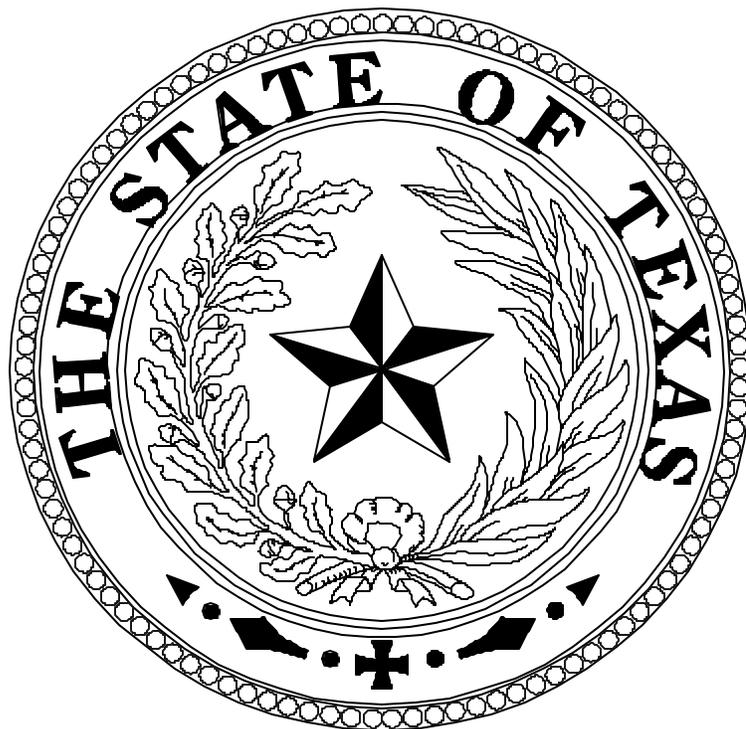


Thursday Morning
July 27, 2000
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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QUESTION 1

Hal and Wanda have been married for eleven years. Hal is a 38-year-old high school graduate working for a building contractor as a heavy equipment operator. Hal earns \$42,000 a year and has the usual fringe benefits, including health coverage and an employer-funded retirement plan.

Wanda is 37 years old. She did not graduate from high school and, except for a brief period of employment in a clerical job before the birth of her first child 16 years ago, she has never been employed. She possesses no particular skills that would make her employable except in minimum wage jobs.

Hal and Wanda have one child of their marriage, aged 4. Wanda is the managing conservator of her two children, aged 12 and 16, from a prior marriage. She receives \$1,000 per month in child support from her ex-husband. Hal and Wanda agreed at the time they married that Wanda would stay home, keep house, and care for the children.

Hal and Wanda rent their home. Their property consists of the following: two automobiles encumbered by outstanding loans, the balances of which are roughly equal to the values of the vehicles; household furnishings; Hal's interest in his employer's retirement plan; \$4,500 in savings; and \$800 in a checking account. They owe about \$4,000 in credit card debt.

Six months ago, Hal began having an extra-marital affair with another woman and moved out of the marital home to live with the other woman. Since Hal moved out, Wanda has made no effort to get a job, but, to enhance her employability, she has entered an adult education program aimed at obtaining a high school diploma.

Wanda has filed for divorce and is seeking, among other things, an award of spousal maintenance.

- 1. Is Wanda eligible for spousal maintenance? Explain fully.**
- 2. Assuming that Wanda is entitled to spousal maintenance, what relevant statutory factors would the court consider in determining the duration and amount of an award of spousal maintenance? Explain fully.**
- 3. What events or circumstances would cause an award of spousal maintenance to be diminished, increased, or terminated? Explain fully.**

QUESTION 2

In 1992, Mother and Father met in Dallas, Texas and began dating. Mother became pregnant. Father was thereafter transferred by his employer to Chicago, Illinois and Mother followed him there. They were married in Chicago, and a few months later Mother gave birth to Child.

Mother and Father continued to live in Chicago. Each year during the holiday season, they would return with Child to Dallas and spend two weeks visiting their friends and family.

In 1996, Mother and Father divorced in an action brought in the court in Illinois. In the divorce, Mother was named managing conservator of Child, and Father was named possessory conservator and required to pay child support. Mother immediately moved back to Dallas. Father continued to live in Chicago. Each year after the divorce, Father returned to Dallas at Christmas and again during the summer to take Child back to Chicago for the periods of possession granted in the divorce decree.

To enforce collection of Father's child support payments, the Illinois court issued an income withholding order that was served on Father's employer, who regularly withheld the payments and remitted them to the appropriate agency in the State of Illinois. The Illinois agency forwarded the payments to Mother.

In December 1999, Father lost his job. He moved from Chicago to Milwaukee, Wisconsin, where he now resides and where, in January 2000, he obtained a new job. His new job pays a lower salary. He has not made any child support payments since December 1999. He still intends, however, to exercise his rights to take possession of Child during the periods set out in the Illinois divorce decree.

All three states (Illinois, Wisconsin, and Texas) have adopted the Uniform Interstate Family Support Act.

- 1. What procedures are available to Mother to enforce future payments under the child support order? Explain fully.**
- 2. Does a Texas court have jurisdiction to collect the arrearages sought by Mother? Explain fully.**
- 3. In which jurisdiction(s) can Mother attempt to have the support order modified? Explain fully.**

Answer the next two questions in the GRAY answer book.

ANSWER QUESTIONS 3 & 4 IN THE GRAY ANSWER BOOK

QUESTION 3

Constructor, Inc. is in the business of building custom homes. On March 1, 1995, Constructor obtained from Texas Bank a \$500,000 line of credit upon which he could draw for working capital. Constructor signed a security agreement granting Texas Bank a security interest in all of Constructor's currently-owned and after-acquired equipment, inventory and accounts receivable. The security agreement contained a clause reciting that it covered future advances made on the line of credit. Texas Bank properly filed financing statements in all the required public offices.

Most of the time after March 1995, the outstanding balance on the Texas Bank line of credit, taking into account periodic payments by Constructor and advances by Texas Bank, was about \$200,000.

In June 1998, Lumberjack sold Constructor \$90,000 worth of lumber on credit. The lumber became part of Constructor's inventory for use in the construction of homes in the Houston area. Constructor signed a security agreement granting to Lumberjack a security interest in the lumber and proceeds thereof. Lumberjack filed financing statements in the Harris County Clerk's office only. A few days before delivering the lumber to Constructor, Lumberjack delivered a letter to Texas Bank, describing the lumber, and advising Texas Bank that Lumberjack had sold the lumber to Constructor and was taking a security interest in the lumber to secure payment of the purchase price. Texas Bank received the letter but did not respond to it.

- 1. Which creditor, as between Texas Bank and Lumberjack, has a superior security interest in the lumber sold to Constructor by Lumberjack? Explain fully.**

In July 1999, Constructor purchased two items of earth moving equipment from Mark: a grader and a bulldozer. The grader was purchased on credit extended by Mark, and Constructor signed a security agreement granting to Mark a security interest in the grader. Mark filed financing statements in all the required public offices.

The bulldozer was paid for with an advance from the 1995 Texas Bank line of credit.

In September 1999, Constructor sold the grader and the bulldozer to Odd Job Contractors, a company unrelated to Constructor.

- 2. If Constructor fails to pay Mark and defaults on its payments to Texas Bank, what rights, if any, do Mark and Texas Bank each have to repossess the grader and the bulldozer from Odd Job Contractors? Explain fully.**

On October 1, 1999, another bank, Houston Bank, extended to Constructor a \$500,000 line of credit. Constructor signed a security agreement granting to Houston Bank a security interest in terms identical to those contained in Texas Bank's 1995 security agreement. Houston Bank properly filed financing statements in all the required public offices.

On October 2, 1999, Constructor paid off its running balance on its 1995 line of credit with Texas Bank. The Texas Bank line of credit remained open with a zero balance. On October 3, 1999, Houston Bank advanced \$200,000 to Constructor on its new line of credit. Houston Bank failed to obtain a release of Texas Bank's security interest.

- 3. Which creditor, as between Texas Bank and Houston Bank, has the superior security interest in Constructor's equipment, inventory, and accounts? Explain fully.**

Question 3 continues on the next page.

In December 1999, Constructor paid off Houston Bank and obtained a release of Houston Bank's security interest. In February 2000, Texas Bank advanced Constructor \$495,000 on the original 1995 line of credit.

In July 2000, Constructor borrowed \$100,000 from still another bank, Dallas Bank, and signed a security agreement granting to Dallas Bank a security interest in terms identical to those in the 1995 Texas Bank security agreement. Dallas Bank also properly filed financing statements in the required public offices.

- 4. Which creditor, as between Texas Bank and Dallas Bank, presently has the superior security interest in Constructor's equipment, inventory, and accounts, and what, if anything, could the bank with the inferior position have done to achieve a superior priority position? Explain fully.**

QUESTION 4

In August, 1999, Nan, Dr. Good's trusted office assistant of 15 years, eloped with her fiancé, Dan, and left town without notice. Nan took with her two pads of checks, one on Dr. Good's business checking account at Town Bank and the other on Dr. Good's personal account, also at Town Bank.

On their extended honeymoon, Nan and Dan began writing checks on Dr. Good's accounts. Nan wrote checks on Dr. Good's business account, forging his signature on two checks, one on September 7, for \$500, and the other on September 30, for \$800. She received cash for the checks at Seaside Bank, and the checks were paid by Town Bank and charged to Dr. Good's business account upon presentation by Seaside Bank. The forgeries would have been obvious if Town Bank had compared each signature with the one on the bank's official signature card, but it was Town Bank's practice, in keeping with industry standards, not to compare signatures on checks in amounts less than \$1,000.

The September 7 check was listed on Dr. Good's business account statement, which he received on September 24 but which he failed to review. He received his next business account statement on October 25, on which the forged September 30 check was listed. Dr. Good noticed the forged September 30 check and, in looking back, also noticed the forged September 7 check shown on the prior statement. He then realized that an entire pad of checks was missing.

On October 25, Dr. Good immediately called Town Bank, reported the forgeries, and demanded that Town Bank credit his account with the amounts of the forged checks. Dr. Good also delivered to Town Bank a written stop payment order on all the checks on the missing pad of business account checks.

Dr. Good then realized that a pad of checks on his personal checking account was also missing but found no forgeries among checks listed on the statements on his personal account. On October 28, he called Town Bank to report the missing pad of checks and told the bank officer that he wanted to stop payment on all checks on that pad as well.

The bank officer assured Dr. Good that he would personally take care of ensuring that no checks written on the personal account from the missing pad would be paid and told him that there was no need for Dr. Good to send a written stop payment order. Accordingly, Dr. Good did not send a written stop payment order on the personal account checks.

On October 30, Nan forged another business account check in the amount of \$300. She cashed it at Ocean Bank, and it was paid by Town Bank upon presentation by Ocean Bank on November 1.

On November 1, Dan wrote a check for \$600, forging Dr. Good's signature on one of the checks on Dr. Good's personal account. It, too, was cashed at Ocean Bank and paid by Town Bank upon presentation on November 2.

What liability, if any, does Town Bank have to Dr. Good on:

- 1. The September 7 business account check for \$500? Explain fully.**
- 2. The September 30 business account check for \$800? Explain fully.**
- 3. The October 30 business account check for \$300? Explain fully.**
- 4. The November 1 personal account check for \$600? Explain fully.**

Answer the next two questions in the BLUE answer book.

ANSWER QUESTIONS 5 & 6 IN THE BLUE ANSWER BOOK

QUESTION 5

In 1979, Arlene, 18 years old and unmarried, had just inherited a substantial portfolio of stocks and bonds from her father. At that time, she signed a valid typewritten will in which the only dispositive provision was the following bequest: "I leave to my older brother, Bill, all stocks and bonds that I inherited from my father and that are still in my estate at the time of my death."

Arlene signed the will in the presence of Bill and a friend, Jim. At Arlene's request, Bill and Jim signed as witnesses. The will was not self-proved.

Arlene married Carl in 1989. In 1990, Arlene gave birth to their son, Don. On July 4, 2000, Arlene and Carl were involved in a serious automobile accident. Arlene died on July 4 within hours of the accident, and Carl died intestate on July 6, 2000.

At the time of her death, Arlene's estate consisted of the following property: a portfolio consisting entirely of stocks and bonds she had inherited from her father in 1979, including the increases from periodic stock splits and stock dividends she had received over the years; her interest in the home she and Carl had purchased a few years earlier and, until their deaths, lived in with Don; her interest in their household goods and furnishings; and her interest in a joint savings account at Last Bank held in the names of Arlene and Carl with rights of survivorship. The house was encumbered by the debt of a promissory note and a purchase money lien held by Last Bank to secure the note.

Assuming Arlene's 1979 will is valid, what rights, if any, do Bill, Don, Carl's estate, and Last Bank have in each item of Arlene's estate? Explain fully.

QUESTION 6

Bill and Jane, husband and wife, were lifetime residents of Texas. In 1998, they executed a joint will, on the same piece of paper, which provided in relevant part that:

We hereby devise all of our property, real and personal, to the survivor of us. Said property is to be used and enjoyed by the survivor of us during his or her lifetime. On the death of the survivor of us, all of said property shall pass as follows: one-half to the children of our daughter, Ann, and one-half to our son, Fred.

A contract exists between us to make this joint will, and the survivor of us shall not revoke this will after the death of the first of us to die.

At the time of the execution of this will by Bill and Jane, their daughter Ann had three children, Mary, Nan, and Oscar.

In June 1999, Jane had a violent argument with Fred. The next day she executed a new will in which she expressly revoked the 1998 joint will, disinherited Fred from taking any part of her estate, and left her entire estate to the children of Ann.

In January 2000, Jane told Bill she had revoked their joint will and had written a new will disinheriting Fred. Bill became so upset by the news that he suffered a massive heart attack and died.

Jane subsequently probated the joint will of Bill and Jane and took under the terms of that will.

In February, 2000, Ann's son Oscar died, survived by a son, Paul. Jane died in April 2000 survived by Fred, Mary, Nan and Paul.

Under which will, to whom, and in what proportions should Jane's estate be distributed? Explain fully.

This concludes the morning portion of the Texas Essay exam.