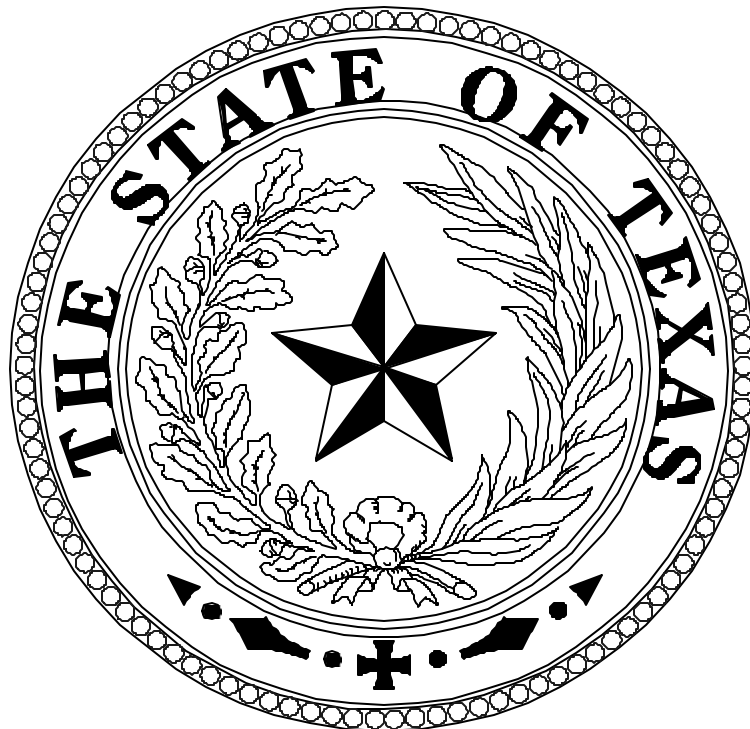


Thursday Afternoon  
July 27, 2000  
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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**QUESTION 7**

Daddy Warbucks is the sole officer, director, and shareholder of Cars Are Us, Inc., a duly formed and operating Texas corporation. Cars Are Us specializes in buying and selling rare automobiles.

Cars Are Us inadvertently failed to pay its Texas franchise tax, and its right to do business was forfeited on May 1, 2000. On June 1, 2000, when Warbucks realized the oversight, he paid the tax, and the right of Cars Are Us to do business was reinstated as of June 1.

On May 10, Warbucks had learned that Dealer owned a very rare Rolls automobile that he was trying to sell. Warbucks was interested in acquiring the Rolls for Cars Are Us but was concerned that, if Dealer knew that Cars Are Us was the buyer, Dealer would inflate the price.

Warbucks asked Annie to present herself to Dealer as the buyer without telling Dealer she was acting for Cars Are Us. Warbucks said Cars Are Us would give her the money to pay for the Rolls. Annie is a minor.

In order to pass herself off as an adult, Annie went to Dealer's showroom on May 12, 2000 wearing clothing and make-up that made her look older. Although Dealer did not ask her, Annie told Dealer she was twenty-one. As far as Dealer knew, Annie was buying the Rolls for herself, and Annie did not tell him otherwise. As instructed by Warbucks, Annie signed a contract agreeing to buy the Rolls.

On May 16, 2000, Warbucks changed his mind, told Annie that Cars Are Us no longer wanted the Rolls, and refused to give her the money to pay for it. Consequently, Annie told Dealer she would not honor the contract to buy the Rolls. Dealer later found out that Annie had been acting on behalf of Cars Are Us.

**What are Dealer's rights, if any, to recover for breach of contract against:**

- 1. Annie? Explain fully.**
- 2. Cars Are Us, Inc.? Explain fully.**
- 3. Warbucks? Explain fully.**

## QUESTION 8

Art, Ben, and Cal formed Land Venture Associates (“LVA”), a general partnership, for the express purpose of building and selling an office building on land they had acquired and transferred to LVA. The partnership agreement contained the following terms: Art, Ben, and Cal each agree to contribute \$300,000 to the partnership capital account; Art agrees to provide LVA with all architectural services in connection with the project; Ben agrees to furnish all accounting services; Cal agrees to furnish all marketing services; and the death of a partner is not an event of dissolution.

Within a few days after LVA was formed and after the partners had made their capital contributions, but before any of the money had been spent, Art announces to Ben and Cal that he wishes to withdraw. He says he believes the project is too speculative and that he will not perform the architectural services. He also demands that his \$300,000 capital contribution be refunded. LVA refuses Art’s demand for an immediate refund.

Art files suit against LVA seeking to force an immediate refund of his \$300,000 capital contribution. Ben and Cal are not named as parties to the suit. LVA, having determined that it will cost \$150,000 to obtain the architectural services necessary to carry out the project, files a counterclaim against Art for that amount.

As the litigation progresses, Art and LVA reach a tentative settlement agreement. While the lawyers are still working on the settlement papers, Ben dies with a valid will that leaves all his property to his widow, Doris. Doris does not agree with the terms of the settlement agreement and insists that LVA continue the litigation with Art.

- 1. Is LVA liable to Art for the immediate return of his \$300,000 capital contribution? Explain fully.**
- 2. Is Art liable to LVA for the \$150,000 cost of replacing his architectural services? Explain fully.**
- 3. May Cal proceed with the settlement agreement despite Doris’ opposition to it? Explain fully.**

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

**QUESTION 9**

Abe owned in fee simple 10 acres of land adjoining the municipal airport in the City of Austin, Texas. He owned no other land. In 1993, Abe wrote on a blank piece of paper only the following words:

I hereby convey to Bob the southernmost two acres of the 10 acres I own adjacent to the municipal airport in Austin, Texas; provided, however, that I reserve for my own benefit and for the benefit of Clay, who owns the adjoining tract on the south, a 20-foot-wide right of way easement along the southern boundary of the two acres conveyed hereby.

/s/ (Abe's signature)

Abe delivered the paper to Bob, who paid no consideration.

Bob promptly took the paper to the Travis County Clerk for recordation and tendered a check in the amount of the usual fee for recording a deed. The Clerk refused to record the document.

Bob made no further attempt to record the paper. Bob did nothing on the southernmost two acres described in the paper other than mow the grass twice. Occasionally, Clay would travel along the 20-foot strip mentioned in Bob's paper to get to and from his adjoining property, but he did nothing to formalize the right of way easement. Abe never used the 20-foot strip after 1993.

In 1994, Abe sold his land to the City of Austin for a considerable sum of money and duly executed and delivered a quitclaim deed to the City. In the deed, which had been prepared by the City, Abe conveyed "all my right, title, and interest" in the 10-acre tract, which was accurately described by metes and bounds in the quitclaim deed.

The City did not know about the paper Abe had delivered to Bob in 1993. The City paved the property and has exclusively used and claimed ownership of the entire 10 acres for public airport parking lot purposes since its acquisition in 1994.

In June 2000, Abe, Bob, and Clay filed suit against the City claiming various interests in part of the 10 acres and seeking an injunction and damages against the City.

- 1. Was the 1993 paper signed by Abe effective as a deed to the two southernmost acres of the 10-acre parcel? Explain fully.**
- 2. Did the Travis County Clerk properly refuse to record the paper Bob presented for recordation? Explain fully.**
- 3. Assuming the 1993 paper was valid as a deed, what rights, if any, do Abe, Bob, Clay, and the City of Austin have in the 10-acre parcel or any part of it? Explain fully.**
- 4. What cross-claims or alternative pleas should the City of Austin assert in order to remain in possession of the entire 10-acre parcel during the pendency of the lawsuit? Explain fully.**

## QUESTION 10

Father owned title to a 200-acre parcel of land in Texas, subject to a life estate in favor of Grandmother, who lives on the 200 acres. The land is worth about \$500 per acre.

Father conveyed fee simple title in the 200 acres to Son and Daughter by deed subject to Grandmother's life estate. In the deed, Father expressly reserved: (i) a one-tenth interest in all oil and gas in and under and that may be produced from the land; and (ii) an option for himself and his heirs and assigns to repurchase for \$2000, "50 acres out of the 200 acres" conveyed, exercisable at any time in the future.

Son and Grandmother negotiated and executed an oil and gas lease on the 200 acres with Oil Co. The lease, among other provisions, provided for a 20% landowner royalty from proceeds of oil or gas production from the land without deduction for any drilling, completion, producing, or marketing expenses. Father and Daughter refused to sign the lease.

No oil, gas, or other minerals had ever before been produced from the 20 acres. Oil Co. drilled and completed a well that began producing 5,000 barrels of oil each month. Father then gave notice to Son and Daughter that he was exercising his option to repurchase 50 acres of the land and tendered \$2000 in cash. Son and Daughter rejected the tender and refused to convey any land back to Father.

Oil Co. presented a division order providing for payment of Father and Daughter's share of oil proceeds after deduction of their share of marketing expenses. Daughter promptly sent a letter to Oil Co. ratifying the lease and signed the division order. Father refused to ratify the lease or to sign the division order.

- 1. If Father sues to enforce his option to repurchase 50 acres of the 200 acres, will he be likely to prevail? Explain fully.**
- 2. Can Father or Daughter successfully challenge Oil Co.'s right to continue to produce oil from the land on the ground that Father or Daughter did not sign the lease? Explain fully.**
- 3. Assume that the oil and gas lease is valid and that Father's option to repurchase is invalid. What rights, if any, do Grandmother, Father, and Daughter each have to the oil that is being produced by Oil Co. or the royalties due thereon, and, what obligations, if any, do such parties have concerning payment of drilling, completion, producing and marketing expenses? Explain fully.**

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

QUESTION 11

Trustee, a private individual, is the sole trustee of an express trust that is governed by the Texas Trust Code. Ben, 25 years old, is the beneficiary of the trust.

Among the items of the trust property is a large and valuable collection of gold coins, which comprises one-fourth of the value of the trust. Under the terms of the trust, Trustee is directed to preserve the coin collection intact and turn it over to Ben when Ben reaches age 30.

For two years, Trustee has kept the coin collection in a locked safe in his office, and his office is equipped with a silent alarm system. Trustee would periodically monitor the value of the coins and report the ever-increasing value to Ben. Ben always told Trustee that he liked the fact that the coins were in Trustee's office because it was convenient for him occasionally to visit Trustee's office, take the coins out of the safe, examine and admire them, and then return them to the safe.

During a widespread late-night power failure that disabled Trustee's alarm system, thieves broke into Trustee's office, forced open the safe, and stole the entire coin collection. Trustee held off telling Ben about the theft, hoping the police would recover the coins. Ben found out about six months later on one of his occasional visits to inspect the coins.

The balance of the trust property consists of over 50 residential rental properties. Trustee has carried out his duties as trustee, to advertise and rent the properties, maintain them and oversee repairs, and pay the rents, net of expenses, to Ben.

One of the properties was a house rented to Renter. A fire resulted from some undetectable faulty wiring inside one of the walls at Renter's house. Renter, who was not at fault, lost all her personal belongings in the fire. Renter sued Trustee and Ben to recover her losses.

- 1. What claims of breach of fiduciary duty and liability can Ben assert against Trustee relating to the loss of the coin collection, what defenses should Trustee raise, and what is the likely result on each claim and defense? Explain fully.**
- 2. On what theory, if any, may Renter sue to recover her damages against Ben and/or Trustee, what defenses should Ben and Trustee raise in Renter's suit, and what is the likely result? Explain fully.**
- 3. What rights, if any, does Trustee have against the trust to recover any expenses incurred in the litigation commenced by Renter? Explain fully.**

## QUESTION 12

In 1997, Byer inspected a model home in the Country Estates subdivision on the outskirts of Kerrville, Texas. The developer of the subdivision and builder of the homes was Great Homes Corporation (“GHC”).

Among the brochures handed to Byer at the model home was one promoting a state of the art security and fire warning system available as an “extra” to purchasers of the homes. The security and fire system and all its components were manufactured by Protective Products, Inc. (“PPI”). The brochure contained a statement that, “The foolproof sensing devices, which are the central feature of the PPI system, are placed in strategic locations throughout the house and instantaneously set off a silent alarm notifying the police and fire departments in case of a fire or intrusion.”

The brochure was published by PPI as a means of marketing the system and was handed to Byer at the model home by a representative of GHC.

PPI had undertaken a concerted marketing campaign, emphasizing the effectiveness of the sensing devices. PPI's marketing campaign induced GHC to promote the PPI system as the exclusive security and fire system to be offered by GHC as an “extra” to be installed in the Country Estates subdivision at the option of purchasers of the homes.

Byer contracted to purchase one of the Country Estates homes yet to be built. Convinced by what she had seen in the brochure, she ordered the PPI system to be installed in the house. The availability of the system was a significant inducement to her in deciding to buy the house.

Byer eventually moved into the house. In March 2000, while Byer was away, a fire broke out and destroyed the house and its contents, resulting in \$200,000 fire damage. Later inspection revealed that the fire sensing devices had failed to activate the alarm. It was determined that, if the alarm had been activated, the firefighters could have responded in time to limit the damage to about \$5,000.

It was also later determined that the failure occurred because the extreme Texas summer heat had caused the sensing devices to crack and not function as designed. There is some evidence that pre-production tests of the sensing devices at PPI's manufacturing plant had indicated that such a problem might occur.

- 1. What rights and remedies, if any, does Byer have under the Texas Deceptive Trade Practices Act against:**
  - a) Great Homes Corporation? Explain fully.**
  - b) Protective Products, Inc.? Explain fully.**
- 2. What rights and remedies, if any, does Great Homes Corporation have against Protective Products, Inc. under the Texas Deceptive Trade Practices Act? 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.**