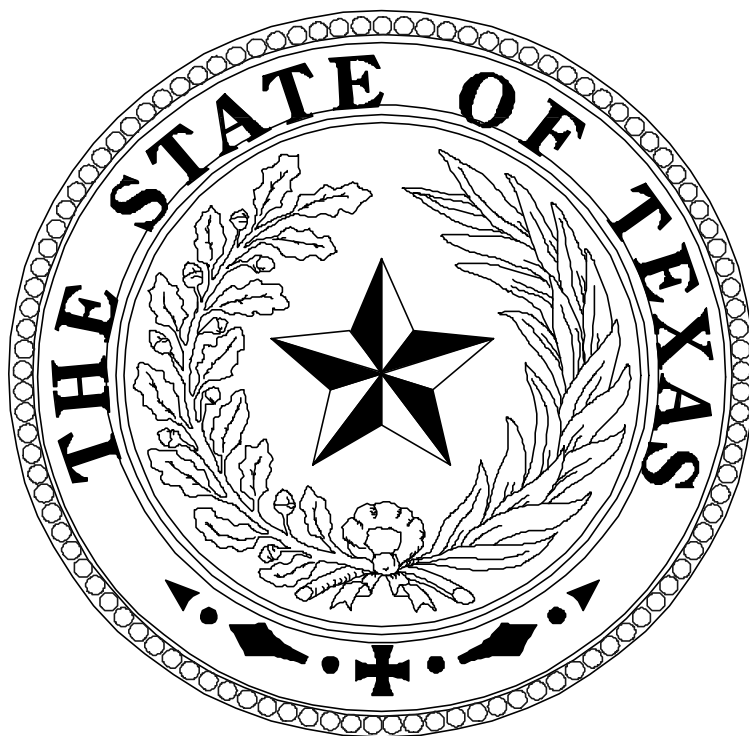


Thursday Morning
March 1, 2001
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTIONS 1 & 2 IN THE GOLDENROD ANSWER BOOK

QUESTION 1

Bob manufactures and sells metal storage containers. In 1997, Bob borrowed \$100,000 for operating capital from his sister, Sue. To secure the loan, Bob signed a security agreement granting to Sue a security interest in “all existing and after-acquired inventory and equipment, including the equipment described on Exhibit A attached hereto.” The items listed on Exhibit A consisted only of the various pieces of machinery that comprised the Supercoat Painting Assembly owned by Bob. At the same time, Bob signed a financing statement which described the collateral as “the items described in the attached Exhibit A,” which was the same list that had been attached to the security agreement. Sue properly filed the financing statement, with Exhibit A attached, in the Office of the Texas Secretary of State.

In 1999, Bob moved his business to a new location and, to cover the cost of the move, he borrowed \$50,000 from Bank. In connection with the move, Bob purchased all new equipment, except that he retained and moved his existing Supercoat Painting Assembly to the new location. To secure the loan, Bob signed a security agreement granting Bank a security interest in “all existing and after-acquired inventory and equipment.” He also signed a financing statement which described the collateral in exactly the same language as it was described in the security agreement. Bank properly filed the financing statement in the Office of the Texas Secretary of State. Bank had searched the public records of UCC filings and had seen Sue’s financing statement, but had not read Exhibit A.

On January 15, 2000, Bob purchased on credit and took possession of a forklift from Carl’s Equipment Company (“Carl’s”). Bob signed a security agreement and a financing statement in favor of Carl’s properly describing the forklift as the collateral. Carl’s properly filed the financing statement in the Office of the Texas Secretary of State on January 25, 2000.

Dave’s Container Co. (“Dave’s”), a competitor of Bob, decided to go out of business and delivered all his unsold containers to Bob’s sales yard to sell under the terms of a valid consignment agreement. There were no signs or other indications that these containers were owned by Dave’s, nor were Bob’s creditors advised of the consignment arrangement, nor did Dave’s file a financing statement in any public office.

To facilitate the handling of his containers, Dave’s allowed Bob to use six carts, which Dave’s intended to keep and use in another business. Bob found the carts so handy that, when Dave’s truck driver came to pick them up, Bob turned over four of them. The driver took the four carts, and Bob kept the other two for his own use.

Bob has now defaulted on all his debts. His business assets consist of:

1. The Supercoat Painting Assembly;
2. The equipment Bob acquired when he moved to his new location in 1999;
3. The unsold inventory of containers manufactured by Bob;
4. The forklift;
5. The unsold containers consigned by Dave’s; and
6. The two carts Bob had kept.

As among Sue, Bank, Carl’s, and Dave’s, which has the superior interest in each of the items listed above? Explain fully.

QUESTION 2

David was the treasurer of Widget, Inc. and was authorized to sign checks on Widget's account at State Bank. David opened an account at National Bank in the name of ABC Co., a non-existent company, and presented National Bank with a fictitious assumed name certificate that showed falsely that he was the sole proprietor of ABC Co. National Bank assumed the certificate was authentic.

David then wrote a check in the amount of \$10,000 payable to ABC Co. drawn on Widget's account at State Bank. He endorsed it and deposited it in the new account at National Bank. The check was paid by State Bank upon presentment.

When he learned of an upcoming outside audit of Widget's books, David decided he should leave town. He withdrew all the funds from the ABC Co. account at National Bank and closed the account.

Before leaving town, David wrote a check for \$700 on Widget's account, payable to State Bank. He used this check to obtain a \$700 cashier's check from State Bank payable to Speedy Moving Company. He gave Speedy the cashier's check in payment for moving his belongings to a distant state. Speedy did not know there was anything unusual about David's payment.

The next day, Widget learned of David's embezzlement and, before Speedy cashed the \$700 cashier's check, Widget requested that State Bank stop payment on the cashier's check.

1. **What rights, if any, does Widget have against State Bank and National Bank to recover the \$10,000 paid on the check to ABC Co.? Explain fully.**

2. **Is State Bank obligated to stop payment on the \$700 cashier's check, and if it does, what liability, if any, does State Bank have to Speedy? Explain fully.**

Answer the next two questions in the GRAY answer book.

ANSWER QUESTIONS 3 & 4 IN THE GRAY ANSWER BOOK

QUESTION 3

In 1997, Joe and Ann Jones built a custom home in San Antonio, Texas. The home was in an area where the exclusive supplier of electrical power was Strong Power & Light Company (“Strong”).

In order to obtain electrical power, the Joneses were required to purchase from Strong an electrical meter box that met Strong’s specifications. Strong connected the electrical lines from the street to the meter box, which was attached to the outside of the house, and then from the meter box into the house. Although the meter box belonged to the Joneses, it was to be maintained by Strong and was sealed to prevent access to the internal wiring board by anyone other than Strong. Strong attached a warning tag to the meter box; the tag stated: “WARNING - Breaking the seal or accessing this meter box other than for maintenance by Strong Power & Light is prohibited.” Strong advertized widely that its services were second to none and that its equipment was maintenance free.

In March 1999, the Joneses moved out of state, where they continue to reside at the present time. They leased their San Antonio home to Happy Schools, Inc., a nationwide nursery school entity which had total assets of approximately sixteen million dollars. Use of the home as a nursery school was a lawful use under the local zoning ordinance.

The last electricity bill paid by the Joneses was for the month of March 1999. Happy Schools contracted with Strong to start up its electrical power in April 1999 and began paying the electricity bills at that time.

In February 2000, an electrical short occurred within the meter box, resulting in a fire that destroyed the Jones’ home and forced Happy Schools to shut down its San Antonio operation. An investigation revealed that Strong had never performed any maintenance on the meter box and that the fire would not have occurred if Strong had inspected and maintained the box.

Do the Joneses and Happy Schools have standing to assert claims against Strong under the Texas Deceptive Trade Practices Act, and, if so, what defenses might Strong reasonably assert against each? Explain fully.

QUESTION 4

In 1998, Bill Good established two separate irrevocable trusts, Trust No. 1 and Trust No. 2. He funded each trust with apartment complexes he owned in Dallas, Texas. Good was the settlor and trustee of both trusts. Each trust contained the following provisions:

- a. The term of each trust was 15 years;
- b. The income from each trust was to be distributed monthly to the beneficiary of that trust;
- c. At the end of the 15-year term, the corpus of each trust was to be transferred to the beneficiary free of the trust;
- d. There was a spendthrift provision that stated: “The beneficiary of this trust is hereby restrained from anticipating, encumbering, alienating, or in any other manner assigning or disposing of his/her interest in either corpus or income of the trust estate and is without power to do so.”
- e. Each trust expressly prohibited the sale or exchange of the trust corpus.

Good was the sole beneficiary of Trust No. 1. Good’s cousin, Sara Williams, was the sole beneficiary of Trust No. 2.

In 1999, a judgment was entered against Good in a suit for personal injuries suffered by plaintiffs in an automobile accident. Also in 1999, a judgment was entered against Williams for personal injuries arising out of a different accident.

- 1. Can plaintiffs in the suit against Good reach the undistributed income and the corpus of Trust No. 1 to satisfy their judgment? Explain fully.**
- 2. Can the plaintiffs in the suit against Williams reach the undistributed income and the corpus in Trust No. 2 to satisfy their judgment? Explain fully.**
- 3. Can Williams, if she wishes to do so, assign the undistributed income or part of the corpus from Trust No. 2 to the plaintiffs to satisfy the judgment in the suit against her? Explain fully.**
- 4. Can the plaintiffs in the suit against Williams reach the income once it has been distributed to Williams? Explain fully.**

Answer the next two questions in the BLUE answer book.

ANSWER QUESTIONS 5 & 6 IN THE BLUE ANSWER BOOK

QUESTION 5

Randy and Sam Hoot want to open a retail store to sell cowboy boots. They want to call the business “Hoot’s Boots.” They have entered into a written agreement that contains the following terms:

- (a) All management decisions must be made jointly by Randy and Sam;
 - (b) Sam will be the sole employee and receive a salary to be agreed upon annually between Randy and Sam;
 - (c) Randy will have no liability for any aspect of the business;
 - (d) Randy will advance \$100,000 as operating capital and will receive the first 5% of the profit from the business each year;
 - (e) Before any profit, other than the first 5% referred to in subpart (d), can be distributed, Randy and Sam must mutually agree whether and how much of the profit is to be distributed and how much is to be retained for use as operating capital; and
 - (f) If Randy and Sam decide to distribute any of the profit, it is to be distributed equally between the two of them.
1. **Do the terms of their agreement prevent Randy and Sam from using any of the following business associations as the legal entity for Hoot’s Boots:**
 - (i) **A general partnership? Explain fully.**
 - (ii) **A limited partnership? Explain fully.**
 - (iii) **An L.L.C.? Explain fully.**
 2. **What steps must Randy and Sam take in order to be able legally to use the name “Hoot’s Boots?” Explain fully.**

QUESTION 6

Goats Are Us, Inc. is a Texas corporation. Its articles of incorporation state: “This corporation is a close corporation.” Goats Are Us sells goat meat, goat milk, and other products processed from goats to the health food inclined public. There are 100 issued and outstanding shares, of which Father owns 90 shares and Daughter owns 10 shares. Daughter is a salaried employee of the corporation.

Goats Are Us has no board of directors and no bylaws, but there is a shareholders’ agreement signed by Father and Daughter that includes all of the provisions the law requires bylaws to contain. That agreement also states: “All financial and business decisions of the corporation shall be made by Father and are reserved exclusively to Father. No person who acquires corporate stock by transfer or assignment shall thereby acquire any right to participate in the management or administration of the corporation.”

To ensure a steady supply of goat products, Father contracted with Tee, a local goatherd, to sell products to the corporation at fixed prices. As part of the consideration, Father conveyed to Tee 50 of Father’s 90 shares in Goats Are Us. Tee had no knowledge of the shareholders’ agreement at the time of the conveyance, and Father said nothing about the restrictions on the shares.

The business is four years old, has earned increased profits each year, and has an earned surplus of \$125,000. At the next legally called shareholders’ meeting, Tee made three motions: (1) that a dividend be declared; (2) that the corporation increase the prices paid for his products by 15% (which is in fact a reasonable price); and (3) that Daughter’s salary be reduced by 20% (which would still in fact be a fair and reasonable salary). Tee voted his 50 shares in favor of his motions, and Father voted his 40 shares against them. Daughter abstained.

Father then moved (1) not to declare a dividend; (2) to increase Daughter’s salary by 20%; and (3) to lower by 15% the prices paid for Tee’s products. Father voted his 40 shares in favor of these motions, and Tee voted his 50 shares against them. Again, Daughter abstained.

- 1. Is it lawful for Goats Are Us to operate without bylaws and without a board of directors? Explain fully.**
- 2. Which set of motions, Father’s or Tee’s, prevail? Explain fully.**
- 3. Do shareholders of a close corporation owe one another any fiduciary duty? Explain fully.**

This concludes the morning portion of the Texas Essay exam.