ANSWER QUESTIONS 7 & 8 IN THE RED ANSWER BOOK

QUESTION 7

Fisher, a Texas resident, purchased a new 26-foot pleasure fishing boat for $34,000 from Marina Vessels, Inc. ("MVI"). MVI customized the boat according to Fisher's specifications and installed all the latest equipment for shark fishing in the Gulf of Mexico. At the time Fisher took delivery of the boat, he insured it through Best Insurance Co. for $34,000, its full value.

Two months later, Fisher purchased from MVI a radar system for $4,000. He purchased this particular system because Smith, a salesperson for MVI, assured Fisher that the radar system was manufactured with materials specially designed to withstand the extraordinarily corrosive effects of the salt-water and fishing climate in the Gulf of Mexico.

As soon as the radar was installed in the boat, Fisher spoke by telephone with Agent, Best Insurance Co.'s local representative, and told him he wanted to increase the coverage in the insurance policy by $4,000 to cover his newly installed radar. Agent told Fisher, "No problem. I'll send you the paper work, you fill it out, and send it back to me with a check for $200." Fisher filled out the form and sent Agent the $200 check. Agent then forwarded the form and the check to Best Insurance Co.

Four months after he bought the radar system, Fisher began experiencing radar failures, apparently caused by the effect of salt-water corrosion. Fisher repeatedly took the boat to MVI to have the radar repaired. Despite several attempts to fix it, MVI was unable to solve the problem.

At a time when the boat was docked in Fisher's berth and no one was aboard, the boat was completely destroyed by an on-board fire. It was later determined that the cause of the fire was a short circuit in the radar system wiring which had sparked and ignited a flame that spread.

Fisher filed a timely claim for the $38,000 loss with Best Insurance Co. Agent told Fisher that Fisher's coverage was limited to $34,000 because Best Insurance Co. says it never received from Agent the application and payment for the additional coverage for the radar.

1. **What causes of action, if any, under the Texas Deceptive Trade Practices Act does Fisher have against MVI for the loss of the boat, and what damages, if any, might Fisher recover from MVI? Explain fully.**

2. **What causes of action, if any, under the Texas Insurance Code does Fisher have against Best Insurance Co. for the loss of the radar system, and what damages, if any, might Fisher recover from Best Insurance Co.? Explain fully.**

QUESTION 8

Sally, a 68-year-old resident of Texas, is mentally incapacitated, although her medical condition is stable. She never married and has no children.

In 1997, before she became incapacitated, Sally made a valid will in which she bequeathed her entire estate to three adult nieces. At the same time in 1997, she duly executed under Texas law a Statutory Durable Power of Attorney. The power of attorney names Sally's friend, Tom, as Sally's attorney-in-fact and contains the following clauses: (1) This power of attorney is not affected by my subsequent disability or incapacity; and (2) This power of attorney authorizes my attorney-in-fact to handle estate and gift tax planning for me.

In 1999, Sally suffered a stroke that left her mentally incapacitated. As a result, her brother, Richard, was appointed the guardian of her estate to manage her financial affairs. Up to then, Sally had been a very successful businesswoman. She accumulated a large fortune that, upon her death, is likely to have significant federal estate tax liability.

Tom and Richard are both concerned that there is no estate plan to reduce the tax burden on Sally's death. They each consult estate tax attorneys and come up with estate plans that vary from each other in significant respects. Both plans, however, contain provisions that, if implemented, would confer inter vivos gifts in 2001 on the three nieces named in Sally's will. Tom believes the estate plan he commissioned is better than Richard's, and Richard naturally believes his is the better.

1. **As between Tom and Richard, who has the superior right to implement an estate plan for Sally, and what evidence must be presented to the court to allow tax motivated gifts to be made in a guardianship? Explain fully.**

2. **May whichever estate plan is ultimately implemented lawfully authorize inter vivos gifts to Sally's nieces? Explain fully.**

3. **Assuming that valid inter vivos gifts can be made, what is the maximum amount of the gift that can be made in 2001 to each niece without incurring any gift tax liability and without using any part of the unified tax credit? Explain fully.**

Answer the next two questions in the GREEN answer book.

ANSWER QUESTIONS 9 & 10 IN THE GREEN ANSWER BOOK

QUESTION 9

Al, a married man, purchased Whiteacre from Cam. Whiteacre is a 10-acre unimproved tract of land in Texas. Al used community property funds to buy the land, but the recorded deed conveyed title to Whiteacre to Al in his name alone. That deed also reserved "all oil, gas, and other mineral rights" to Cam. Although Al and his wife live in a small town about 30 miles from Whiteacre, each has expressed an intention to make Whiteacre their future residence.

Al entered into a written contract to sell Whiteacre to Ben, subject to the reservation of "oil, gas, and other mineral rights." The contract is silent on the character, nature, and extent of the title to be conveyed to Ben. It is Ben's intention, once he takes possession, to mine gravel and limestone, which lie between 15 and 30 feet below the surface of Whiteacre.

In order to facilitate the mining, it would be necessary for Ben to construct a retaining wall on Whiteacre along the boundary between Whiteacre and Neighbor's land to prevent surface water from flowing naturally across Neighbor's land onto Whiteacre. The effect of the retaining wall would be, during times of rain, to impound water and cause it to back up and damage Neighbor's land.

In constructing the wall, Ben would also have to cut through the roots that extend onto Whiteacre from a large pecan tree on Neighbor's land, possibly killing the tree.

1. **Does Al have the right to sell Whiteacre to Ben without Al's wife's joinder, and, if so, what is the character, nature, and extent of the title Al is obligated to convey under the contract with Ben? Explain fully.**

2. **If Ben acquires Whiteacre, puts up the retaining wall as intended, and cuts the pecan tree roots, will he be exposed to damage claims from Neighbor? Explain fully.**

3. **If Ben acquires Whiteacre, will he have the right to mine gravel and limestone on Whiteacre, and, if so, would Ben's mining activities be subject to any restrictions relating to rights that Cam and Neighbor have? Explain fully.**

QUESTION 10

In 1987, Kim, Jennie, and Dan inherited in equal undivided shares from their parents a fenced 100-acre farm in Texas. Their parents had purchased the farm in 1986 from Neighbor, who is the owner of the adjoining land.

From and since the death of her parents, Kim is the only one of the three siblings who has lived on the farm. Kim has continued to plow the fields, raise and harvest the crops, and maintain the buildings, roads, and fences. She has borne all the expenses of operating the farm, paid all property taxes timely, and kept for herself all the income from the sale of crops. Kim has not asked Jennie or Dan for any contribution to the expenses, nor have Jennie and Dan asked for a share of the farm income.

In 1998, Kim and Driller entered into and recorded an oil and gas lease granting to Driller the oil and gas rights on the entire 100 acres for 5 years. Driller paid in advance all delay rentals necessary to keep the lease in force for its full 5-year term. The lease provided for payment of a 24% royalty on all oil and gas produced on the 100 acres. So far, there has never been any drilling or oil or gas produced on the 100 acres.

From the time the parents acquired the farm in 1986, Kim, her siblings, and their parents regularly used a road located on Neighbor's adjoining land to get to and from the 100 acres. The road was in use and existence before Neighbor severed the 100 acres and sold the 100 acres to Kim's parents. Neighbor has used the road a few times during the past 15 years and has never objected to the use by Kim and members of her family. About five years ago, Kim wrote Neighbor a letter asking him to share in the expenses to improve the road, but Neighbor never responded. Kim then, at her own expense, graded and graveled the road. Recently Neighbor has threatened to close the road.

The only other way to get to and from the 100 acres requires crossing a creek that is subject to occasional flooding and is considerably less convenient.

1. **What would Kim have to prove in order to establish that, by the time she entered into the lease with Driller, she had become the sole owner of the oil, gas, and mineral rights on the 100 acres, and, under the facts given above, could she successfully prove that she was the sole owner? Explain fully.**

2. **Assuming Kim is not able to prove what is required in Question 1, above, what options do Jennie and Dan have with regard to the lease, and what rights do they have to the royalties and/or the oil and gas under each of those options? Explain fully.**

3. **Under what theories might Kim and her siblings assert a claim to an easement over the road across Neighbor's land, and would they be likely to succeed under any of those theories? Explain fully.**

Answer the next two questions in the YELLOW answer book.

ANSWER QUESTIONS 11 & 12 IN THE YELLOW ANSWER BOOK

QUESTION 11

Kelly, owner of Kelly's Retail Store, contracted with Super Care Moving Company ("Super Care") to move her merchandise to a new store location. On March 1, 2001, Super Care completed the move and agreed to accept payment in the form of a promissory note from Kelly.

Kelly properly executed and delivered to Super Care a promissory note payable to the order of Super Care in the amount of $3,000, interest-free, and due and payable on July 2, 2001.

The day after the move, Kelly discovered that Super Care, through its negligence, had lost a crate containing $2,000 worth of Kelly's merchandise. Super Care's documents inventorying the move establish beyond dispute that the crate was lost and that the amount of the loss is $2,000.

With these basic facts as the background, assume the following scenarios:

Scenario 1: On July 2, 2001, Super Care presented the note to Kelly and demanded payment. Kelly tendered $1,000 and refused to pay any more.

Scenario 2: Assume instead that Super Care owed Henry $2,500 for some equipment Henry had sold Super Care. Henry agreed to accept Kelly's note in full satisfaction of that debt. Super Care indorsed the note by signing it on the back and delivered it to Henry, who accepted it without knowledge of the dispute between Kelly and Super Care. On July 2, 2001, Henry presented the note to Kelly and demanded payment. Kelly, citing the $2,000 loss caused by Super Care, tendered $1,000 and refuses to pay any more.

Scenario 3: Assume instead that Super Care owed Allen $2,700 for a truck Allen had sold to Super Care. Allen agreed to accept Kelly's note in full satisfaction of that debt. On July 16, 2001, Super Care indorsed the note by signing it on the back and delivered it to Allen, who accepted it without knowledge of the dispute between Kelly and Super Care. On July 17, 2001, Allen presented the note to Kelly and demanded payment. Kelly refused to pay any amount.

What are Kelly's obligations on the note in each of these three scenarios? Explain fully.

QUESTION 12

Ray contracted with Diane for the construction of a new den addition to his home in Centerville, Leon County, Texas. To secure his obligation to pay Diane, Ray encumbered his home with a construction mortgage in favor of Diane. Diane properly filed the mortgage in the Leon County Clerk's Office on July 2, 2001.

On July 10, 2001, Ray purchased a television set from Enco, Inc., a Delaware corporation with a store in Centerville. As he told Enco, this television set was to be installed in a specially designed wall enclosure in his new den at home. To finance the purchase, Ray signed an installment sales contract combined with a security agreement granting Enco a security interest in the television set. Enco did not file any financing statements relating to this television set.

On July 12, 2001, Diane bolted the television set to the wall and then surrounded it by a brick enclosure. To remove the set, it would be necessary to tear apart the brick enclosure. Diane then went on to complete the den construction.

Also on July 10, 2001, Ray purchased from Enco a DVD player that, as he told Enco, was for the waiting room at Car Wash, a sole proprietorship owned and operated by Ray. To finance this purchase, Ray signed another installment sales contact combined with a security agreement granting Enco a security interest in the DVD player. On July 14, 2001, Enco properly filed a signed financing statement relating to the DVD player with the Texas Secretary of State.

Ray put the DVD player in the Car Wash waiting room so his customers could watch movies while waiting for their cars but soon determined that it was not a good idea because the customers were lingering longer than they should. Joe, a customer who had no actual knowledge of Enco's security interest, offered to buy the DVD player, and Ray sold it to him on July 20, 2001.

On July 23, 2001, Enco borrowed operating capital from Federal Bank. To secure the Federal Bank loan, Enco signed a valid security agreement granting Federal Bank a security interest in, "All chattel paper owned by Enco," and authorizing Federal Bank to sign and file financing statements in connection with the security agreement. The "chattel paper" in question consisted of the installment sales contracts combined with security agreements held by Enco from its customers.

Federal Bank promptly and properly completed and signed the necessary financing statement forms relating to its loan to Enco. Without having Enco sign the financing statement forms, Federal Bank filed them with the Texas Secretary of State.

Although Enco delivered most of the "chattel paper" to Federal Bank, including the installment sales contract that Ray had signed for the DVD player, Enco inadvertently neglected to deliver the installment sales contract Ray had signed for the television set.

Ray has defaulted on his payments to Enco and Diane, and Enco has defaulted on its obligations to Federal Bank.

1. **As between Diane and Enco, who has the priority interest in the television set? Explain fully.**

2. **As between Enco and Joe, who has the priority interest in the DVD player? Explain fully.**

3. **Does Federal Bank have a perfected security interest in the installment sales contracts signed by Ray for the DVD player and the television set? 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.