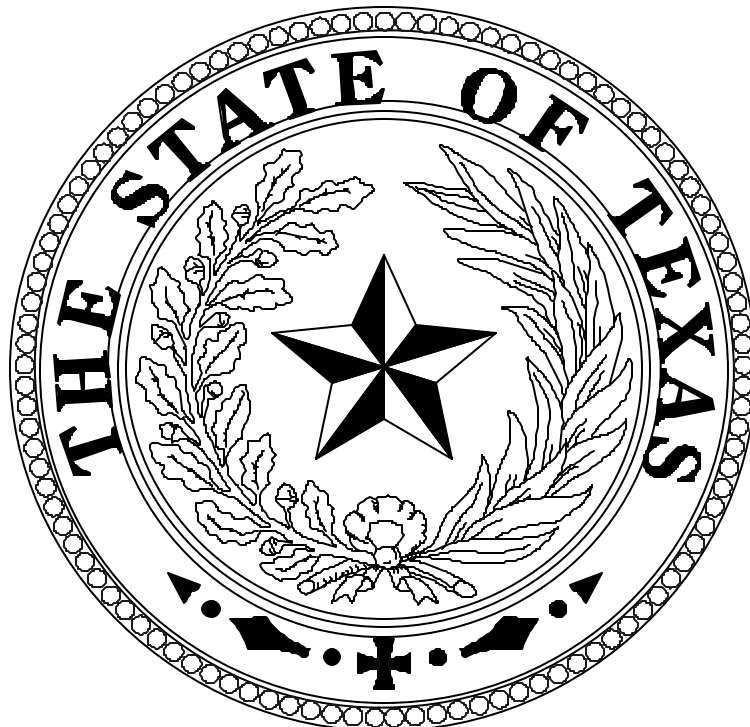


Thursday Afternoon
August 1, 2002
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

James, a widower, executed a valid will, which contained the following dispositive provisions:

“I give my homestead, which consists of 100 acres, more or less, in Bexar County, Texas to my best friend, Thomas.

I give the sum of one dollar (\$1.00) to my son, Bill. I have already taken care of Bill by naming him as the beneficiary under my life insurance policies and my retirement accounts.

All the rest, residue, and remainder of my estate I give to my best friend, Thomas, and The United Way in equal shares.”

The will contained no provision concerning apportionment of estate taxes.

In April 2002, James sold his homestead for \$600,000 cash. He deposited the proceeds in a savings account at National Bank.

James died in June 2002. He is survived by Bill and Thomas. At the time of his death, James owned the following assets having a total value of \$2,000,000:

- The \$600,000 savings account at National Bank;
- Two life insurance policies in the total amount of \$800,000; both policies named Bill as the beneficiary;
- Two individual retirement accounts in the total amount of \$200,000; both accounts named Bill as the beneficiary; and
- Stocks and bonds worth \$400,000.

Thomas, who is the named Executor under James’ will, has come to you for the following legal advice.

- 1. To whom and in what proportions is the money James received from the sale of his homestead to be distributed? Explain fully.**
- 2. Assuming there are no debts, what is James’ total taxable estate? Explain fully.**
- 3. In what proportions are the federal estate taxes that might be assessed against James’ estate to be apportioned among Bill, Thomas, and The United Way? Explain fully.**

Answer the next question in the LIGHT GREEN answer book.

QUESTION 8

In 1995, Jim, a resident of Houston, Texas, had his lawyer prepare a will and a self-proving affidavit, both of which documents were to be executed by Jim and the same two witnesses. Jim signed the will. The two witnesses signed the self-proving affidavit, which was stapled to the will, but did not sign the will itself. No one noticed this omission.

Jim's will devised his entire estate as follows: "I give my estate to my wife, Sue, if she survives me but, if Sue does not survive me, to my children in equal shares."

At the time of the execution of the will, Jim and Sue had two children, Todd and Betty. In 1997, Jim and Sue had another child, Harvey.

In 2001, Jim entered the hospital for a serious operation. While in the hospital, he wrote and signed on a hospital paper napkin the following undated handwritten note to his brother, Dave: "Dave, I want to make a change in my 1995 will. Whatever is in my name at National Bank when I die should be divided equally among my children. The rest of my will is OK. /s/ Jim."

Jim died in surgery. He is survived by Sue and the three children. In addition to his general estate, there was a \$150,000 savings account in his name in National Bank.

- 1. Can Jim's 1995 will be admitted to probate? Explain fully.**
- 2. Is the 2001 undated handwritten note entitled to probate? Explain fully.**
- 3. To whom and in what proportions should Jim's estate be divided? Explain fully.**

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

Son executed and delivered to Father a gift deed to two adjoining tracts of land, Blackacre and Whiteacre, located in Montgomery County, Texas. In the gift deed, Son reserved all mineral interests in both tracts.

Father then sold Blackacre to Alan, conveying it by a warranty deed that stated that the conveyance was subject to Son's reservation of the mineral interests in the gift deed. Son then conveyed his mineral interest in Blackacre to Alan by a valid mineral deed.

The Son-to-Father gift deed, the Father-to-Alan warranty deed, and the Son-to-Alan mineral deed (collectively referred to below as the "earlier deeds") all correctly described the properties and were properly acknowledged and timely recorded in the Montgomery County Clerk's Office.

Dora, believing that Father owned both Blackacre and Whiteacre, told Father she wanted to buy both tracts. Without telling Dora about the earlier deeds, Father sold Blackacre and Whiteacre to Dora, conveying both tracts by warranty deed. This deed contained a proper description of the tracts but did not include any mineral reservation or mention of the mineral reservation in the Son-to-Father gift deed. Dora timely recorded the properly acknowledged deed from Father but did not search the county records for prior deeds.

Dora moved onto Blackacre and Whiteacre. She fenced both tracts, constructed parking facilities straddling both tracts, and built an office building for her trucking business on part of Blackacre. The area she fenced in also included a stretch of about 25 feet of a dedicated county road that dead-ended at Blackacre. Dora regularly parked trucks both on the area she had paved and on the 25-foot strip of the county road that was inside her fence.

For the next seven years, Dora continuously ran her trucking business from that location and timely paid taxes on Blackacre and Whiteacre. Alan took no action to remove Dora from the tracts.

Dora has offered Blackacre and Whiteacre, including the entire fenced-in area, for sale. A potential buyer has discovered the earlier deeds and the fenced-in strip of the dedicated road and wants to know who has what ownership interests in the properties.

- 1. What interests, if any, do Alan and Dora have in Blackacre? Discuss fully.**
- 2. What interests, if any, do Son and Dora have in Whiteacre? Discuss fully.**
- 3. What interest, if any, does Dora have in the fenced-in strip of the county road? Discuss fully.**

Answer the next question in the BLUE answer book.

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Hal inherited two tracts of land in Texas from his parents: a 20-acre tract in Harris County and a 300-acre tract in Waller County. Hal and his wife, Wanda, reside in the family home on the Harris County property, which is within the city limits of Tomball. The City of Tomball provides fire and police protection and water, electricity, and sewer service to Hal and Wanda's home.

After he inherited the Waller County tract, Hal signed an oil and gas lease with Oil Co. The lease provides that it continues from its inception date "so long thereafter as oil, gas, and other minerals are produced thereon." The lease is recorded in the Waller County Clerk's real property records. Oil Co. has completed an oil well that is currently producing and promises to produce into the future.

Glenn's Golf, Inc. ("GGI") subsequently developed a golf course and residential community adjacent to Hal's Waller County property. At the golf course, Hal purchased half of the shares in GGI and executed a promissory note for the purchase price. Hal signed and delivered to GGI deeds of trust on the Harris County and Waller County properties to secure the promissory note. Both deeds of trust were properly recorded. Hal did not tell Wanda about the transaction, and Wanda did not sign the deeds of trust.

Hal has defaulted in paying the note. GGI wants to conduct a non-judicial foreclosure on both properties and to purchase the properties at the foreclosure sale. GGI also wants to oust Oil Co. so GGI can develop the Waller County tract as part of the golf course community.

- 1. To what extent, if any, does GGI have a valid lien on the Harris County property? Explain fully.**

- 2. Will the Waller County property remain subject to Oil Co.'s lease after a properly conducted non-judicial foreclosure, and, if so, to whom will the royalties be payable? Explain fully.**

Answer the next question in the ORANGE answer book.

QUESTION 11

Jim and Nancy announced their engagement. Shortly before the wedding, Nancy's mother sponsored a shower for Nancy and, during the shower, presented Nancy with a new car as a wedding gift.

Shortly after the marriage, Jim gave Nancy a large diamond ring as a Valentine's Day gift.

While married to Nancy, Jim suffered a personal injury, and, after some litigation, the case was settled. The settlement agreement set forth specific amounts for each of the following components of damages: Jim's pain and suffering, Jim's lost wages, Jim's medical expenses, and Nancy's loss of consortium.

After three years of marriage, Nancy files for divorce. There is no suggestion that Jim has been abusive toward Nancy. Jim's current salary is \$200,000 per year. Nancy has no special training and presently lacks earning ability adequate to provide for her reasonable needs. In addition to a division of their property, Nancy seeks an award of spousal maintenance.

- 1. What are Jim's and Nancy's community or separate property interests in the car, the ring, and the settlement money? Explain fully.**

- 2. Is Nancy entitled to an award of spousal maintenance for any period of time after the divorce decree? Explain fully.**

Answer the next question in the PURPLE answer book.

QUESTION 12

Bob and Judy married in Dallas, Texas and resided there for several years. Before their marriage, Bob and Judy had estates that were comparable in size and they each had equal earning potential. With full knowledge of each other's property and financial obligations, they entered into a written premarital agreement. The key provisions of the agreement are that, in the event of a divorce, "neither of them would be entitled to support of any kind from the other, and support for any children of the marriage will be equally divided between them."

In 1996, their son, Charley, was born with a disability that will require lifetime care. It is not likely that he will ever be able to support himself.

In 2000, Judy became approximately 50% disabled from asthma, and the family moved to Arizona on medical advice.

One month ago, they moved back to Dallas so that Charley could attend a special school in Dallas. The tuition is \$30,000 per year. The move back to Dallas probably will have an adverse effect on Judy's asthma, causing her to become more than 50% disabled.

While the family was living in Arizona, Bob entered into a relationship with his secretary, Samantha, who is now pregnant with Bob's child. Bob wants to divorce Judy as soon as possible so he can marry Samantha.

Bob currently earns \$200,000 per year but states: "Starting over with Samantha will be expensive, and I want to minimize the amount I might have to pay my old family."

Answer the following questions for Bob:

1. **How long must I reside in Texas before I can file for divorce in Texas? Explain fully.**
2. **How long must I wait before I can marry Samantha after the divorce? Explain fully.**
3. **Are the two key provisions of the premarital agreement enforceable? Explain fully.**
4. **If the court orders me to pay support for Charley,**
 - (a) **For how long can the court require the payments to continue? Explain fully.**
 - (b) **Once the court sets the amount of the payments, can that amount be changed in the future? Explain fully.**
 - (c) **Can the support obligation to Charley be discharged in bankruptcy? 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.**