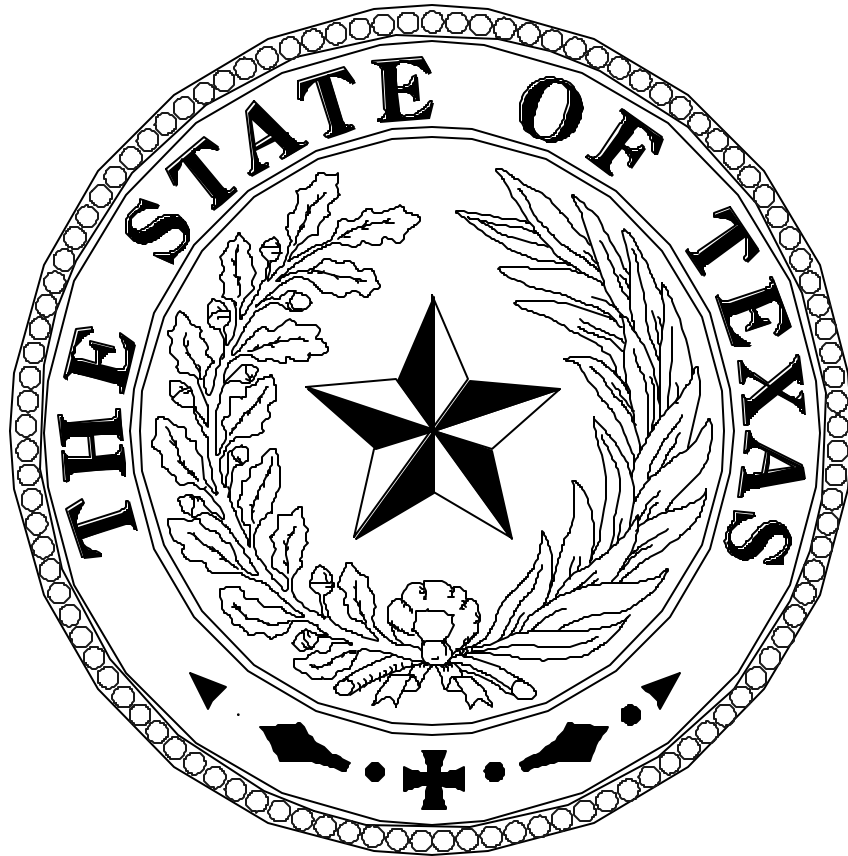


Thursday Morning
July 31, 2003
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

Linda owns two adjoining tracts, Redacre and Blackacre in Galveston County, Texas. Blackacre is improved with a building and a small parking lot that abuts a narrow access road. Redacre abuts a major thoroughfare.

Linda had previously used the building on Blackacre as a pottery studio and had installed a kiln that was attached as a fixture to the building.

In January 2002, Linda leased Blackacre, including use of the kiln, to Tom. She also granted Tom an easement across Redacre. The written easement states that it is “for purposes of ingress and egress to and from Blackacre.”

The written five-year lease between Linda and Tom stated that Tom would pay a modest fixed monthly rental plus a percentage of the gross sales income from any merchandise sold at Blackacre by Tom. The lease was silent on what type of business Tom would operate and whether he would operate the business continuously. The lease was also silent concerning subleases or assignments by Tom, and concerning whether any violation of the lease would cause the lease to terminate.

Initially, Tom used Blackacre as a pottery manufacturing facility and as a retail store for pottery sales. The pottery store generated a high sales volume, but Tom decided to stop manufacturing pottery.

In October 2002, Tom replaced the pottery store with an antique store open only on the weekends. Tom has kept current on the rent payments, but Linda is receiving reduced payments for her share of sales income because the antique store produces less sales income than the pottery store did.

Without Linda’s consent, Tom entered into an oral agreement with Susan to sublease the pottery manufacturing area, including the kiln, for a term of six months. Susan uses the area to teach lessons in making pottery and uses the kiln for firing the students’ pottery. Parking on Blackacre is not adequate for both Susan’s and Tom’s businesses, so Tom has directed customers to park on the easement area.

Linda objects to Susan’s use of the building; to the reduced amount of the payments for her share of sales income; and to Tom’s use of the easement area for parking. In December 2002, Linda entered the building after the businesses were closed for the day and removed the kiln.

- 1. Does Linda have the right to oust Susan from Blackacre? Explain fully.**
- 2. Is the change in Tom’s business and the resulting reduction in rent a ground upon which Linda could oust Tom from Blackacre? Explain fully.**
- 3. Does Linda have the right to prevent use of the easement area for parking and, if so, how can she enforce that right? Explain fully.**
- 4. What remedies, if any, does Tom have as a result of Linda’s removal of the kiln? Explain fully.**

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

Dennis and his wife, Sue, owned fee simple title to and resided on a 200-acre ranch located in Jefferson County, Texas. Oil Co. approached them with a proposition to lease the mineral rights of the ranch. Dennis declined, but Sue wanted to do it. Without Dennis' consent, in May 2002, Sue alone signed an oil and gas lease leasing all mineral rights of the ranch to Oil Co.

Dennis and Sue also owned fee simple title to Blackacre, a 100-acre tract of land in Orange County, Texas. In June 2002, they both signed, acknowledged and recorded in the Orange County Clerk's Office a grazing lease of the south half of Blackacre to Tara for one year. The lease gave Tara uninterrupted and exclusive use of the surface of the south half of Blackacre for the grazing of livestock, including the exclusive rights of ingress and egress. The lease included a waiver by Dennis and Sue of their rights to go upon the surface of the south half of Blackacre to explore for, drill, produce, transport or mine the oil, gas and other minerals. In July 2002, Dennis and Sue executed an oil and gas lease of all of Blackacre to Oil Co. for two years.

Dennis and Sue had an opportunity to buy a prize bull they had their eyes on for a long time, but they needed the cash. In March 2003, Ned, their neighbor, knowing he had them over a barrel, agreed to advance them \$50,000 but only if they would deed the Jefferson County ranch to him. The ranch was valued at \$300,000 and had a fair rental value of \$2,500 per month. Ned was not related to Dennis or Sue.

Dennis and Sue executed and properly recorded a warranty deed conveying the Jefferson County Ranch to Ned. At the same time, the parties entered into a written lease under which Dennis and Sue would continue to reside on the ranch and pay rent of \$4,000 per month to Ned. Ned orally agreed that he would reconvey the ranch to Dennis and Sue at such time as their rent payments, together with any future lump sum payment, equaled \$60,000.

- 1. What rights, if any, did Oil Co. have on July 1, 2002 to conduct drilling operations on the Jefferson County ranch property? Explain fully.**
- 2. What rights, if any, does Oil Co. have to conduct drilling operations on Blackacre? Explain fully.**
- 3. What rights, if any, do Dennis and Sue have in relation to Ned in the Jefferson County ranch property? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

For the past two years, Jenny and Courtney operated a home repair business in Texas. It was a partnership called Specialty Business Company. An assumed name certificate was properly filed reciting that Specialty Business Company was a partnership between them.

In January 2002, they decided to incorporate the business as a Texas business corporation. They submitted the necessary fees and proper Articles of Incorporation to the Secretary of State to incorporate the business under the name of Specialty Business Company, the same as the partnership, reciting that Jenny and Courtney would be the sole shareholders and the initial officers and directors. Jenny and Courtney realized that the corporation would be undercapitalized, but they did not want to put any additional money at risk.

In February 2002, before the Secretary of State approved the Articles of Incorporation, Jenny purchased supplies from Melissa on credit in the name of Specialty Business Company. She duly disclosed that she was acting in a representative capacity as an agent for Specialty Business Company, intending the purchase to be an obligation of the corporation. Melissa shipped the supplies and billed Specialty Business Company for the money due.

In March 2002, Jenny and Courtney received from the Secretary of State the properly filed and approved Articles of Incorporation. They immediately called a corporation organizational meeting, adopted bylaws, elected Courtney as president and Jenny as vice president, issued shares to Jenny and Courtney, set up corporate books and records, and officially dissolved the partnership.

In April 2002, Courtney purchased an expensive paint spraying system from Karl on credit. She properly disclosed that she was acting as an officer and agent of Specialty Business Company, and she signed the purchase documents "Specialty Business Company, by Courtney, President."

By June 2002, Specialty Business Company had suffered business reverses and could not pay its bills, including the outstanding bill from Melissa and the balance owed to Karl.

Melissa and Karl each sue Specialty Business Company, Jenny, and Courtney for breach of contract.

- 1. Which entities and individuals, if any, are liable to Melissa? Explain fully.**
- 2. Which entities and individuals, if any, are liable to Karl? Explain fully.**
- 3. After the incorporation, what are the consequences if Jenny and Courtney fail to take appropriate action with regard to the assumed name certificate? Explain fully.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Ashley and Elizabeth form an entity called Partnership, a properly formed Texas general partnership. They agree to exert their best efforts to make Partnership profitable and that they will each contribute the following capital: Ashley contributes \$5,000 in cash; Elizabeth contributes a computer worth \$2,500 and commits to contribute \$2,500 in cash within a few days. However, Elizabeth never makes the \$2,500 cash contribution.

Ashley, without discussing with Elizabeth her intent to do so, borrows \$10,000 from Bank. She borrows the money in the name of Partnership for use in the general course of Partnership's business.

Ashley calls on Wyatt, a customer of Partnership, and fraudulently obtains \$3,000 as a deposit on goods to be furnished to Wyatt by Partnership. Ashley misappropriates the \$3,000 for her own use, and Partnership does not deliver the goods to Wyatt.

While driving her personal car on the way to meet with a potential Partnership customer, Ashley negligently collides with Madisen's car. She causes \$15,000 damage to Madisen's car, but has no insurance coverage.

Elizabeth finally gets fed up with Ashley's conduct and gives the required legal notice that she is withdrawing from Partnership. However, she refuses to participate in winding up Partnership and the costs associated therewith. Ashley has left town, and her whereabouts are unknown.

Assuming Partnership has no assets, does Elizabeth have any obligation or liability to:

- (a) **Partnership? Explain fully.**
- (b) **Bank? Explain fully.**
- (c) **Wyatt? Explain fully.**
- (d) **Madisen? Explain fully.**

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

Bill died leaving a valid will that contained the following provisions:

“I direct that all my legal debts, the expenses of my last illness and funeral, and expenses of administering my estate shall be charged against my estate and be payable from the assets of my estate.

“I devise and bequeath my property as follows:

- (a) I give to my brothers and sisters the sum of \$200,000 to be shared among them.
- (b) I give to my wife, Mary, the beach house in Florida that I inherited from my mother.
- (c) I give to my son, Fred, the sum of \$500,000 to be paid out of the proceeds of the sale of my 10,000 shares of XYZ Corporation currently valued at \$2,000,000.
- (d) I give the rest, residue, and remainder of my property, both real and personal, to my wife, Mary, and my father’s brother, Uncle Joseph, in equal shares.”

At the time of Bill’s death, all the beneficiaries are alive except an older brother and Uncle Joseph. The older brother left a surviving son, Sam, and Uncle Joseph left a surviving daughter, Teresa.

The debts and expenses of Bill’s estate total \$500,000. His estate contains the Florida beach house, which is free of debt, valued at \$500,000; cash in the amount of \$1,000,000; and 10,000 shares of XYZ Corporation stock, which are worthless.

- 1. In what order should the assets of Bill’s estate be used to pay the debts and expenses? Explain fully.**
- 2. After payment of the debts and expenses, to which beneficiaries and in what amounts should the bequests be distributed? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

Fred was married to Toni. They had one child of their marriage, Becky. Fred had a son by a previous marriage, Tim. Fred also had a daughter, Marie, who had been born out of wedlock when Fred was in high school.

Fred had always acknowledged Marie as his daughter, and Fred's name appears on Marie's birth certificate as her father. Fred had attempted to marry Marie's mother after Marie's birth, but the mother's family would not allow it.

In March 2000, Fred executed a self-proving will in which he left his property as follows:

To my wife, Toni, I leave all my interest in our home and its contents and in our joint accounts at Main Street Bank.

To my daughter, Becky, and my son, Tim, I leave in equal shares all my stock in XYZ Company.

To my wife, Toni, and to my daughter, Marie, if she survives me, I leave the rest, residue, and remainder of my estate.

In July 2001, Marie died in an automobile accident, leaving a minor son, Robby. In November 2001, Fred and Toni adopted Robby.

In February 2003, Fred died without revising his will. He was survived by Toni, Becky, Tim, and Robby.

To whom and in what proportions should Fred's estate be distributed? Explain fully.

This concludes the morning portion of the Texas Essay exam.