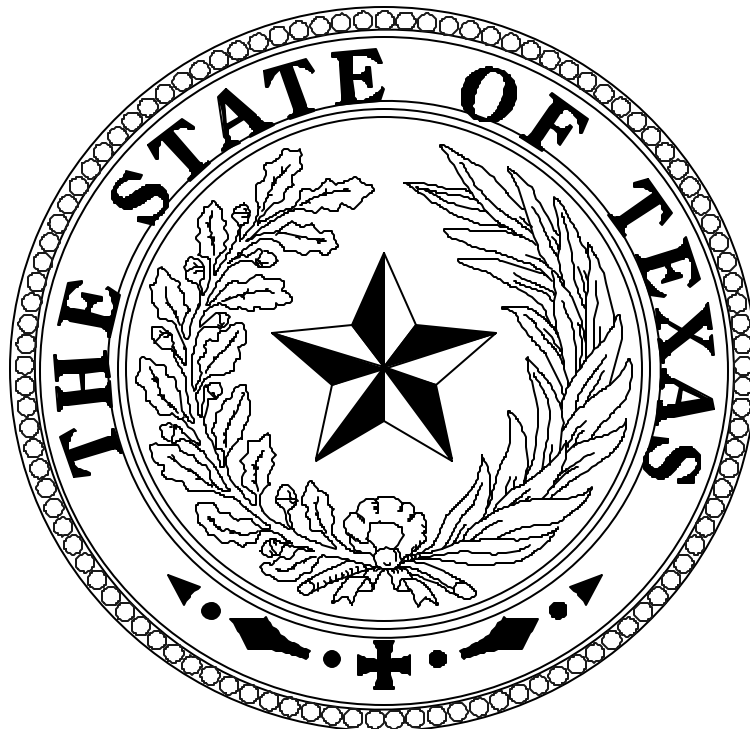


Thursday Afternoon
February 28, 2002
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTIONS 7 & 8 IN THE RED ANSWER BOOK

QUESTION 7

Tom and Susan married in 1991. At the time of their marriage, Tom had two children from a previous marriage: Paul and Linda.

Before Tom's marriage to Susan, Tom gave \$250,000 to Paul on his 21st birthday. At the time he gave the money to Paul, Tom stated to him, "This is all you're going to receive from me." Linda heard Tom say this.

In 1994, Tom executed a self-proved will that contained the following provisions:

"I hereby appoint my wife, Susan, to act as Independent Executrix of my estate, to serve without bond.

"I devise and bequeath all my real and personal property in equal shares to my wife, Susan, and my daughter, Linda.

"I gave my son, Paul, his share of my estate when he turned 21 years of age."

In 1998, Tom and Susan had a child, Jane. In 2000, Tom and Susan divorced, and Susan received custody of Jane. Tom died in March 2001, leaving in his estate real and personal property valued at \$4,000,000.

Linda has come to you and asked what rights, if any, the following persons have in Tom's estate:

- 1. Paul? Explain fully.**
- 2. Susan? Explain fully.**
- 3. Jane? Explain fully.**
- 4. Linda? Explain fully.**

QUESTION 8

Horace and Mary married just after they finished high school, and their very good friend, Bill, was their best man. The three of them remained close friends throughout the years. Bill was godfather to Jimmy, Horace and Mary's only child.

In 1993, Horace executed a will leaving his entire estate to Mary. In 1994, Mary executed a will leaving her entire estate to Horace.

Horace died in 1995, and Mary inherited his substantial estate. Soon after Horace's death, Mary suffered a severe stroke that left her physically and mentally impaired. She began wandering away from home, where she lived alone, and would frequently be heard muttering, "I'm the Queen of England." Jimmy, who left home on his 21st birthday, rarely communicated with Mary and refused to return and care for her.

Bill decided to "take charge" because of his close friendship with Mary. In 1999, he moved Mary into a room in his home and retained a private duty nurse at his own expense to care for her.

In 2000, Mary executed a new will in which she left most of her \$525,000 estate to Bill. She left \$2,500 to Jimmy. The will included a no-contest clause, which provided for the disinheritance of any beneficiary who contested the will.

While she was executing the will in her room in Bill's home, Mary told her private duty nurse, "You know, I've got a sizeable estate, and, even though I'm the Queen of England, I'm leaving most of it to Bill. He's always been there when Horace and I needed him. That's more than I can say for my son, Jimmy, who deserted me." Bill was present when Mary signed the will. Two of Bill's cousins were the subscribing witnesses to the will.

Mary died in Bill's home in 2001. Bill filed Mary's will for probate. Jimmy filed a challenge to the probate of the will, but he is now having second thoughts about it and is considering dismissing the challenge.

- 1. What grounds, if any, might Jimmy assert as bases for the challenge, what would he have to prove as to each ground, and what is the probable outcome on each ground? Explain fully.**
- 2. Does Jimmy's filing of the challenge result in a forfeiture of Mary's bequest to him, and what is the effect of a subsequent dismissal of the challenge? Explain fully.**

Answer the next two questions in the GREEN answer book.

ANSWER QUESTIONS 9 & 10 IN THE GREEN ANSWER BOOK

QUESTION 9

Decor, Inc., a Delaware corporation, operates a retail store in Dallas, Texas. Decor sells decorative items for the home.

In August 2001, Decor bought 175 lamps for its inventory on credit from Larry's Lamps. The lamps were retained in Larry's warehouse for later delivery to be directed from time to time by Decor. Decor properly completed and authenticated a sales contract combined with a security agreement, granting Larry's a security interest in the lamps. Larry's, however, neglected to file a financing statement.

Also in August 2001, Decor bought on credit and took delivery of 50 birdbaths from Carrie. In connection with this transaction, Decor properly completed and authenticated a sales contract combined with a security agreement, granting Carrie a security interest in the birdbaths. Carrie timely filed a financing statement in the office of the Secretary of State in the State of Delaware. The financing statement described the birdbaths and included all required information regarding the parties. The security agreement also described the birdbaths and contained a provision by which Decor purported to waive notice of default before repossession and also to waive any damages arising from any repossession by Carrie.

In September 2001, Sam bought 75 lamps from Decor to be delivered to Sam directly from Larry's warehouse. The 75 lamps were identified and put in a separate section of the warehouse. Sam paid Decor for the lamps. Decor used the proceeds of the sale to pay the full amount due Carrie on the purchase of the birdbaths. Consequently, Decor defaulted on its obligations to Larry's, so Larry's refused to deliver the 75 lamps to Sam.

Carrie inadvertently credited the payment from Decor to the wrong account so that it appeared on Carrie's books that Decor was in default. Carrie's hired Reba's Repo Service, an independent reposessor, to repossess the birdbaths from Decor.

After dark one evening, Reba went to Decor's store and, finding that the birdbaths were on display in front of the store, loaded them in a trailer. The store manager, who was just closing up the store, approached Reba, who told him she was repossessing the birdbaths. When the manager tried to stop her, protesting that Carrie had been paid, Reba shoved him and jumped into her truck. The manager pursued her, and, as Reba swerved toward the manager to scare him away, the trailer overturned, and all the birdbaths fell out and broke to pieces.

Decor sues Carrie, claiming wrongful repossession and damages to the birdbaths under the Texas Uniform Commercial Code, Chapter 9. Carrie asserts as defenses that (a) she was not required to give notice before attempting to repossess the birdbaths, (b) she is not responsible for Reba's actions and (c) Decor waived any damages that might occur in connection with a repossession.

Sam demands that Larry's deliver the 75 lamps to him.

- 1. As between Larry's and Sam, which has the superior rights to the 75 lamps? Explain fully.**
- 2. What arguments should Decor make in support of its claims against Carrie, and what is the likelihood of success of each of Carrie's defenses? Explain fully.**

QUESTION 10

Ana contracted with Lou for repairs on her home. While he was working next to the kitchen window, Lou saw Ana lock her checkbook in a cabinet and put the key in a cookie jar. Later and without Ana's knowledge, Lou slipped into the kitchen, used the key to unlock the cabinet, stole a blank check, locked the cabinet, and replaced the key.

Ana maintained her checking account at Local Bank. She gave Lou a check payable to Lou for \$800 in payment for the repairs. Lou altered this check by changing the written word "eight" to read "eighteen" and the number "\$800" to read "\$1,800."

Lou then filled out the stolen check, making it payable to himself in the amount of \$500. He signed Ana's name, skillfully copying Ana's signature from the \$800 check so that there was nothing unusual about the appearance of the \$500 check. Lou indorsed both checks and deposited them in his checking account at National Bank.

National Bank presented the checks to Local Bank in the ordinary course of business. Local Bank paid the \$500 check. However, an employee of Local Bank noticed the alteration of the check for \$1,800 and phoned Ana to ask her about it. Ana was out of town for a few days, so the Local Bank employee left a voicemail message. The check for \$1,800 was set aside and not paid. Local Bank did nothing to notify National Bank that it was holding up payment on the \$1,800 check.

Five days later, when Ana returned home, she listened to the message and reviewed the checking account statement she had received from Local Bank during her absence. She immediately phoned Local Bank and reported that the \$500 check, which was among the canceled checks enclosed with the statement, had been stolen and forged. In response to the voicemail message, she reported that the \$1,800 check had been altered and said she had written it for \$800.

In the meantime, National Bank had credited Lou's account with \$2,300. Four days after National Bank had forwarded the two checks to Local Bank for collection, Lou closed his National Bank checking account and withdrew all funds, including the \$2,300. Lou has departed, and his whereabouts are unknown.

- 1. Is National Bank entitled to recover \$1,800 or any other amount from Local Bank? Explain fully.**
- 2. Is Local Bank entitled to recover from National Bank the \$500 paid on the forged check? Explain fully.**
- 3. Is Ana entitled to have Local Bank restore the \$500 to her account? Explain fully.**

Answer the next two questions in the YELLOW answer book.

ANSWER QUESTIONS 11 & 12 IN THE YELLOW ANSWER BOOK

QUESTION 11

We Got Gas, Inc. (“Gas”) is a corporation legally formed under the Texas Business Corporations Act. Gas manufactures carbonated gas for the soft drink industry. Gas has 15 directors and 650 stockholders.

Historically, Gas has been the only carbonated gas producer in the U.S. that sells the gas in 200-pound bottles. Consequently, Gas has always maintained a substantial inventory of the large bottles.

Alan is the newly elected president of Gas, replacing Zeb, who was fired for cheating on his expense account. Ben is one of the directors.

Alan recently discovered that, while Zeb was still president, and without consulting with the Board of Directors, Zeb signed and delivered a properly worded deed to Owen, conveying a tract of land that Gas owned. Gas had purchased the land and was holding it for future development as a headquarters site. Owen paid Zeb for the land in good faith, and Zeb turned the proceeds over to Gas. Zeb signed the deed “Zeb, President of We Got Gas, Inc.” The deed was the only document Zeb delivered to Owen, and it is the only document ever prepared that refers in any way to the transaction.

Alan, in his capacity as president of Gas, and Ben, in his capacity as a director, visited Owen to examine the deed and discuss the transaction. During that visit, Owen became upset over Alan’s claim that the deed was not an effective conveyance of corporate real estate. Owen called the police and alleged that Alan and Ben had assaulted him. Alan and Ben hired lawyers and were subsequently tried for assault and acquitted of the charges. After their acquittal, Alan and Ben requested that Gas indemnify them for the attorney’s fees and expenses they incurred in their defense. Gas’s corporate treasurer refused.

Due to declining sales of the large 200-pound bottles of carbonated gas, the Board of Directors, at a lawfully called meeting, voted 14 to 1 to liquidate Gas’s entire inventory of the large gas bottles and to begin selling gas in smaller bottles only. The dissenting director objected to the decision on the ground that the sale of the entire inventory was unlawful without approval of the stockholders.

- 1. Do Alan and Ben each have the right to have the corporation indemnify them for the attorney’s fees and expenses they incurred in defending the assault charges? Explain fully.**
- 2. Was the delivery of only a deed by Zeb to Owen effective under the Texas Business Corporations Act to convey the land? Explain fully.**
- 3. Did the Board of Directors have the power to sell the inventory of large gas bottles without approval of the stockholders? Explain fully.**

QUESTION 12

Abel, Bill, and Carl are individuals associated in two businesses, both legally formed in Texas.

One of the businesses is Castaway Confetti L.L.P. (“Castaway”), which manufactures confetti for tickertape parades. Abel, Bill, and Carl are each partners in the business.

The second business is Clean Sweep Limited (“Sweep”), which manufactures street cleaning equipment. In this business, Abel is the general partner; Bill and Carl are limited partners. Bill takes little interest in the day-to-day operation of the business, but Carl frequently consults with Abel about business operations.

Two lawsuits are pending against Castaway and each of its partners individually:

- ! One of Castaway’s suppliers is suing for collection of a past due debt. The size of the debt is more than the available assets of Castaway.

- ! A plaintiff is suing for a tort committed by Bill in the course and scope of business for Castaway. Neither Abel nor Carl was directly involved in the activity that led to the tort, nor did either of them have notice of the tortious activity until after it occurred. The insurance coverage for Castaway appears to be less than the expected recovery for this tort.

There are also two lawsuits pending against Sweep and each of its partners individually:

- ! One of Sweep’s suppliers is suing for collection of a past due debt. The size of the debt is more than the available assets of Sweep.

- ! A plaintiff is suing for a tort committed by Bill in the course and scope of business for Sweep. Neither Abel nor Carl was directly involved in the activity that led to the tort, nor did either of them have notice of the tortious activity until after it occurred. The insurance coverage for Sweep appears to be less than the expected recovery for this tort.

Are Able or Bill or Carl *personally* liable for:

1. The debt owed to Castaway’s supplier? Explain fully.
2. The tort for which Castaway is being sued? Explain fully.
3. The debt owed to Sweep’s supplier? Explain fully.
4. The tort for which Sweep is being sued? Explain fully.

**This concludes the Texas Essay portion of the exam.
Be certain that you write the pledge on the back of your
YELLOW answer book.**