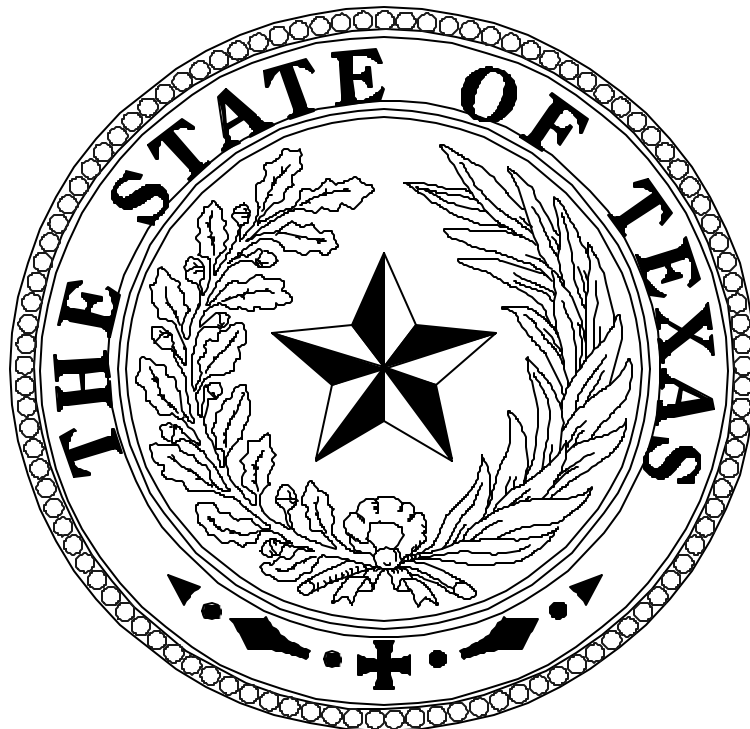


Thursday Afternoon
February 24, 2000
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

QUESTION 7

Tommy Lee, 24 years old, recently suffered severe head and spinal trauma in an automobile accident and is confined to a wheelchair. His cognitive skills have been seriously reduced, and the prognosis for ever regaining them is guarded.

Just before the accident, his grandfather's sizeable estate, consisting of cash, securities, and a 50-acre parcel of valuable land capable of being profitably developed, was distributed to Tommy. It is clear that he is currently incapable of managing the assets, and it is doubtful that he would have been able to do so even before the accident.

Since the accident, Tommy, unable to care for himself, has moved in with his Aunt Sally. Aunt Sally is willing to care for his physical well-being for as long as is necessary. However, she is unwilling to accept the responsibility of managing Tommy's finances, including the estate he inherited from his Grandfather.

Answer the following questions for Aunt Sally:

1. What rights and responsibilities will she have if she is appointed by a court as the guardian of Tommy's person? Explain fully.
2. What options can Aunt Sally invoke under the Probate Code to provide for the management of Tommy's property, and what rights and obligations would inure to the person or entity appointed under each such option? Explain fully.
3. If Tommy were to regain his cognitive skills, what could he do to take over management of his property and what would he have to show in order to achieve that objective? Explain fully.

QUESTION 8

On October 10, 1999, Joe Smith, a sole proprietor, sells at the retail level home irrigation and sprinkling systems. The assets of his business are valued at approximately \$3,000,000. He prides himself on selling state-of-the-art equipment at competitive prices and on complete customer satisfaction.

The regional sales manager of one of Smith's suppliers, Great Grass, Inc. (GGI), initiated a promotional rebate program under which a \$200 rebate would be paid, one-half to the retailer for each GGI system sold and the other one-half to the customer who bought the system. Relying on the rebate program, Smith ordered and received 10 GGI systems for his inventory. He advertised the rebate program to his customers. Harry Bates bought one of the GGI systems from Smith and both of them submitted the paper work necessary for payment of the rebate.

It turns out that, although GGI's head office had authorized its regional manager to initiate the rebate program, GGI had, without advising its customers, conditioned the program upon the regional manager's achieving a certain level of wholesale sales, which he had failed to do. Accordingly, GGI notified Smith and Bates that it would not pay the rebate.

Smith became extremely upset, both because of GGI's refusal to pay the rebate and because of the perceived damage to his reputation. As a result of his being upset, he has developed high blood pressure and has been under doctor's care.

Bates, although not upset with Smith, is angry over the loss of the \$100 he would have received as a rebate. He is especially angry over what he feels was a "sucker" tactic engaged in by GGI, so much so that he has lost sleep and suffered mental anguish that will require medical treatment and psychological counseling.

- (a) What rights, if any, does Smith have against GGI under the DTPA? Explain fully.
- (b) What rights, if any, does Bates have against GGI under the DTPA? Explain fully.
- (c) Assuming Smith and Bates can pursue DTPA claims against GGI, what damages can each recover? Explain fully.

Answer the next two questions in the GREEN answer book.

QUESTION 9

Longhorn, Inc., a Texas corporation, owns a ranch and is in the business of raising cattle. The Articles of Incorporation say that Longhorn's purpose is the "transaction of any and all lawful business." The Articles provide for only one class of shares and place no limits on preemptive rights. Longhorn has issued 100 shares of common stock.

Tom and Mary are the sole officers and shareholders of Longhorn. Tom owns 75 shares, and Mary owns 25 shares.

Walter, a friend of Tom, owns a beef packing plant and is in the business of slaughtering, curing and packing beef. Tom and Walter decide that it is in their interest to combine Longhorn's ranching business with Walter's business. They agree to a plan under which Walter will convey his packing plant and its business to Longhorn and, in return, Longhorn will issue and convey 50 shares to Walter. The value of the 50 newly-issued Longhorn shares is equal to the fair market value of Walter's business and packing plant.

The plan also contemplates that, after issuance of the shares to Walter, Tom and Walter will vote their shares to add Walter to the Board of Directors. Further, once Walter becomes a director, Longhorn will loan Walter \$10,000 at the going market interest rate to be used by Walter to pay for a vacation to South America.

Mary opposes all aspects of Tom and Walter's plan.

Advise Mary on the following questions:

1. Which parts, if any, of the plan proposed by Tom and Walter are ultra vires? Explain fully.
2. What steps, if any, can Mary take as a shareholder to prevent the plan from being implemented? Explain fully.
3. What are "preemptive rights," and does Mary have any preemptive rights if the proposed transaction is consummated? Explain fully.

QUESTION 10

In May 1999, X and Y formed High Rise Rental Company (“High Rise”), a valid Texas general partnership, for the purpose of owning and operating Ozone Towers, a high-rise apartment building. X and Y each contributed equal amounts of cash toward the purchase of Ozone Towers, and an unencumbered fee title to the building was taken in the partnership name. The partnership agreement provided that the partnership was for a term of 10 years. High Rise hired a building superintendent to manage the building.

In June 1999, X borrowed money from Henry to build a lake house. Without Y’s consent, X gave Henry a deed of trust on Ozone Towers as security for the loan. X has defaulted on the loan from Henry, and Henry wants to foreclose on Ozone Towers.

In July 1999, without consulting X, Y gave one half of his partnership interest to his son Charles as a graduation gift. No formal steps were taken to induct Charles into the partnership.

In August 1999, there was a fire in the basement of Ozone Towers caused by faulty maintenance. The contents of a number of the apartments suffered smoke damage, and the tenants were threatening to sue High Rise. Placing blame for the fire on the building superintendent, Charles told the superintendent that his employment was terminated.

Concerned that he would be personally liable to the tenants for the smoke damage, Charles had his interest in High Rise evaluated at \$200,000 by a qualified appraiser. Charles then made a written demand on High Rise that it buy out his interest for \$200,000 cash. High Rise disputes the value assigned by Charles’s appraiser.

1. Does Henry have the right to foreclose his deed of trust on Ozone Towers? Explain fully.
2. Did Charles have the right to terminate the building superintendent’s employment? Explain fully.
3. Does Charles have any personal liability to the tenants? Explain fully.
4. Must High Rise buy out Charles’s interest for \$200,000 in cash? Explain fully.

Answer the next two questions in the YELLOW answer book.

QUESTION 11

Mark and Anne married in 1990 and began living on a 200-acre farm in Hill County, Texas that belonged to Mark's parents. His parents died simultaneously in an automobile accident in 1993. Their joint will, which bequeathed their property to various of their four children, was duly probated. The only bequest to Mark was in the following language: "We leave our farm located in Hill County, Texas to our son, Mark."

In 1998, Mark and Anne decided to build a new home on the farm. Mark signed a writing granting an easement to Electric Co. to construct an electric distribution line from the highway to the site of the new home. Although the specific route to be followed by Electric Co. was not described, Electric Co. built the line along a path that did not substantially affect the use of the property.

Mark entered into a written contract with a builder to build the house. The contract included a mechanic's and materialmen's lien on the property securing a note for construction costs and reciting that the lien was "subject to the easement granted to Electric Co."

A few days later, Mark arranged with Trust Bank to borrow part of the money to cover construction costs and, as part of the documentation securing payment of the loan, Builder assigned the mechanic's and materialmen's lien and the note to Trust Bank.

To obtain the rest of the money, Mark also signed in 1998 a paid-up five-year oil and gas lease to 2C Oil Co. covering the entire 200 acres. The lease contained no express limitations regarding when or where or under what circumstances 2C Oil Co. could drill wells. 2C Oil Co. plans to drill its first well in a place that happens to be within 100 yards of Mark and Anne's new home site.

Just after the building contractor cleared the new home site and sank the holes for the foundation, Mark, at Trust Bank's request, asked Anne to sign the easement, the oil and gas lease, and the Trust Bank loan papers, including the mechanic's and materialmen's lien and note. Anne signed the Trust Bank loan papers, including the mechanic's and materialmen's lien and note, but refused to sign the easement and the oil and gas lease.

1. Was the language used in Mark's parents' will sufficient to devise the 200-acre farm to Mark? Explain fully.

Assume for purposes of the remaining questions that Mark did inherit the farm.

2. Does the mechanic's and materialmen's lien constitute a valid and enforceable lien on the property? Explain fully.
3. Is the easement signed by Mark valid and effective? Explain fully.
4. Is the oil and gas lease signed by Mark valid and effective on the property? Explain fully.
5. Assuming that the oil and gas lease is valid, what are 2C Oil Co.'s rights and obligations regarding the drilling of the well near the house as planned? Explain fully.

QUESTION 12

Leah was trying to sell her house in Texas without involving a real estate broker. She drafted and signed a form of real estate purchase contract that stated the sale price was \$100,000. The contract was silent as to who would bear the risk in case of loss.

The contract provided for execution of a deed by which Leah “grants and conveys” the described property to the buyer, but which made no mention of warranties.

There are restrictions of record on the property in the current chain of title that require that the roof on the house be constructed from wood shingles and that the property be used for residential purposes only. In fact, the house has a metal roof on it. Moreover, because of gradual changes in the character of the neighborhood, the city has changed the zoning from residential to commercial.

Leah gave up trying to sell on her own and contacted Broker. Leah and Broker orally agreed that, if Broker could find a buyer who would purchase the property accepting the contract Leah had drafted, Leah would pay Broker a commission of 6% on the sale.

Broker found Melissa, who signed Leah’s contract, agreeing to buy the house for \$100,000. Leah has not yet delivered to Melissa any written notice of the condition of the property.

1. Will Leah be liable to Broker for the 6% commission? Explain fully.
2. Who bears the loss if the house sustains fire damage before the closing? Explain fully.
3. Is Leah required to give Melissa a written notice of the condition of the property, and, if so, what are the consequences if Leah fails timely to deliver such notice? Explain fully.
4. What warranties, if any, does Leah make to Melissa by executing the deed drafted by Leah? Explain fully.
5. Are the shingle roof and residential use restrictions on the property binding on Melissa if she buys the property? 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.