

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

## **QUESTION 1**

A & B was a general partnership for the practice of law. The partners were A, B, and C.

In January 2001, C, in the course of representing X in a legal matter, committed malpractice. In February 2001, C was convicted of possession of cocaine, and A & B lawfully voted to expel C from the partnership.

In March 2001, D joined the A & B firm as a partner and, as is customary upon joining a law firm, D contributed \$30,000 as his share of the firm's capital account to be used for operating funds.

X has learned of C's malpractice and wishes to sue for damages, which, at a minimum, equal \$1,000,000. Neither the A & B partnership nor any of the partners carry professional liability insurance, and the partnership's current assets are less than \$100,000.

**Explain to X the extent of the liability for damages resulting from C's legal malpractice as to each of the following:**

- 1. A & B Partnership.**
- 2. A & B individually.**
- 3. C individually.**
- 4. D individually.**

## QUESTION 2

Greek Stuff Inc. (GSI) is a corporation legally formed in the State of Texas. GSI is not formed as a close corporation. GSI is a profitable business that manufactures and sells paraphernalia with Greek symbols to fraternities and sororities.

The Board of Directors of GSI consists of Mary, Sam, and Harry. GSI issued and has outstanding 10,000 shares. Mary owns 60% of the issued shares, Sam owns 3%, and various investors own the remaining issued shares, none owning more than 4% of the shares.

The corporation has three employees: Mary, who is chief executive officer, Paul, who is the plant manager, and John, who is GSI's product designer. Paul is paid a salary, and John is paid a salary plus an annual bonus of 10% of GSI's net sales. Paul is not a shareholder. However, three months ago, John purchased 1% of GSI's issued shares from another shareholder.

GSI had \$100,000 in its surplus account. Mary, who needs the money to finance her dream trip around the world, urged the Board of Directors to declare the entire \$100,000 as a dividend. The other directors, Sam and Harry, did not object.

Paul objected on the ground that the money would be better used to expand operations. John objected because he was concerned that paying out the entire surplus account as a dividend might jeopardize payment of his bonus in future years. John and Paul demanded that Mary allow them to inspect GSI's business records. Mary refused.

At a properly noticed, duly called, and lawfully conducted meeting, the directors voted to pay the entire \$100,000 out as a dividend to be paid ratably to all shareholders. One week thereafter, Rufus bought 2% of GSI's shares and, at the urging of Paul and John, is contemplating filing a shareholder's derivative action to rescind the declaration of the dividend.

- 1. Did Paul and John have the right to inspect GSI's business records? Explain fully as to the rights of each.**
- 2. Was the dividend lawfully declared? Explain fully.**
- 3. Does Rufus have the right to bring a shareholder's derivative action? Explain fully.**

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

# ANSWER QUESTIONS 3 & 4 IN THE GRAY ANSWER BOOK

## QUESTION 3

Fred and Mary married and had one child, Tim. They divorced, and Mary was awarded custody of Tim.

Two years later, Mary married Bob, who with his only siblings, Ken and Susan, was heir to a large fortune inherited from their deceased parents. Mary and Tim, then aged 5, moved to Bob's mansion in the exclusive River Oaks section of Houston, Texas. Bob's marriage to Mary was his first, and he had no children of his own.

Bob and Tim struck up a very close relationship, and, on Tim's 7<sup>th</sup> birthday, Bob asked Mary if she would agree to let Bob adopt Tim. Mary said she agreed, saying it made her genuinely happy. This conversation occurred in the presence of and was overheard by Bob's butler, Chauncey.

When Mary sought to obtain Fred's approval as Tim's natural father, Fred refused to agree to the adoption. Consequently, no formal statutory adoption ever occurred.

Bob and Mary never told Tim that Fred had blocked the adoption, but, during the next 14 years, Bob paid all of Tim's living and education expenses, including private high school and college tuition. Tim always called Bob "Dad," and Bob called Tim "Son." Although Tim never took Bob's last name, Bob and Mary always introduced Tim as Bob's son, and most people in the community knew Tim as Bob's son. During his childhood, Tim did chores around the house, received a weekly allowance from Bob, and frequently engaged in father/son activities with Bob.

After finishing college, Tim moved to his own apartment. Mary died in 1999. Even after his mother's death, Tim maintained a close relationship with Bob, talking to him by phone at least twice a week, and inviting him to his apartment for meals on Father's Day and holidays like Thanksgiving and Christmas.

On the other hand, during his childhood, Tim had no contact at all with his biological father, Fred. Fred had neither paid any child support nor contributed in any other way to Tim's upbringing. Tim spoke with Fred only a few times after Tim became an adult.

Bob and Ken died simultaneously in February 2001, when their private jet crashed. They both died intestate. Ken had never married and had no children of his own. At Bob's funeral, Chauncey the butler told Tim that he had overheard the conversation in which Mary had agreed to Bob's request for permission to adopt Tim and that it was a shame that Fred had withheld his approval.

Susan has filed an heirship application to have herself declared the only heir of the estates of Bob and Ken. Tim files a contest asserting that, as Bob's adopted son, he is Bob's only heir and that he also has an interest in Ken's estate.

- 1. What must Tim prove to establish that he is Bob's adopted son? Explain fully.**
- 2. Assuming Tim establishes that he is Bob's adopted son, what interest, if any, does he have in Ken's estate? Explain fully.**

#### **QUESTION 4**

In April 2000, Jim Smith, a lifelong citizen of Texas, executed a will that met with all formal requirements. The dispositive provisions of the will stated:

I, Jim Smith, being of sound mind and body and over the age of 18, do hereby make and publish this my last will and testament.

\* \* \*

I bequeath all property, both real and personal, that I may own or have an interest in at the time of my death to my only child, Cynthia, provided that, during my lifetime, Cynthia marries my lifelong friend, Sam Jones. I believe that Sam will make a fine husband and a fine father to Cynthia's five-year-old son and my grandson, Troy.

If Cynthia fails to marry Sam during my lifetime, then I bequeath all my property, both real and personal, to Sam.

Cynthia was aware of the provisions of Jim's will. Despite the fact that she disliked Sam and resented her father's insistence, she married Sam in November 2000. Her resentment grew and, on March 1, 2001, just before Sam and Jim were to leave on a hunting trip to the Big Bend Country, she punctured the brake fluid lines in Jim's pickup truck, hoping the brakes would fail and Jim and Sam would be killed in the resulting collision.

On the drive to the Big Bend Country, the brakes failed. Jim's truck crossed over the dividing line in the highway and collided head on with another vehicle. Sam died instantly. Jim was rushed to a San Antonio hospital in critical condition. Fearing he was about to die, Jim called a nurse and two hospital attendants to his room and, in their presence, said, "I know my daughter, Cynthia, had something to do with causing my truck to go out of control. I don't want her to get any of my property. I now want to give all my property to my grandson, Troy, on my death." Jim died 10 hours after he made this statement. He is survived by Cynthia and Troy.

Cynthia confessed to the murder of Jim and Sam. On May 11, 2001, while Cynthia was in prison, her lawyer filed Jim's April 2000 will for probate on Cynthia's behalf. The nurse who had heard Jim's near death statement learned of the probate proceedings and reported Jim's near death statement. A guardian ad litem was appointed for Troy, and Jim's near death statement was introduced as part of the probate proceedings. Troy's guardian claims Troy should take Jim's entire estate.

**How and to whom should Jim's estate be distributed? Explain fully.**

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

# ANSWER QUESTIONS 5 & 6 IN THE BLUE ANSWER BOOK

## QUESTION 5

Husband (H) and Wife (W) married in New Braunfels, Comal County, Texas and resided there for 12 years. H succeeded his father as president of the largest bank in town, and acquired 1,000 shares of stock in the bank. It is unclear whether the stock was a gift from his father or whether it was compensation from the bank to H during the marriage.

H and W quarreled often, and, during one of H's frequent fits of temper, H shoved W into a wall, causing her to suffer a concussion. Nine months ago, W left New Braunfels and took the couple's only child, a ten-year-old son, with her. They moved in with W's mother in Dallas, Texas, where the two of them have resided ever since.

H filed a divorce action in Comal County and included a prayer that he be named managing conservator of the child. The following events occurred during the pendency of the divorce case:

1. W moved to have the case moved to Dallas County. The court denied W's motion.
2. Pursuant to H's request and over W's objection, the court impaneled a jury to hear the issues of who, as between H and W, should be the managing conservator and possessory conservator of the child.
3. The court ultimately disregarded the jury's findings that H should be the managing conservator of the child and that W should be the possessory conservator and concluded that, because of the incident of domestic violence, it was in the child's best interests that W should be the managing conservator and H the possessory conservator.
4. The court refused H's request to submit to the jury the issues relating to child support and ultimately ordered H to pay \$1,000 per month in child support.
5. The court refused H's request to submit to the jury the issues relating to the terms and conditions of access to and possession of the child and ultimately ruled that H would have the standard possessory and access rights to the child.
6. The court refused H's request to submit to the jury the issue of whether the 1,000 shares of bank stock were community property or H's separate property and ruled that the stock was community property.

**Did the court commit error in taking each of the actions described above? Explain fully.**

## QUESTION 6

Husband (H) and Wife (W) are contemplating a divorce. Together, they have the following assets:

An Individual Retirement Account (IRA): Before the marriage, W worked for Dotcom Company. She ceased working there on the day she and H got married and has not worked outside the home since then. During her years at Dotcom, W funded an IRA with part of her earnings. The IRA was invested in a mutual fund. The value of the mutual fund on her last day of work was \$15,000. Today, the mutual fund is worth \$22,000. The \$7,000 increase in value consists of \$1,000 from reinvested quarterly dividends; \$2,000 from reinvested capital gains distributions; and \$4,000 from market appreciation.

A Bank Account: This account has a current balance of \$5,000 and has never had a balance of less than \$2,500. The account was opened after the marriage with a \$3,000 gift to H from his grandfather. H periodically made deposits to the account from his earnings and intermittently withdrew funds to pay household living expenses.

A Rental House: Before the marriage, H purchased a house as a rental property. The purchase price was \$100,000. H paid a \$16,000 cash down payment and took out a mortgage of \$84,000. The rental income has always been used to pay the mortgage payments. The current principal balance on the mortgage is \$80,000. Principal payments totaling \$2,000 were made before the marriage and principal payments totaling \$2,000 were made during the marriage. The market value of the rental property on the date of the marriage was \$100,000 and is now \$130,000.

1000 Dotcom Company Shares: A year after W quit her job at Dotcom, the Board of Directors decided to reward the company's first five employees for their contributions to the success of the company by giving them a "bonus." The Board awarded W, as one of those five employees, 500 shares of Dotcom Company. The shares have since split 2 for 1.

**What proportion of each of these assets is separate property and what proportion is community property? Explain fully.**

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