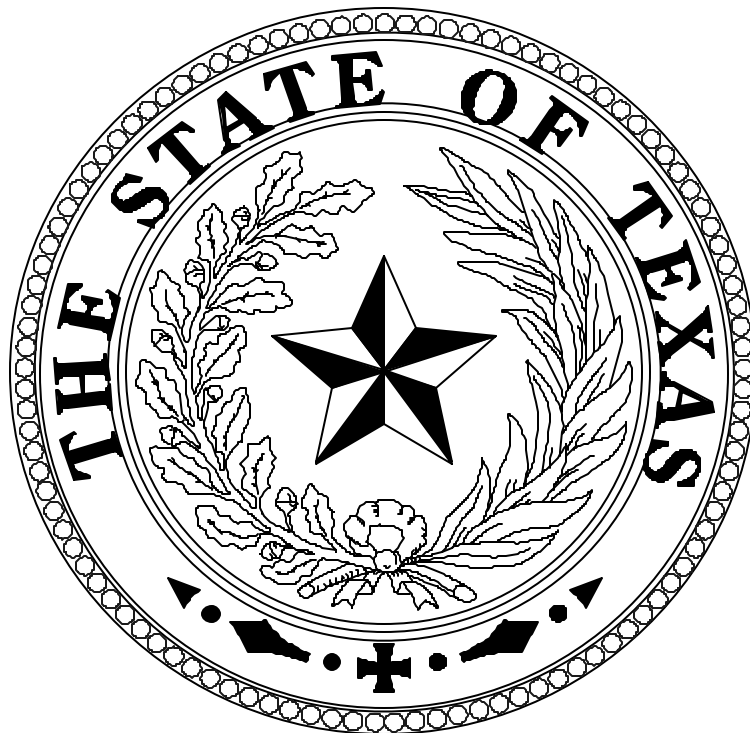


Thursday Afternoon
February 27, 2003
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

Phil told Joe, the sole proprietor of Joe's Pre-Owned Trucks, he was looking for a used truck he could purchase for under \$1,000. He told Joe he needed a vehicle he could use exclusively for towing his boat and trailer the 500 yards between his cabin and the access ramp at the water's edge.

Joe said he had no trucks under \$1,000 but, although he does not normally deal in anything other than trucks, he had recently taken as a trade-in an ATV (All Terrain Vehicle, a four-wheeled motorcycle). Joe showed Phil the ATV and said, "It's been sitting in the shed for two weeks, and no one has made an offer. It might be just what you need. I can let you have it for \$800." Phil did a cursory inspection of the ATV, started it up, and, satisfied that it ran, purchased it for \$800.

The next day, Phil used the ATV to tow the boat and place it in the water. Later, when Phil was pulling the boat out of the water, the transmission of the ATV failed. His mechanic inspected it and found that one of the seals had rotted, allowing the transmission fluid to leak out. The mechanic said the leak should have been obvious even before the failure because there were oily spots on the transmission housing and there would have been a puddle of transmission fluid on the ground wherever the ATV had been parked. When Phil checked the place where he had parked the ATV overnight, he saw the puddle.

The old transmission cannot be repaired. A rebuilt transmission will cost \$850. The value of the ATV in its current condition is \$100 for its parts.

- 1. What claims, if any, might Phil assert against Joe for breach of warranty under Article 2 of the Uniform Commercial Code (UCC)? Explain fully.**
- 2. What defenses, if any, can Joe assert against each claim? Explain fully.**
- 3. What is the measure of damages under the UCC for Phil's breach of warranty claims? Explain fully.**

Answer the next question in the LIGHT GREEN answer book.

ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK

QUESTION 8

Clarence employed Bobbie Johnson as a secretary/bookkeeper in his business. Part of Bobbie Johnson's job was to gather the bills once a week, prepare for Clarence's signature the checks to pay the bills, record them on the stubs in the checkbook, and mail out the checks. She was not authorized to sign checks.

Clarence's bank, Bank, regularly sent out the monthly checking account statements at the end of each month and Clarence would receive them on the 3rd day of the following month. Bank would list on the monthly statements the paid checks showing check number, date of payment, and amount. For the type of account Clarence had, Bank did not return the cancelled checks with the statements. Clarence would customarily review and reconcile the statements within two weeks after he received them.

On June 1, 2002, Clarence left on an extended vacation and returned on August 30, 2002. When he returned, he found a letter of resignation from Bobbie Johnson.

On October 2, 2002, Clarence reviewed the May 31, June 30, July 31, and August 31 bank statements that had been received in his office on June 3, July 3, August 3, and September 3, respectively. He became suspicious when he noticed the following four checks, each in the amount of \$2,500, that had not been recorded on the check stubs:

- Check no. 100, paid by Bank on May 15;
- Check no. 200, paid by Bank on June 15;
- Check no. 300, paid by Bank on July 15; and
- Check no. 400, paid by Bank on August 15.

When he called Bank on October 2 to inquire about those checks, he learned that they were all payable to Bobbie Johnson. After examining the checks Clarence concluded that Bobbie Johnson had forged his signature. Clarence's banker explained that Bank had not discovered the forgeries because, due to the volume of checks paid every day, Bank's policy was to verify signatures only on checks in excess of \$5,000. Clarence demanded that Bank credit his account with the amount of all four checks, \$10,000. Bank credited his account with \$2,500 for check no. 400 paid on August 15 but refused to credit any of the other amounts.

- 1. Under the UCC, what are Bank's obligations to Clarence with respect to the checking account, and did Bank breach any of those obligations? Explain fully.**
- 2. Under the UCC, what are Clarence's obligations to Bank with respect to the checking account, and did Clarence breach any of those obligations? Explain fully.**
- 3. What amount, if any, is Clarence entitled to recover from Bank, and how will the amount be determined? Explain fully.**

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

In February 2000, Pablo sustained personal injuries when his vehicle was rear-ended by a truck in Webb County, Texas. As a result of his injuries, Pablo lost six months from work at a local factory and incurred substantial medical bills.

In September 2000, Pablo contacted Attorney. Attorney told Pablo, who had limited education and had difficulty understanding English, that, in his opinion, Pablo had a good case. Attorney also told Pablo that he would be willing to take the case on a contingent fee basis and that he could file the suit against the other driver in a couple of weeks. Pablo agreed to hire Attorney. Pablo never signed any contract or paid Attorney any money.

Periodically, Pablo would contact Attorney's office to check on the status of his case. Attorney and his assistants always told Pablo that things were going well. At one point, Attorney told Pablo that he had already filed the lawsuit and was merely waiting to hear from the opposing lawyer to settle the case.

In September 2002, Attorney's new legal assistant told Pablo that no suit had ever been filed on his behalf and that he should contact another lawyer. Upon hearing the news, Pablo became physically ill and depressed, requiring medical treatment and hospitalization.

1. **On what grounds, if any, might Pablo assert he is a "consumer" under the Texas Deceptive Trade Practices Act (DTPA)? Explain fully.**
2. **Assuming Pablo is a consumer, what rights and remedies, if any, does he have against Attorney under the DTPA? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Peter owned Greenacre, a 100-acre tract in Goliad County, Texas. In May 2000, Peter signed a document conveying Greenacre as follows: "To my lawyer, Bill, as Trustee." The document contained a detailed property description and stated that the purpose of the conveyance was to benefit Peter's minor son, John. No other property was included in the instrument. The document was silent on whether the conveyance was revocable or irrevocable.

In May 2001, Peter borrowed \$50,000 from Friend. Peter executed a note and deed of trust describing Greenacre as security for the loan. Peter did not tell Bill about this transaction.

In January 2002, Peter decided to purchase Blackacre, the 500-acre tract adjacent to Greenacre. However, he did not want his family to know that he was going to acquire Blackacre. Peter convinced Bill to take title to Blackacre, even though Peter paid the entire purchase price. They orally agreed that at a later date Bill would draw up documents conveying Blackacre to Peter. Bill sent Peter a letter confirming their agreement, stating, "I am taking title to Blackacre in my name as an accommodation to you."

In January 2003, Peter asked Bill to prepare and execute a deed conveying Blackacre to Peter in accordance with their agreement. Bill refused, claiming that Blackacre had been a gift for his many years of loyal service as Peter's lawyer.

Unbeknownst to Peter, Bill had contracted to sell Blackacre for \$300,000 although this transaction had not yet been consummated.

- 1. What is the legal effect of Peter's transaction with Bill regarding Greenacre? Explain fully.**
- 2. What is the legal effect of Peter's transaction with Friend? Explain fully.**
- 3. On what theories can Peter succeed in claiming that Bill holds Blackacre, or the proceeds of any sale of Blackacre, in trust for him? Explain fully.**

Answer the next question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

QUESTION 11

In January 2001, Sam, a 90-year-old widower, fell in love with, Betty, his 26-year-old financial planner. On February 1, Sam executed a self-proving will in which he named Betty as Executrix and left his property as follows:

“I give, devise and bequeath

1. To my long time friend, Adam, my home in Austin, Texas, together with all the contents in the home;
2. To my favorite niece, Carol, my savings account at First Bank of Houston, consisting of \$200,000;
3. To the new love of my life, Betty, all the rest and residue of my Estate.

Sam died in March 2002 at the age of 91. He was survived by the following individuals: Betty; Jim, Sam’s only child, with whom he did not get along and whom he had not seen for several years; and two nieces, one named Carol Jones and the other named Carol Smith.

The savings account mentioned in Sam’s will was in fact at Last Bank of Houston and had never been at First Bank of Houston. The balance at his death was \$210,000, of which \$10,000 was interest that had accumulated in the year after he had executed his will.

While Betty was inventorying Sam’s property as Executrix, Betty found a brief case in Sam’s Austin home containing stock certificates, titled in Sam’s name, having the approximate value of \$3,000,000. Although Betty had been Sam’s financial planner, she had not previously known that Sam possessed these stock certificates.

1. **On what basis may Jim contest Sam’s will, and what is the probable outcome? Explain fully.**
2. **To whom should the following property be distributed:**
 - a) **Sam’s Austin home? Explain fully.**
 - b) **The savings account at Last Bank of Houston? Explain fully.**
 - c) **The stock certificates? Explain fully.**

Answer the next question in the PURPLE answer book.

ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

QUESTION 12

In 1999, John, a very wealthy man, executed a self-proving will leaving his entire estate to his wife, Grace. John and Grace had no children, and John's only other living relative was his sister, Sally.

During a heated argument at John's home on Christmas Eve 2000, Sally, enraged because John had not provided for her in his will, tore John's 1999 will into several pieces. After Sally left, John joined these pieces back together and secured them with scotch tape. On the back of each page, John wrote, "To whom it may concern: My sister, Sally, tore up my will during an argument on December 24, 2000, but my will is still effective and in force as my will." John signed his name after this inscription on each page.

On February 4, 2001, remorseful about not having provided for Sally, John took the taped-together 1999 will, made a large "x" through the clause that made Grace the sole beneficiary, and, with a felt-tipped pen, wrote at the bottom of the last page, "I revoke this will and I give, devise, and bequeath 1/3 of my property to my sister, Sally, and 2/3 to my wife Grace." Immediately below that, John initialed and dated this language.

In January 2002, John and Grace divorced, but, three months later, they reconciled and remarried.

John died in November 2002 survived by Grace and Sally.

- 1. Did the events of December 24, 2000 or February 4, 2001 result in the revocation of John's will? Explain fully as to each.**
- 2. To whom and in what proportions should John's estate be distributed? 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.