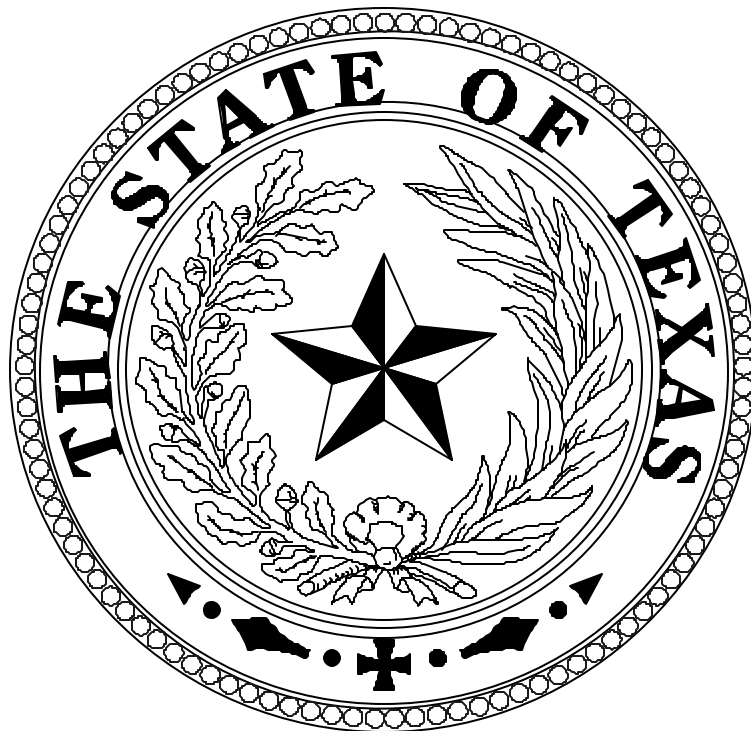


Thursday Morning
August 1, 2002
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

The police in South Padre Island, Texas arrested and jailed Sally during spring break on charges of driving while under the influence and resisting arrest. John, Sally's elderly father, contracted with AAA, a licensed bonding company in South Padre, for a bail bond to secure Sally's release from jail. John agreed to pay AAA the face amount of the bond within 5 days of any bond forfeiture. Sally was released from jail.

Sally failed to appear for a court hearing, and AAA had to pay on the bond. Five days later, Bob, an employee of AAA, telephoned John and demanded payment under the contract with AAA. John said he was short of cash and would not be able to pay right now.

Bob told John that, if he did not pay immediately, AAA would seize and sell John's car and file a criminal action against him and that the police would arrest him the same day.

That same evening, Bob called again. Mary, John's elderly wife, answered the phone. Bob repeated to Mary what he had told John earlier in the day. John failed to pay the amount owed.

AAA retained Edgar, a lawyer, who sent a letter to John demanding immediate payment. In the letter, Edgar threatened to sue John in a civil action to collect the debt. He also stated in the letter that, "If after proper court proceedings it is determined that you have violated a criminal law of the State of Texas, the authorities might arrest you." John showed the letter to Mary.

John and Mary became so upset by the communications from Bob and Edgar that they required medical attention and special medication.

- 1. What rights, if any, under the Texas Debt Collection Practices Act does John have against**
 - a. AAA? Explain fully.**
 - b. Edgar? Explain fully.**

- 2. What rights, if any, under the Texas Debt Collection Practices Act does Mary have against**
 - a. AAA? Explain fully.**
 - b. Edgar? Explain fully.**

Answer the next question in the GRAY answer book.

QUESTION 2

Wanda became mentally and physically incapacitated on her 80th birthday and was confined to her home in Texarkana, Texas. At the time, she had a large cash balance in her checking account at the local bank.

To protect Wanda's welfare and assets, her family filed in the local probate court an application for the appointment of a guardian. On December 15, 2001, the judge issued an order naming Gloria, Wanda's sister, as guardian of Wanda's person and estate. The order also directed the issuance of letters of guardianship, pending approval of a \$100,000 bond. The order contained all other provisions required by law.

Gloria failed to appear in court to take the oath of guardianship, never filed the bond required by the court, and never filed any other documents relating to her appointment as guardian. Nevertheless, she presented a copy of the court order to the local bank, which, on the authority of the order, allowed her to withdraw \$75,000 from Wanda's account. Gloria then placed the \$75,000 in her personal savings account in a Little Rock, Arkansas, bank.

On January 1, 2002, Gloria placed Wanda in an unlicensed nursing home in Texarkana and moved to Little Rock, Arkansas. She has resided in Little Rock ever since and has never returned to Texas.

On July 1, 2002, when the probate judge learned of Gloria's actions he, on his own motion and without notice, removed Gloria as the guardian and appointed a successor guardian. On July 29, 2002, Gloria learned of the probate judge's order removing her as guardian.

- 1. Did Gloria qualify as Wanda's lawful guardian? Explain fully.**
- 2. Was it within the probate judge's authority to remove Gloria as guardian and appoint a successor on his own motion and without notice? Explain fully.**
- 3. On what basis, if any, and within what time may Gloria apply for reinstatement as Wanda's guardian? Explain fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

KemJen is an ordinary Texas business corporation. It has a three member Board of Directors. Its bylaws state that an annual meeting of the shareholders shall be held at the principal office of KemJen on the first Monday in January of each year, at which time the shareholders, by majority vote, shall elect a new director for a three-year term.

Prior to the January 2002 annual meeting, Pres, president and a director of KemJen, successfully solicited the written proxies of the shareholders holding 80% of the corporation's shares. The proxies did not recite whether they were revocable or irrevocable.

Seven shareholders, who cumulatively held 60% of KemJen's outstanding shares, were among those who had given their written proxies to Pres. Shortly before the meeting they learned that Pres intended to lobby the Board of Directors to sell substantially all of KemJen's assets to a company owned by Pres. These seven shareholders opposed the proposed sale. They agreed among themselves in writing to attend the annual meeting and vote as a block to elect a new director who would agree to fire Pres.

Shortly before the scheduled January 2002 meeting, Pres and one of the other Directors spoke in a telephone conference and agreed to reschedule the annual meeting to the first Monday in February. No notice of the rescheduled meeting was sent to the shareholders.

However, all shareholders learned of the change in date and attended the rescheduled meeting. The seven dissenting shareholders who had agreed to vote as a block announced that they revoked their proxies and were voting their own shares at the meeting. Pres ruled that the seven shareholders were out of order and refused to count their votes. Pres voted all 80% of the shares for which he had obtained written proxies and purported to elect a director of his choice. The newly elected board member and Pres then voted to sell substantially all of KemJen's assets to the company owned by Pres.

1. (a) **Was the rescheduling of the annual meeting proper under Texas law? Explain fully.**
(b) **Can the seven dissenting shareholders successfully object to the rescheduled meeting they attended? Explain fully.**
2. **Did the seven dissenting shareholders have the legal right to revoke their proxies? Explain fully.**
3. **What are the grounds, if any, upon which the seven dissenting shareholders can challenge the vote of the directors to sell substantially all of KemJen's assets to the company owned by Pres? Explain fully.**

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Dan and Courtney entered into an agreement to associate and jointly carry on a farming operation for profit in the name of Big Farm. Their written agreement contained the following provisions:

- It expressly stated that, “This agreement does not create a partnership between the parties;”
- Dan and Courtney would each contribute \$500 to the operation;
- They would share equally in the profits and losses; and
- Each of them would have the equal right to control and manage the operation.

Dan contributed his \$500 and spent most of his time working on Big Farm. Courtney has not yet contributed her \$500, and she spent no time working on the farm.

Dan sold farm products grown on Big Farm to Customer and received a check payable to Big Farm. He indorsed the check “Big Farm/Dan,” and received cash from the bank. Figuring that he was entitled to a salary for the work he did on the farm and that the amount just about covered the value of his personal services, he deposited the money in his personal checking account.

Courtney insists that she is entitled to one-half of the amount, after expenses.

- 1. What is the legal nature of the business association, if any, entered into between Dan and Courtney? Explain fully.**

For purposes of answering questions 2 and 3, assume that Dan and Courtney formed a Texas general partnership.

- 2. Was Dan entitled to (a) cash the check received from Customer and (b) retain any of the proceeds as compensation for his services? Explain fully.**
- 3. Is Courtney entitled to any of the money received from Customer? Explain fully.**

Answer the next question in the DARK GREEN answer book.

QUESTION 5

Bob gave Al a promissory note for \$500 in exchange for a Rolex watch, which, unknown to Bob, did not keep proper time. The note was undated, did not mention any interest rate, and read, "I promise to pay to the order of Al the sum of \$500. /s/ Bob."

Al, intending to give the promissory note to his son as a gift, indorsed it in blank, "/s/ Al." Before he was able to deliver it to his son, Al lost the note.

Cal, a stranger, found the note. He transferred possession of it to Tom in exchange for \$350 cash. Tom did not know how Cal acquired the note, and Cal has disappeared.

- 1. Against whom, if anyone, can Tom collect on the note? Explain fully.**
- 2. What claims or defenses, if any, can Bob assert against Al and Tom? Explain fully.**
- 3. What rights, if any, does Al have against Tom as to the note? Explain fully.**

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

Bob's Builders, Inc., ("BBI") is a Texas corporation engaged in a small home construction business. In December 2001, BBI borrowed \$500 from Travis and promised to repay it in six months. BBI gave Travis BBI's portable cement mixer to hold until the loan was repaid. Travis has possession of the cement mixer.

On January 5, 2002, BBI borrowed \$5,000 from Bank to finance a new job BBI had undertaken. BBI signed a promissory note and security agreement giving Bank a security interest in "all of BBI's equipment and tools now owned or hereafter acquired." At the time, BBI owned the cement mixer and sundry construction tools. On the same day, Bank properly perfected its security interest by filing a financing statement with the Texas Secretary of State.

On March 5, 2002, BBI reorganized and changed its name to House Levelers, Inc. ("HLI"), a Texas corporation. At the same time, it filled out the necessary paper work and changed the name on its checking account at Bank from BBI to HLI.

Also on March 5, 2002, under its new name, HLI paid cash for and took delivery from Jacking Devices, Inc. ("JDI") a set of jacks to be used for lifting houses off their foundations.

On April 5, 2002, HLI purchased some new drilling equipment on credit from Drillco. HLI gave Drillco a promissory note and a security agreement covering the drilling equipment. Drillco properly perfected its security agreement on April 6, 2002 by filing a financing statement with the Texas Secretary of State.

On July 10, 2002, HLI purchased a used grinding machine on credit from Grindco. HLI gave Grindco a promissory note and a security agreement covering the grinding machine. However, Grindco failed to file a financing statement.

It is now July 15, 2002, and HLI cannot pay its bills.

As among Travis, Bank, Drillco, and Grindco, which creditor's security interest, if any, has priority in the following items:

- (a) **The portable cement mixer? Explain fully.**
- (b) **The sundry construction tools? Explain fully.**
- (c) **The set of jacks? Explain fully.**
- (d) **The drilling equipment? Explain fully.**
- (e) **The grinding equipment? Explain fully.**

This concludes the morning portion of the Texas Essay exam.