Thursday Morning
February 24, 2000
Essay Questions 1 - 6

TEXAS BAR EXAMINATION

ANSWER QUESTIONS 1 & 2 IN THE GOLDENROD ANSWER BOOK

QUESTION 1

Al, an attorney in Sealy, Texas, specializes in Probate and Estate Planning.

Several years ago, Al had prepared a valid, duly executed will for his client, Bob. The only three dispositive provisions in that will were as follows:

1. I bequeath to my nephew, Phil, all sums on deposit in my savings account at First National Bank of Sealy.
2. I bequeath $10,000 to each of my employees at my furniture store who, at the time of my death, is still employed at the store and who shall have been employed there for 20 years.
3. I leave the rest, residue, and remainder of my estate to my niece, Connie.

Bob's niece, Connie, is a minor who has been incapacitated since birth. She is represented by George, a court-appointed guardian.

In December 1999, Bob spoke with Al by phone and asked him to prepare a codicil to his will that would take Phil out of the will and leave his savings account at First National Bank of Sealy to his other niece, Nora. Bob also instructed Al to include a provision that would prevent anyone from contesting his will.

In his notes of his conversation with Bob, Al correctly wrote that the savings account to be left to Nora was at First National Bank of Sealy. In typing the codicil, however, Al's secretary erroneously transcribed his notes so that the dispositive provision stated: "I leave to my niece, Nora, all sums on deposit in my savings account at First City Bank of Sealy." The codicil also contained the following no-contest clause: "If any beneficiary of my will or any codicil thereto contests any provision thereof, he or she shall forfeit any legacy under said will or codicil."

Bob duly executed the codicil without noticing the mistake regarding the name of the bank. Bob died in February 2000. At the time of his death, Bob owned two savings accounts: one in First National Bank of Sealy in the amount of $10,000; another in First City Bank of Sealy in the amount of $150,000.

1. Explain whether or not the provision in Bob's will regarding his employees is valid under Texas law, and give reasons for your answer.

2. George, as Connie's guardian, requests your advice as to Connie's rights as a residuary beneficiary under Bob's will regarding the mistaken bequest to Nora, and the no contest clause in Bob's will. Explain fully.

QUESTION 2

Tom and Susan married in 1960. At the time of their marriage, Susan had one child from a previous marriage, and Tom had two children from a previous marriage. Four additional children were born to them during their marriage.

In 1991, Betty, the oldest child of the marriage of Tom and Susan, had a child, Charles, born out of wedlock. Tom and Susan adopted Charles.

Tom died without a will on July 15, 1999. Susan died without a will 72 hours later on July 18, 1999. Their property consisted of the following: a home Tom and Susan had purchased with their earnings during their marriage; Tom and Susan had a joint bank account with a right of survivorship in each in the total amount of $100,000 they had accumulated from their earnings during their marriage; and a $200,000 life insurance policy Tom had purchased on his life, naming Susan as the beneficiary.

Tom and Susan are survived by Charles and all their children, including the ones from their previous marriages.

To whom and in what proportions should the estates of Tom and Susan be distributed? Explain fully.

Answer the next two questions in the GRAY answer book.

ANSWER QUESTIONS 3 & 4 IN THE GRAY ANSWER BOOK

QUESTION 3

In December 1998, Minnie decided to settle her accounts and write her year-end checks, all drawn on Local Bank. Among the checks she wrote, dated and mailed on December 30, 1998 were the following: two checks to her physician, Dr. Dan, one to cover a bill for $1,000 and another to cover a separate bill for $500; and a check in the amount of $5,000 as a gift to her nephew, Neal.

Minnie's check for $1,000 arrived on the day Dr. Dan's regular assistant was leaving on vacation. Dr. Dan endorsed the check by signing his name on the back, and put the check on his assistant's desk at the end of the day. Minnie's check for $500 arrived the next day and was received by Tammy, a temporary employee Dr. Dan had hired from Agency, the temporary employment agency he had used with satisfactory results for several years.

Tammy, who was short on funds, took the two checks. She forged Dr. Dan's endorsement on the one for $500. She cashed both checks at Easy Street Bank, where she sometimes maintained an account, and left town. The checks were paid to Easy Street Bank upon presentation to Local Bank.

Neal received Minnie's $5,000 check but misplaced it and forgot to thank her for it. Minnie, upset that her generosity had been ignored, phoned the manager at Local Bank in September 1999, described the check by telling the manager the amount, date, check number and payee, and told him to stop payment on it. She never confirmed her instructions in writing.

In December 1999, Neal found the check while cleaning out his desk. He endorsed it and gave it to Travco, a travel agency, in payment for a Caribbean cruise he had booked through Travco. Travco endorsed and deposited the check in its account at National Bank, which paid the check and presented it to Local Bank for payment.

The manager of Local Bank recalled the phone call from Minnie, who is a valued customer of Local Bank. At the time the $5,000 check was presented to Local Bank, Minnie's checking account balance was $3,000, although she had other deposits at Local Bank totaling $200,000 from which Local Bank could, at its option, cover the difference.

1. What remedies, if any, are available under the UCC to Dr. Dan against Easy Street Bank and what defenses, if any, might Easy Street Bank reasonably assert? Explain.

2. On what bases, if any, might Local Bank assert that it is not obligated to pay the $5,000 check? Explain.

3. What liability, if any, does Local Bank have to Minnie if it pays the $5,000 check? Explain.

QUESTION 4

In late 1997, Dale Money started a tax and financial services business in Dallas, Texas. He entered into the following transactions.

On February 1, 1998, Supply Hut sold and delivered to Money a copier and telephone system on credit. Although Money was supposed to sign and return a security agreement granting to Supply Hut a security interest in the equipment, he failed to do so and Supply Hut never followed up on it.

On April 15, 1998, Money obtained a $200,000 line of credit from RiverBank for working capital. As collateral for the line of credit and all future advances, Money signed a security agreement granting RiverBank a security interest in all his currently owned and after-acquired equipment, inventory, accounts receivable, and a negotiable $100,000 promissory note from his father-in-law made payable to the order of Money. The note was kept in the safe in Money's office. Also, on April 15, 1998, RiverBank filed financing statements in all the required public offices.

On June 1, 1998, OfficeCo sold on credit and delivered to Money office furniture valued at $15,000. Money signed a note and a security agreement granting to OfficeCo a security interest in the furniture. OfficeCo filed financing statements in all the required public offices but did not do so until July 3, 1998.

On May 15, 1999, GoodBuy sold on credit and delivered to Money five sophisticated desktop computers for use in Money's office, and two laptop computers which, known to GoodBuy, Money purchased for use by his family at home. The total purchase price was $20,000, for which Money signed a promissory note and a security agreement granting to GoodBuy a security interest in the five desktop computers, the two laptop computers, and Money's accounts receivable. On June 3, 1999, GoodBuy filed financing statements in all the required public offices. On June 15, concluding that he had bought more sophisticated desktop computers than he needed for his office, Money sold two of them to ReCompute. He did not tell GoodBuy he had sold them nor did he tell ReCompute about GoodBuy's security interest in them.

In December 1999, Money removed the $100,000 promissory note from his office safe and sold it at a discount to Ted, a good faith purchaser for value.

In February 2000, Money ceased doing business and defaulted on all his debts.

As among RiverBank, Supply Hut, OfficeCo, GoodBuy, ReCompute, and Ted, who holds the superior interests in the following items of collateral:

1. The equipment (copier and telephone system, desktop computers) and laptop computers? Explain.

2. The office furniture? Explain.

3. The accounts receivable? Explain.

4. The $100,000 promissory note? Explain.

Answer the next two questions in the BLUE answer book.

ANSWER QUESTIONS 5 & 6 IN THE BLUE ANSWER BOOK

QUESTION 5

During the one-year marriage of Father and Mother, Mother gave birth to Child. The marriage ended in divorce. In the decree, Mother was named managing conservator of Child, and Father was named possessory conservator. As a result of Father's failure to pay child support for several years, Mother went to court and had Father's parent-child relationship terminated.

Mother has never remarried but has been cohabiting with Boyfriend. Mother has been very lax in supervising Child's behavior. From time to time, Boyfriend, without objection from Mother, has disciplined Child by "spanking" him.

On one recent occasion, Child, now eight years old, was playing with matches. He accidentally started a grass fire which spread and burned down a neighbor's garage. To teach Child a lesson, Boyfriend beat Child with a metal-studded leather belt, leaving welts and breaking the skin in one place on Child's back. Mother made no effort to stop the beating.

At school the next day, the school nurse, Nurse, noticed blood on the back of Child's shirt and, when she examined him further, she saw the welts. Child told her he had scratched his back while wrestling with one of his friends. Nurse, suspicious of Child's explanation, sent Child to the school psychologist, Psychologist. She also called Mother, who told her that she had disciplined Child for misbehaving, that it was none of the school's business, and that she would sue Nurse if Nurse told anyone about it.

After some counseling, Child agreed to tell Psychologist what had happened on condition that Psychologist not tell anyone else. Child told her that Boyfriend did not like Child, that Boyfriend had whipped him several times, this time with a steel-studded belt, and that Mother did nothing to stop Boyfriend.

After school that day, Child went to the home of his paternal grandmother, Grandmother. When Grandmother saw Child's injuries, she phoned Mother and told her she was going to do something to "take Child away" from Mother unless Mother "kicked that bum Boyfriend out" and started paying some attention to Child. Mother told Grandmother to mind her own business and that, if she tried anything, she would never see Child again. Grandmother was not mentioned in Mother and Father's divorce decree.

1. Under the circumstances:
   (a) What actions are Nurse and Psychologist obligated to take?
   (b) What are the consequences if they fail to take such actions?
   (c) What rights, if any, does Mother have against Nurse and Psychologist if they do take such action? Explain fully.

2. What rights, if any, does Grandmother have if she decides to try to "take Child away" from Mother or at least ensure that Mother does not prevent her from continuing to see Child? Explain fully.

3. What liability, if any, does Mother have to the neighbor whose garage burned down? Explain fully.

QUESTION 6

John began working as an art professor at a Texas university in 1980. In 1985, he and Sally, one of his art students, began living together. Sally dropped out of school and never earned a degree.

In 1986, John and Sally moved into a house John had purchased for $100,000. Title stood in John's name, the $20,000 down payment was paid from money he had saved from his university earnings, and John was the sole signatory on a mortgage for the balance. All mortgage payments were automatically deducted from John's university paycheck. John and Sally married in 1990.

In 1998, John accepted a two-year visiting professorship in Cairo, Egypt. In March 1998, John and Sally sold the house in Texas and moved to Cairo, planning to return to Texas after completion of John's Cairo visitation. Before leaving, they opened a joint savings account in a Texas credit union with the $115,000 net proceeds from the sale of the house.

In June 1999, Sally left Egypt to spend the summer with her parents in Kansas. While there, she had a medical checkup and learned that she had contracted a sexually transmitted herpes virus. When she told John, he admitted that he had contracted the virus from a woman with whom he had been having an affair in Egypt and that he had not told Sally because he feared she would divorce him.

Sally told John she was going to do exactly that and that she was never going back to Texas. However, Sally never filed for divorce. She is now living with her parents in Kansas.

In January 2000, John returned to Texas and resumed his duties at the university in Texas. John's salary is now $65,000 a year. The only items of property at issue are the credit union joint savings account, which, with accumulated interest, now has a balance of $120,000, and John's university pension.

1. If John files suit in Texas in February 2000 and Sally is properly served with process but fails to appear, will the Texas court have jurisdiction to grant a divorce and order a division of marital property binding on Sally? Explain fully.

2. Excluding any consideration of spousal support, what rights do John and Sally each have in the property at issue, and what arguments might each of them reasonably make to maximize his or her share of that property? Explain fully.

3. Excluding any consideration of spousal support, what claim, if any, can Sally assert in the divorce action to recover money in addition to a share of the community property? Explain fully.

4. What difference, if any, will it make in the division of John's university pension whether it is a defined benefit or a defined contribution plan? Explain fully.

This concludes the morning portion of the Texas Essay exam.