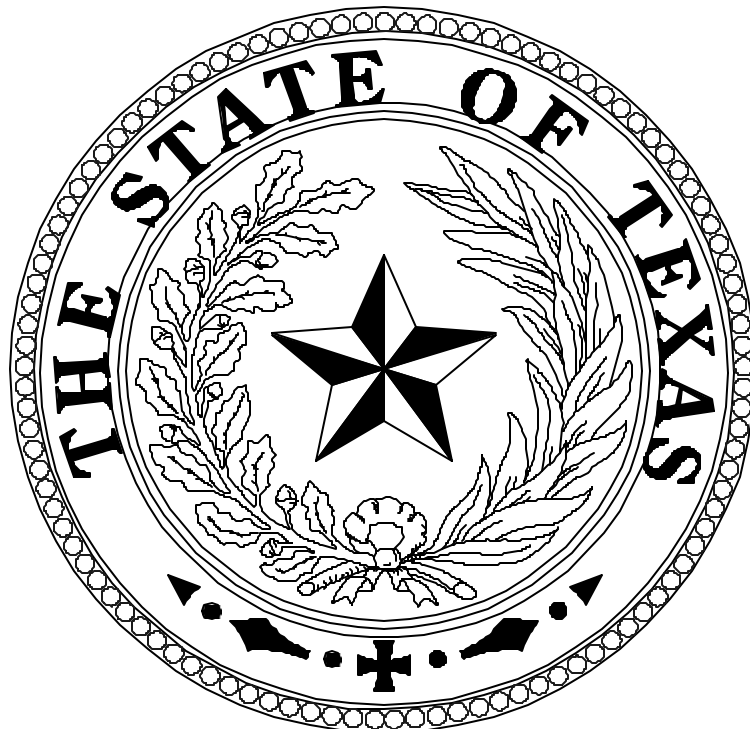


Thursday Afternoon  
March 1, 2001  
Essay Questions 7 - 12



## TEXAS BAR EXAMINATION

# ANSWER QUESTIONS 7 & 8 IN THE RED ANSWER BOOK

## QUESTION 7

On August 13, 1995, Fred Smith, a widower and lifelong resident of Texas, executed a will which stated: "I leave my entire estate to my only son, Paul." The will was signed by Fred and witnessed by his neighbors, Harry and Wanda, who read the will before signing it. The following provision, which was present when Harry and Wanda read and witnessed Fred's will, was typed in below the signatures of Fred and the witnesses on the will:

In the event my son, Paul, predeceases me, my estate shall pass to Paul's descendants, two-thirds to his male descendants and one-third to his female descendants. The term "descendants" for purposes of this my Last Will and Testament shall mean children of Paul and the issue of such children, including such children and issue who are adopted.

Fred placed his handwritten initials and the date, "FS, 8/13/95," alongside this additional provision.

Paul died in September 2000 survived by David, whom Paul had adopted in 1994 when David was 23 years of age, and Melissa, his 20-year-old natural daughter.

Fred died in October 2000 survived by David and Melissa. At his death, his estate was valued at \$3,000,000.

His will cannot be found. The last time it was seen was when Fred had handed the will and his safe deposit key to Melissa and directed her to put the will in his safe deposit box at the bank. Melissa retained the key to Fred's safe deposit box.

**How, if at all, can Fred's 1995 will be proven, and if proven, to whom and in what proportions should Fred's estate be distributed? Explain fully.**

## QUESTION 8

Tim and his wife, Sarah, lifelong residents of Dallas, Texas, had three adult children, Carol, Elliott, and Mary. Carol, Elliott, and Mary each had one child.

In 1992, Tim executed a valid will, in which he left his business to Sarah and a life estate in his interest in his ranch (which was his separate property) to Sarah, with the remainder to Carol, Elliott, and Mary, in equal shares. He left his interests in all his other property to Carol, Elliott, and Mary in equal shares. The will named Elliott as Independent Executor to serve without bond.

In 1997, Elliott pledged his expectancy in Tim's ranch as security for a \$100,000 loan from Lender. Elliott eventually defaulted on the loan, and Lender is still owed \$100,000 plus accrued interest.

Tim died on June 1, 2000. He was survived by Sarah, Carol, Elliott, Mary, and their children. At the time of Tim's death, Elliott was serving a five-year term on a felony conviction.

On December 1, 2000, Carol, Elliott, and Mary jointly signed and notarized the following document and filed it in the Probate Court in Dallas County:

Carol, Elliott, and Mary do hereby each disclaim any and all interest in the property, real or personal or otherwise, which we have been devised or bequeathed by our father, Tim, under his will. By this disclaimer, we each intend to pass all our respective interests in said property to our mother, Sarah.

1. **Does the disclaimer defeat Lender's security interest in Elliott's expectancy in the ranch? Explain fully.**
  
2. **To whom should Tim's estate be distributed? Explain fully.**

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

# ANSWER QUESTIONS 9 & 10 IN THE GREEN ANSWER BOOK

## QUESTION 9

Sue and Jim have been married for 10 years. Jim works for a computer manufacturing company. He maintains a checking account on which Sue is a co-signer for Jim's convenience.

Jim regularly deposits his salary checks into this account and pays the family's household bills from this account. The current balance in Jim's account is \$22,000, which is made up of the following: \$2,000 from Jim's salary and \$20,000 he received in an insurance settlement for injuries in an auto accident (\$10,000 of the settlement was for lost wages, \$5,000 for damage to the car owned by Jim and Sue, and \$5,000 for Jim's pain and suffering).

Sue runs her own business selling vitamins door-to-door for a multi-level marketing organization. She has not incorporated her business. She is paid commissions on her own sales and, in addition, on the sales made by other salespeople she recruits, trains, and supervises. Each of the salespeople she hires is required to advance \$5,000 to cover the cost of training and vitamin samples.

Sue maintains her own business checking account, into which she deposits her commissions and from which she pays her business expenses. The current balance in Sue's account is \$20,000, which is made up of the following: \$5,000 in vitamin sales commissions; \$10,000 she received as a gift from her father to help her start the business; and \$5,000 from a loan Jim made to her from his checking account.

Molly, recruited by Sue, has been unsuccessful as a salesperson. She sues Sue for breach of contract and fraud, claiming that she was inadequately trained and deceived by Sue into putting up her \$5,000.

1. **Does Jim, as Sue's husband, have any personal liability to Molly? Explain fully.**
2. **Which of the components of the two checking accounts can Molly reach to satisfy her judgment if she prevails in her suit on the basis of:**
  - (a) **Breach of contract? Explain fully.**
  - (b) **Fraud? Explain fully.**

## QUESTION 10

Sally, an 18-year-old clerk, worked for ABC Department Store. Quint, age 40, was her boss. They began having an affair, and Sally moved in with Quint. They lived in a large family mansion owned by Quint's wealthy mother, who was in a care facility for the terminally ill.

Sally had no property and earned only minimum wage. Quint earned \$90,000 a year and owned 10% of the stock of ABC Department Store. His stock was worth in excess of \$2,000,000.

Sally became pregnant and began pressing Quint to marry her. Quint wanted to continue his relationship with Sally and was happy at the prospect of becoming a father, but resisted marrying her. Sally persisted, and Quint finally agreed but insisted that he would not marry her unless she signed a premarital agreement. Sally reluctantly agreed. Quint himself prepared and presented Sally with a premarital agreement that contained the following provisions:

- a. The earnings of each spouse shall be that spouse's separate property;
- b. All income from a spouse's separate property shall be that spouse's separate property;
- c. Any inheritance Quint receives from his mother shall be deemed community property;
- d. If Quint and Sally divorce, Sally waives any spousal support;
- e. If Quint and Sally divorce, as child support, Quint shall set up a \$200,000 trust fund for the benefit of any children; and
- f. Sally waives any right to have Quint disclose the nature and extent of his assets.

In fact, Quint did not make any disclosures concerning his assets. Sally studied the agreement carefully and, after several weeks of thinking about it, reluctantly signed it.

They married, and Quint supported Sally and their child. Two years later, Sally filed for divorce. Quint's mother is still alive.

Sally challenges the enforceability of the agreement both in its entirety and as to each of the provisions. She also seeks a temporary order requiring Quint to pay spousal and child support.

- 1. What must Sally prove to have the agreement set aside in its entirety? Explain fully.**
- 2. Discuss whether each provision of the agreement is legally enforceable. Explain fully.**
- 3. If the court finds the agreement enforceable, in whole or in part, may the court nevertheless grant Sally's request for temporary spousal and child support orders during the pendency of the divorce? Explain fully.**

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

# **ANSWER QUESTIONS 11 & 12 IN THE YELLOW ANSWER BOOK**

## **QUESTION 11**

In 1989, Elizabeth signed and acknowledged an instrument intending to convey 100 acres of land she owned in Texas to her daughters, Ashley and Nicole. The instrument Elizabeth executed had blank spaces for the names of the grantees and for description of the land. She handed the instrument to Ashley and told Ashley to insert her name and Nicole's in the blank space for the names and to attach a proper description of the land. No consideration changed hands. Ashley did as instructed and recorded the instrument.

Ashley and Nicole have not agreed between themselves regarding the use or possession of the land. In fact, Nicole has never visited the land.

Each January 1 since 1990, Ashley has made an oral arrangement with Dan leasing the entire 100 acres to Dan on a year-to-year basis, with monthly lease payments. Ashley has used some of the lease money to fence the entire property, drill a water well, build an above the ground water storage tank, and pay the ad valorem taxes. She has kept the balance of the lease money by way of compensation for her services. She has done all this without consulting or obtaining the approval of Nicole. Nicole has never objected but now demands her "share" of the lease money.

Over the period of his exclusive occupancy, Dan has maintained the fences and grazed cattle on the entire property. He also placed a small movable barn on the property. The barn sits on a concrete pad Dan built and is secured to the pad with cables running at angles to concrete anchors Dan sunk in the ground.

On February 1, 2001, a buyer offered a very good price for good title to the 100 acres and its improvements, including the barn and concrete pad Dan built. The buyer insists, however, that she must have possession by June 1, 2001. Dan says he will not vacate the land until December 31, 2001 and that, in any event, he will tear up the concrete pad and take the barn with him.

- 1. Did the instrument given to Ashley by Elizabeth and recorded by Ashley convey good title in the 100 acres to Ashley and Nicole? Explain fully.**
- 2. As between themselves, what are the rights and obligations of Ashley and Nicole as to the use of the land and in the lease payments? Explain fully.**
- 3. What rights, if any, does Dan have to occupy the land until December 31, 2001 and to remove the barn and concrete pad? Explain fully.**

## QUESTION 12

Courtney owned Blackacre, a 200 acre farm in Travis County, Texas. Blackacre was subject to: (1) a valid reservation in a prior recorded deed of an undivided  $\frac{1}{4}$  interest in all oil, gas, and other minerals in favor of Jenny; and (2) a valid 50-foot-wide easement for a railroad right of way, on which a track was built by Railco.

In 1989, Courtney executed a general warranty deed granting, conveying, and warranting Blackacre to Kim. The deed reserved and retained in Courtney an undivided  $\frac{3}{4}$  interest in all oil, gas, and other minerals in or under Blackacre.

In 1997, Railco removed the railroad track and ceased using the railroad right of way.

In 1998, Courtney and Kim leased “all oil, gas, and other minerals in or under Blackacre” to Oilco under an oil and gas lease. The lease gave the owners of the mineral interests a “20% royalty on all oil, gas, and other minerals produced and sold from Blackacre.” The lease did not disclaim or excuse any implied covenants, and it was silent on whether Oilco could use water and gravel found on Blackacre. Neither Jenny nor Railco signed or ratified the lease.

1. **What are Oilco’s implied covenants, if any, to Kim and Courtney? Explain fully.**
2. **Does Railco own any mineral rights under the railroad right of way either before or after it removed the tracks? Explain fully.**
3. **Is Oilco obligated to pay Jenny and Courtney a share of production or royalty for any oil and gas produced and sold from a well on Blackacre and, if so, in what proportions? Explain fully.**
4. **To what extent, if any, is Oilco entitled to use water and gravel found on Blackacre for its oil and gas operations? 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.**