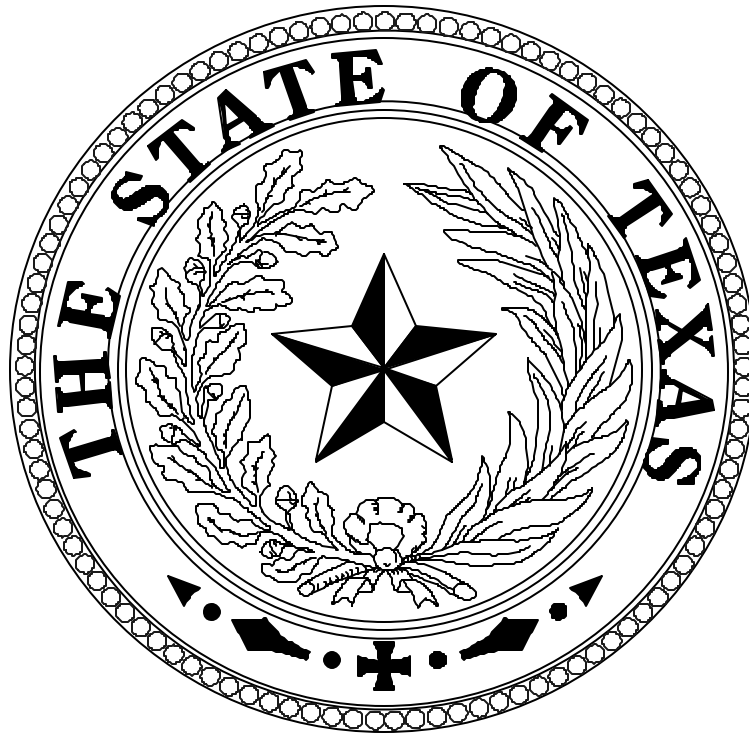


Thursday Morning  
February 27, 2003  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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# ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

## QUESTION 1

While married to and cohabiting with Husband, Wife gave birth to Child. Both Husband and Wife knew that Child was the result of Wife's adulterous relationship with Bert. Although Husband never formally adopted Child, he accepted Child as his own, and together Husband and Wife reared Child, always holding out to the public that Husband was Child's father. Bert was never informed of Child's existence.

On Child's fifth birthday, Wife filed suit against Husband for divorce, and sought to be appointed sole managing conservator of Child. Husband answered the suit, asking to be appointed joint managing conservator of Child.

When Bert heard Wife was divorcing Husband and that she had a five-year-old child, he confronted Wife, who admitted Bert was Child's father.

Bert intervened in the suit, acknowledged paternity of Child, and asked for visitation rights.

Wife then asked for an order requiring Bert to pay child support based on the Texas Family Code child support guidelines from the time of Child's birth. Bert is a prosperous businessman who has net resources of \$5000 per month.

The court ruled Husband did not have standing to sue for appointment as managing conservator of Child. The court appointed Wife sole managing conservator but granted visitation rights to Bert.

The court ordered Bert to pay \$1000 per month for the support of Child plus a payment of \$60,000 to cover the period of Child's birth to the date of the suit. The order requires continued payment of child support from Bert's estate in the event Bert dies before Child reaches age 18.

- 1. Did the Court err in ruling that Husband does not have standing to seek to be appointed managing conservator of Child? Explain fully.**
- 2. What factors should the Court have considered in ruling on Wife's request for retroactive child support? Explain fully.**
- 3. Did the Court err in ordering:**
  - (a) Bert to pay \$1000 per month in child support? Explain fully.**
  - (b) Bert to pay \$60,000 in retroactive child support? Explain fully.**
  - (c) Bert's estate to continue payment until Child reaches age 18? Explain fully.**

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

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

## **QUESTION 2**

Hal and Wanda have been married and have resided in Texas since 1995. In 1999, Hal's father gave Hal a house, and Hal and Wanda began to occupy it as their homestead.

In 2000, Hal borrowed \$50,000 from Bank, signing an unsecured note. Hal alone signed the note and used the proceeds as working capital for a new business. Wanda took no part in the business.

In 2001, without Wanda's knowledge, Hal borrowed another \$50,000 from Bank as additional working capital for the business. Hal signed a promissory note for \$50,000 and executed in favor of Bank a mortgage on the house as security for the loan.

The 2000 loan from Bank and the 2001 loan secured by the mortgage to Bank are both now in default.

In 2002, Pedestrian was awarded damages in the amount of \$150,000 for injuries she sustained in 2001 when Hal negligently struck her while driving his car.

Throughout her marriage to Hal, Wanda has deposited her salary in an account that is in her name alone. The account has a balance of \$250,000.

- 1. Does Bank have a valid mortgage on the house? Explain fully.**
  
- 2. Is the \$250,000 in the account in Wanda's name liable for:**
  - a) The 2000 loan from Bank? Explain fully.**
  - b) The 2002 judgment against Hal? Explain fully.**

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

# ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

## QUESTION 3

Lynn owned 40 acres of land in Polk County, Texas. Lynn orally agreed to lease the west half of the property including the farmhouse for nine months to Teresa for \$1000 per month. A well located near the farmhouse provided its water supply. Lynn, as landlord, agreed to maintain this well. Teresa resided in the farmhouse and paid the rent as agreed.

Two months after Teresa moved into the farmhouse, Lynn drilled another water well on the east half of his property. Lynn used the new well to pump large quantities of water that he bottled and sold to the public.

Almost immediately after Lynn began using the new well, the old well serving the property leased by Teresa and a well located on adjoining property owned by Nona went dry. Both wells dried up as a result of Lynn's pumping from the new well. Nona's property was otherwise unaffected by Lynn's well. Teresa has no other immediate source of drinking water. Lynn's land is not included in any ground water conservation district or in any coastal subsidence district.

By certified mail, return receipt requested, Teresa notified Lynn of the problem with the farmhouse well and demanded that Lynn fix the problem. Lynn refused.

- 1. Does Lynn have an enforceable duty to maintain the water well that supplies the farmhouse during the term of Teresa's nine-month oral lease? Explain fully.**
- 2. What remedies are available to Teresa if Lynn continues to refuse to repair the well? Explain fully.**
- 3. What are Lynn's obligations to Nona, if any, for having caused Nona's well to run dry? Explain fully.**

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

## **ANSWER QUESTION 4 IN THE PINK ANSWER BOOK**

### **QUESTION 4**

Oliver owns Greenacre, a 75-acre tract of unimproved land in Fort Bend County, Texas. Greenacre is not located in a city or town and is not Oliver's homestead.

Oliver signed an oil and gas lease with ABC Oil Co. ("ABC") covering Greenacre and recorded it in the Fort Bend County Clerk's office. The lease provided that production would cause the lease to continue in effect following the expiration of the primary term "so long thereafter as oil, gas and other minerals are produced." The lease also provided for a one-eighth royalty to Oliver. ABC drilled a producing well and paid the royalty as it became due under the lease.

Oliver wanted to give all of his mineral interest in Greenacre to his son, Scott. Oliver executed a valid gift deed that conveyed to Scott "a royalty interest consisting of one-eighth (1/8) of all (100%) of the oil, gas and other minerals that may be produced or saved from Greenacre." Scott filed the deed in the Fort Bend County Clerk's office. Oliver mailed a copy of the recorded deed to ABC, and ABC began to make payments to Scott.

In September 2001, Oliver contracted with Mike, a general contractor, to construct a barn on Greenacre. Mike completed work on the barn on November 30, 2001. Oliver was short of cash and only paid half of the amount that Mike expected upon completion. After unsuccessfully seeking full payment, Mike decided in January 2002 to assert a lien on Greenacre.

Mike filed an affidavit on April 30, 2002, in which he stated the names and addresses for Oliver and himself, the amount of the claim, a description of the work he had done, and a legal description of Greenacre. Mike did not send a copy of the affidavit to Oliver.

- 1. What rights did Scott acquire by the gift deed, and what rights does Oliver still own in the minerals? Explain fully.**
- 2. Did Mike properly perfect the lien? Explain fully.**
- 3. Assuming Mike could perfect his lien, what must he do to foreclose on that lien, and when must he take such action? Explain fully.**

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

# **ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK**

## **QUESTION 5**

Cole, Inc. is a properly incorporated Texas business corporation. The elected directors are Abby, Dan, Jen, and Madisen. Cole, Inc.'s Articles of Incorporation authorized the issuance of 460 shares, but only 400 shares were in the original offering and actually issued. Abby, Dan, Jen, and Madisen each own 100 shares. Cole, Inc.'s bylaws provide that a majority of the elected directors constitute a quorum.

Due and proper notice of a meeting of the directors in accordance with the bylaws was sent to and received by the directors. The notice contained a statement of the business to be conducted at the meeting, including business relating to the sale of stock and issuance of dividends or distribution of surplus. At the time, Cole, Inc. had a surplus of \$15,000.

Abby, Dan, and Jen attended the meeting. Madisen was absent. The following business was conducted during the meeting:

- (a) Abby, Dan, and Jen voted that the corporation issue and sell to each of them 20 of the 60 unissued shares.
- (b) Abby and Dan voted to have the corporation loan them each \$10,000 to pay the tuition for business courses at the local junior college on the ground that taking the courses would help them do a better job as corporate directors. Jen voted against making the loan.
- (c) Abby made, and Dan seconded, a motion that the corporation make a distribution of \$40 per share to each shareholder.

Cole, Inc.'s Articles of Incorporation and bylaws contain no provisions regarding these matters, and no additional information or opinions have been provided to the directors.

Before the vote was taken, Jen became concerned about the motion to make a distribution and the way the meeting was going. Due to her concern, a recess was called and Jen contacted you for advice on the following questions:

- 1. Does Madisen have a right to acquire any of the 60 unissued shares, and, if so, what must she do to perfect that right? Explain fully.**
- 2. Can the corporation lawfully make the loans to Abby and Dan? Explain fully.**
- 3. Is the proposed \$40 per share distribution legal, and, if not legal but nonetheless approved, will Jen, as a director, have any personal liability and to whom? Explain fully, omitting any discussion of the availability of a shareholder derivative suit.**
- 4. Can Jen prevent passage of the motion to make the distribution by not returning to the meeting before the vote is taken? Explain fully.**
- 5. What should Jen do, if anything, to protect herself from liability if the motion to make the distribution passes? Explain fully.**

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

# ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

## QUESTION 6

Wyatt and Nicole want to invest in a used equipment business in Texas, and they want to limit their risk of loss to the \$50,000 they each intend to contribute to the venture. They intend to proceed as follows:

- They want to form Texas Equipment Exchange (“TEX”), a Texas limited partnership, in which each of them will be named as limited partners;
- Nicole plans to work as an employee of TEX and participate in the day-to-day management and control of TEX;
- They want to form a general Texas Business Corporation, the purpose of which will be to serve as general partner of TEX;
- The corporation will be called “Bank of Bargains” and have \$1,000 of authorized capital;
- Wyatt and Nicole will own the shares of the corporation equally;
- Wyatt will be President and Chairman of the Board of Directors of the corporation;
- Wyatt, as President and Chairman of the Board of the general partner corporation, will sign TEX’s promissory note to Lender to secure funds loaned to TEX for the limited partnership operations.

1. **Can Wyatt and Nicole lawfully form a Texas business corporation for the purpose of serving as general partner of TEX and name it “Bank of Bargains? Explain fully.**
2. **Assuming that Wyatt and Nicole can properly incorporate the corporation and proceed with the plans outlined above, as to each of the following explain fully whether they may be liable to Lender for any money borrowed by TEX:**
  - (a) **The corporation?**
  - (b) **Wyatt?**
  - (c) **Nicole?**

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