports figure and a lifelong resident of Houston, Texas, died in June 2000. He died without a will. He is survived by his widow, Betty. At the time of Jim's death, his and Betty's community assets consisted of cash and securities worth $300,000. Betty was appointed administrator of Jim's estate.

No children were born of Jim's marriage to Betty. However, Jim had one child, Tom, who was born out of wedlock in 1975 with Sue while Jim and Sue were in high school. When Tom was six months old, Jim and Sue legally terminated their parental rights when Tom was adopted by his current adoptive parents. The adoption decree was silent on the issue of inheritance rights.

After Jim's death, Shoe Co., a manufacturer of basketball shoes, used Jim's name and likeness in some highly successful television commercials. The use was without Betty's permission as administrator of Jim's estate and was otherwise unauthorized. Shoe Co. did not pay Jim's estate for any of the commercials. Betty, in her capacity as administrator of Jim's estate, sued Shoe Co. for the unauthorized use of Jim's name and likeness and, in November 2002, the suit was settled for $5 million, which was paid to the estate.

Betty knew that Tom was Jim's son and where he lived, but she did not notify the probate court of Tom's existence. Nor did she notify Tom of Jim's death or of the settlement with Shoe Co.

When Tom's adoptive parents read in the newspaper about Betty's settlement with Shoe Co., they told Tom for the first time that Jim was his biological father. Up to then, Tom did not even know that he had been adopted as a baby.

1. (a) Can Tom assert against Betty a right to a portion of the Shoe Co. settlement? Explain fully.

(b) If so, what portion of the settlement can Tom claim? Explain fully.

(c) What is the likelihood that Tom will succeed? Explain fully.

2. To whom and in what proportions should the $300,000 in Jim's estate be distributed? Explain fully.

<u>Answer the next question in the TAN answer book.</u>

ANSWER QUESTION 6 IN THE <u>TAN</u> ANSWER BOOK

<u>QUESTION 6</u>

Linda, a lifelong resident of Houston, Texas, died in March 2001. She was survived by her husband, Frank, and two adult sons, Rick and Jerry, from a previous marriage.

During her lifetime, Linda had validly executed the following wills, each of which was found unaltered among her personal effects:

> **First Will:** A will dated May 1, 1999, in which Linda bequeathed one dollar to Frank and the remainder of her estate to Jerry. This will named Jerry as executor.
>
> **Second Will:** A will dated September 1, 2000, in which Linda bequeathed all of her property to Frank and nothing to Rick and Jerry. This will named Frank as executor.
>
> **Third Will:** A will dated January 2, 2001, in which Linda bequeathed one dollar to Frank and the remainder of her estate to Rick and Jerry in equal shares. This will named Rick as executor.

On April 1, 2001, Linda's Second Will was admitted to probate, and Frank received letters testamentary as executor.

On April 15, 2003, Jerry filed an application to probate Linda's First Will.

On April 30, 2003, Rick filed an application to probate Linda's Third Will.

Despite the passage of more than two years none of Linda's estate has yet been distributed.

Under which of the wills and to whom should Linda's estate be distributed? Explain fully.

This concludes the morning portion of the Texas Essay exam.