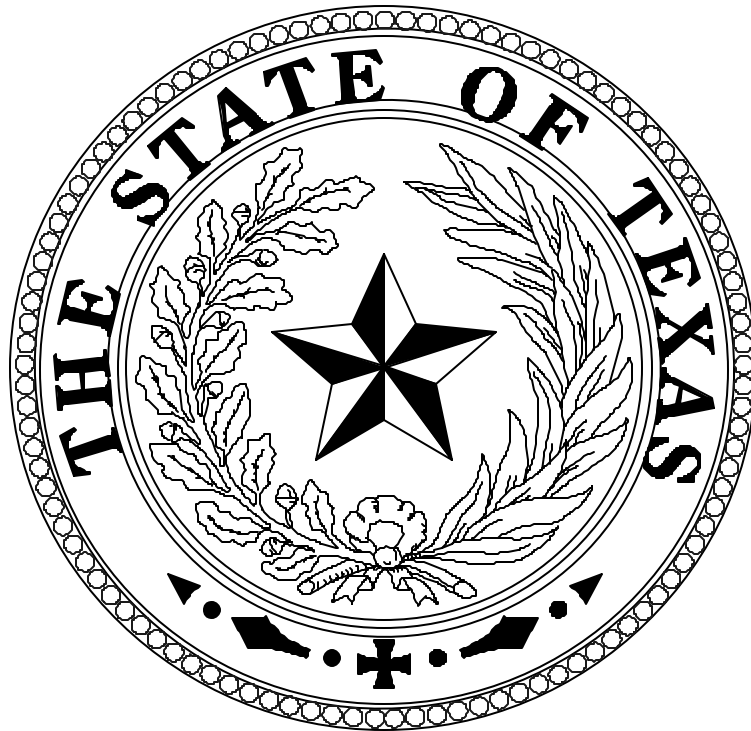


Thursday Morning  
February 28, 2002  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

# **ANSWER QUESTIONS 1 & 2 IN THE GOLDENROD ANSWER BOOK**

## **QUESTION 1**

Ashley owned a five-acre parcel and a larger adjacent tract of land in McLennan County, Texas. She executed and delivered to Elizabeth an undated gift deed conveying to Elizabeth fee simple title to six acres. The deed included and described the five-acre parcel by metes and bounds and, further, provided that Elizabeth had the right within a year to select the sixth acre from an adjoining part of the larger legally described adjacent tract.

The deed contained the following additional provisions: (a) the conveyance was subject to all rights and obligations for the remaining three months of an oral one-year lease of the five-acre parcel to Kim, who was grazing cattle on the five acres pursuant to the lease and paying the rent monthly; (b) Ashley reserved for herself and her heirs an option to repurchase the six acres at \$50 per acre if at any time in the future Elizabeth or her heirs desired to sell the land; and (c) Ashley reserved in favor of Scott, an adjoining landowner, a specifically described 10-foot-wide strip across the five acres as an easement for a future water pipeline.

Elizabeth did what was required to select and identify the sixth acre.

**To what extent, if any, is each of the following valid and enforceable:**

- 1. The deed to Elizabeth? Explain fully.**
- 2. The oral lease to Kim? Explain fully.**
- 3. The reservation of the option in Ashley and her heirs to repurchase the six acres? Explain fully.**
- 4. The reservation of the water pipeline easement? Explain fully.**

## QUESTION 2

Nicole owned fee simple title in the surface and minerals under a 100-acre tract of land in Travis County, Texas. In 1995, for a cash bonus, she executed an oil and gas lease to Daniel Oil Company (DOC) “for five years and so long thereafter as oil and gas is produced from the 100 acres of land.” The lease provided for a 1/6 royalty to be paid to Nicole on all oil or gas produced from the land.

In 1996, DOC entered the land and began its drilling operations. In the course of setting up some equipment, a DOC employee negligently destroyed a pecan tree on the land.

In 1997, Nicole executed and delivered to Jennifer a valid warranty deed conveying the 100-acre tract to her. The deed provided that it was “subject to the oil and gas lease to DOC” and that Nicole “reserves an undivided 1/12 interest in all oil, gas, and other minerals.”

After the deed was delivered to Jennifer, but before it was recorded, Jennifer’s son deleted from the deed the language by which Nicole “reserves an undivided 1/12 interest in all oil, gas, and other minerals.” He did this without anyone’s knowledge or consent, and his intention was to make it appear that there had been no such reservation of rights.

After the deed to Jennifer was recorded, DOC began producing oil from a well drilled on the land.

1. **What interests, if any, do Nicole, Jennifer, and DOC have in the surface of the 100-acre tract and in any oil and gas produced by DOC? Explain fully.**
2. **What effect, if any, does the alteration of the deed have on the rights of Nicole and Jennifer? Explain fully.**
3. **Is DOC liable for the damage to the pecan tree, and, if so, who is entitled to collect the damages? Explain fully.**

**Answer the next two questions in the GRAY answer book.**

# ANSWER QUESTIONS 3 & 4 IN THE GRAY ANSWER BOOK

## QUESTION 3

Sid borrowed \$10,000 from Best Credit for the purchase of a family recreational houseboat. He went to Bank to withdraw from his savings account the \$5,000 he needed for the down payment. Unknown to Sid, his wife had withdrawn \$5,000 on the previous day, leaving a balance in the account of only \$1,000. However, Bank had not yet posted the previous day's withdrawal and, in error, paid Sid \$5,000, which he used for the down payment.

A few days later, Bank realized its error and demanded that Sid pay back the \$4,000 overpayment. Sid refused, saying that he was not responsible for Bank's mistakes. Bank's president then drafted a demand letter to Sid on a letterhead he had created on his desktop computer falsely indicating that it was from "Bank – Legal Division," and he signed his name followed by "Counsel." The letter stated that, if Sid did not repay the overpayment immediately, Bank would commence a civil action against Sid and notify other financial institutions so that, "Sid would never again be able to get a loan in the three-county area."

On the first family outing in the houseboat, Sid wrecked it beyond repair and stopped making payments on the Best Credit loan. After several months, during which the loan was in arrears, Best Credit's collection manager, Vic, undertook to collect the balance due.

Frustrated at being unable to contact Sid in person, Vic began calling on the phone. Over a 48-hour period, Vic repeatedly called Sid's work phone, cell phone, home phone, and the line in Sid's children's room, leaving increasingly angry messages. In one call, when Sid's wife answered the phone, Vic told the wife that she and her husband were guilty of fraud and theft. During two of the calls, Vic disguised his voice and claimed to be Best Credit's attorney. He said he had been talking to the county attorney about pursuing criminal charges, which would be commenced unless Sid paid the debt immediately.

- 1. Did Bank's collection efforts violate the Texas Debt Collection Act (the "Act")? Explain fully.**
- 2. Did Best Credit's collection efforts violate the Act? Explain fully.**
- 3. If Bank or Best Credit violated the Act, what civil remedies are available to Sid under the Act? Explain fully.**

#### QUESTION 4

Settlor deposited \$500,000 in cash with Bank in trust for the benefit of Beneficiary University (“BU”). Bank agreed to serve as corporate trustee. Settlor insisted that his long-time friend, Carl, who was the head of Bank’s Trust Department, be the trust officer in charge of administering the trust.

Because of the close relationship between Settlor and Carl, the trust instrument provided that “Bank, as trustee, shall not be liable for acts or omissions that cause losses to the trust, except in cases of gross negligence or fraud.” The trust specifically authorized Bank to “make such investments and loans as it deems appropriate to maximize the growth of the trust assets.”

The following transactions occurred in connection with the administration of the trust:

- ! Because of a computer error, Bank inadvertently deposited the \$500,000 in a non-interest-bearing account. Bank discovered the error 90 days later and immediately transferred the money to an interest-bearing trust account.
  - ! Carl purchased \$100,000 worth of stock in his brother-in-law’s start-up computer company. The stock did well, and Carl sold it for the benefit of the trust for \$300,000.
  - ! As a token of his appreciation for Carl’s having had enough confidence to invest trust funds in the start-up computer company, Carl’s brother-in-law gave Carl a “bonus” of \$25,000. Carl did not disclose the bonus to Bank, Settlor, or BU and, concluding that it had been a gift to him personally, kept the money for himself.
  - ! Without investigating the purpose for the loan, Carl authorized and Bank made a \$50,000 loan to Bank’s President, who agreed to pay twice the prevailing rate of interest. The business venture in which Bank’s President invested the \$50,000 failed. The President did not pay the interest and never repaid the loan, and Bank did not pursue collection of the debt.
1. **What fiduciary duties, if any, did Bank breach, and how does the exculpatory clause in the trust instrument affect each breach? Explain fully.**
  2. **What are the components of damages, if any, BU can recover from Bank? Explain fully.**
  3. **What are the components of damages, if any, BU can recover from Carl? Explain fully.**

**Answer the next two questions in the BLUE answer book.**

# ANSWER QUESTIONS 5 & 6 IN THE BLUE ANSWER BOOK

## QUESTION 5

On October 1, 1998, John and Mary began living together in Plano, Collin County, Texas. They often referred to one another in the presence of others as “my old lady” and “my old man.” On occasion when Mary went to the doctor for check-ups, she listed John as the person to contact in case of emergency. John listed Mary as his “next of kin” on his employment application.

They planned to have a formal wedding on November 30, 1999, and they rented a hall for the ceremony and the reception. However, on November 1, 1999, they had a falling out, and John left and moved in with a friend in Plano. John thereafter told several of his friends that he was glad he and Mary had not gone through with the wedding ceremony because Mary had been “impossible to live with.”

In January 2000, Mary moved permanently to San Antonio, Bexar County, Texas. On December 1, 2001, John won \$1 million in the lottery. When Mary found out, she filed suit for divorce in Bexar County, alleging that she and John had been informally married on October 1, 1998 when they first moved in together.

John filed a motion to have the case transferred to Collin County and has denied any marriage ever existed.

- 1. Should the Bexar County court transfer the case to Collin County? Explain fully.**
- 2. Does Mary have sufficient grounds, based on these facts, to establish that she was married to John? Explain fully.**

## QUESTION 6

Husband (H) and Wife (W) married 10 years ago in Austin, Texas and have continuously resided there in a home they purchased shortly after their marriage. They have no children.

They jointly own a real estate brokerage firm. W is a licensed broker and manages the firm. H, a surveyor, is employed full time elsewhere but works part time at the brokerage firm.

Both H and W have a history of verbally abusing one another. Two weeks ago, H gave W a black eye as she was trying to hit him with a telephone. Within the last week, H told W that, unless she stops nagging him, he is going to blacken her other eye. W has decided she wants a divorce.

W wants to achieve the following goals:

- ! Limit H's ability to contact her;
- ! Prevent H from having any access to the property and accounts of the brokerage business; and
- ! Gain for herself exclusive possession of the family home.

**What procedures are available to W under the Texas Family Code, with or without notice to H, by which W can attempt to achieve those goals, and, for each procedure, what factual showing must she make? Explain fully.**

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