

Thursday Morning  
February 23, 2017  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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**If hand-writing, answer in the section marked Question 1.  
If laptop, answer in the screen marked Question 1.**

**Question 1**

Seth executed a valid will (Will) that included the creation of a trust (Trust), for the benefit of his adult son, Brad. The Trust corpus consisted of cash and real property, including an old service station with several underground storage tanks. The Trust instrument named Bank as the trustee and included the following language:

I hereby leave my entire estate to my son, Brad, to be held in trust by Bank, and further wish that Brad use the significant cash in my estate to benefit the Lost Pet Shelter (Shelter), my favorite charity.

Seth agreed to sell the service station to buyer (Buyer), but died shortly before the scheduled closing of the sale. Before accepting its appointment as trustee, Bank arranged for an inspection of the service station that uncovered significant environmental problems with the storage tanks. Bank subsequently declined, in writing, to accept the appointment as trustee.

Buyer learned of the negative environmental report, and backed out of its agreement to buy the service station.

Brad brings an action in court and claims that, as a result of the inspection arranged by Bank, he lost the sale of the service station. Brad has requested to be appointed as trustee of the Trust. Shelter intervenes in the court action, claiming beneficiary status under the Trust.

- (1) Does Brad have a valid claim against Bank? Explain fully.**
- (2) How is the Court likely to rule on Shelter's claim that it is a beneficiary? Explain fully.**
- (3) How is the Court likely to rule on Brad's request to be appointed as trustee? Explain fully.**

**If hand-writing, answer in the section marked Question 2.  
If laptop, answer in the screen marked Question 2.**

**Question 2**

Carolina maintained a checking account with Bank. When she opened the account, she signed a checking services agreement that included the following statement printed in bold-face type and 9-point size:  
**I hereby waive all rights under consumer law.**

Carolina decided to close her account and asked Emma, Bank's employee, for the account balance. Emma said the balance in the account totaled \$15,000. Carolina asked Emma to confirm the balance and Emma said she had, although she had not. Emma also said that Bank's account verification system was "100% accurate." Emma then issued a cashier's check in the amount of \$15,000 to Carolina and closed the account.

Several days later, Bank discovered that Carolina's account held only \$5,000 at the time it was closed. At the direction of Bank, Emma called Carolina and demanded the return of the "\$10,000 you stole!" Emma called Carolina a "thief" and "crook" and said Bank was preparing to file criminal charges unless the money was paid back immediately. Emma called Carolina repeatedly over the next several days, demanding the \$10,000. As a result, Carolina became extremely anxious, stayed home from work for a week, and ultimately sought medical attention.

In a lawsuit filed by Carolina against Bank and Emma, Bank claimed that as a Bank employee, Emma was not a debt collector, and that the "waiver" signed by Carolina precluded her suit.

- (1) Did the actions of Bank and/or Emma violate any Texas consumer laws? Explain fully.**
- (2) Is Carolina entitled to any remedies and/or damages under Texas consumer laws? Explain fully.**
- (3) Is the Bank's claim of waiver valid? Explain fully.**

**If hand-writing, answer in the section marked Question 3.  
If laptop, answer in the screen marked Question 3.**

**Question 3**

Processor, a Texas resident, buys peppers from local farmers to be used in making hot sauce. In 2016, Processor had contracts that required him to purchase 5,000 pounds of peppers to make hot sauce. Farmer signed a written contract to sell Processor 5,000 pounds of peppers at 25 cents per pound and she agreed to deliver the peppers to Processor between August 1 and October 31.

Farmer bought chili pepper seeds from Supplier and told Supplier that she needed enough seeds to grow 5,000 pounds of peppers. Supplier suggested that Farmer buy the “Very Hot Pepper” seed variety. Supplier told Farmer that these seeds “make the spiciest hot sauce.” After Farmer planted the seeds, Supplier sent her an invoice stating, “Supplier disclaims all warranties, including any implied warranties.” The disclaimer was in very small type on the back side of the invoice.

Farmer began delivering peppers to Processor on August 1. On September 1, after receiving only 1,000 pounds of peppers from Farmer, Processor told Farmer to hold deliveries because a part needed to fix his processing equipment was on back order. Processor told Farmer that this delay in taking delivery of the peppers was standard practice for the industry. However, Farmer had not experienced such a hold in her 20 years of growing peppers. Processor told Farmer he did not know how long the delay would last and told her to do whatever she needed to get rid of the peppers. Farmer did not pick any of the ripening peppers during the hold and the unpicked peppers spoiled in the field.

On September 10, Processor told Farmer to resume the pepper deliveries. Farmer reassured Processor that she could still meet her contractual obligations. By October 31, Farmer had only delivered an additional 3,000 pounds of peppers to Processor. Processor processed these peppers into hot sauce and sent the hot sauce on to the retailers with whom he had contracts. The retailers rejected the hot sauce, claiming it was spoiled and not spicy enough.

To meet his obligation to the retailers, Processor purchased 4,000 pounds of replacement peppers at 50 cents per pound from other farmers. Processor used these peppers to make hot sauce and was able to sell this hot sauce to retailers for a higher price.

**Answer the following under the Texas UCC:**

- (1) What are Processor’s claims against Farmer and what are Farmer’s defenses, if any? Explain fully.**
- (2) If Processor prevails on any claims against Farmer, what are his damages, if any? Explain fully.**
- (3) What are Farmer’s claims against Supplier and Supplier’s defenses, if any? Explain fully.**

**If hand-writing, answer in the section marked Question 4.  
If laptop, answer in the screen marked Question 4.**

**Question 4**

Kate wrote a \$5,000 check to Bill on her personal bank account. On January 2, 2016, Bill took the check, which was properly indorsed, to his bank. Bill's bank gave him \$500 in cash and posted a credit to Bill's account for \$4,500. The next day, thinking he had \$4,500 in his bank account, Bill wrote a check to University for his tuition.

On January 4, 2016, within its midnight deadline, Bill's bank received notice of dishonor of Kate's check from Kate's bank. Bill's bank gave him timely and proper notice of dishonor. Bill's check to University was returned for insufficient funds and University denied him admission. On February 1, 2016, Bill sued his bank for refusing to honor the \$4,500 check to University. Bill's bank has filed a counterclaim against Bill for return of the \$500 in cash it paid to him on January 2.

On August 15, 2016, Paul filed and served on Bill a lawsuit to collect \$10,000 that Paul had previously loaned to Bill. On May 1, 2010, Bill had signed a \$10,000 promissory note payable to Paul (Note). The Note was a negotiable instrument that was properly executed and delivered in all respects. The Note called for partial payment of \$2,500 on June 1, 2010, with the entire balance of \$7,500 due on December 1, 2010. The Note provided that if Bill did not make the \$2,500 partial payment on June 1, 2010, then "the entire balance shall become due and payable at that time." Bill defaulted on both the June 1 and December 1 payments. In response to Paul's lawsuit, Bill has asserted two defenses: (1) that Paul never made any actual demand for payment at the times payments were due on the Note and (2) that Paul's lawsuit is barred by the statute of limitations.

**Answer the following under the Texas UCC:**

- (1) Which party should prevail on Bill's claim against his bank for the \$4,500 check and on the bank's counterclaim against him for the \$500 cash? Explain fully.**
- (2) Will Bill prevail on the defenses he has asserted to Paul's suit on the Note? Explain fully.**

**If hand-writing, answer in the section marked Question 5.  
If laptop, answer in the screen marked Question 5.**

**Question 5**

Husband and Wife married five years ago in Fort Worth, Texas. They live in a house purchased shortly after their marriage. Husband and Wife jointly own a gas station, which Wife manages.

The couple has a history of family violence. Three weeks ago, Wife beat Husband with a tire iron while he was intoxicated and passed out on the couch after a long day at work. The following day, Wife told Husband that the next time he came home drunk after work; she would see to it that he “won’t live to see another day.”

Husband consults an attorney.

**Discuss the specific procedures available and discuss the factual showings required for Husband to achieve the following objectives under the Texas Family Code:**

- (1) Keep Wife from contacting him.**
- (2) Allow Husband exclusive possession of the couple’s house.**
- (3) Prevent Wife from accessing the gas station.**

**If hand-writing, answer in the section marked Question 6.  
If laptop, answer in the screen marked Question 6.**

**Question 6**

Husband and Wife married in Lubbock, Texas, in June 2004. This was the second marriage for each of them. Husband's first marriage ended in divorce, and Wife's first marriage ended when her spouse died. Husband and Wife are now divorcing.

**Identify and explain whether each of the following scenarios gives rise to a claim of separate property or reimbursement and, if so, the potential value of each claim and evidence necessary to support the claim:**

- (1) When they married, Husband had \$40,000 in his interest bearing savings account. During the marriage, he only deposited community earnings into the account. The balance in the account is now \$100,000.**
- (2) Before they married, Husband owned a truck. During the marriage he traded in his truck for the car he now drives and received a \$5,000 trade-in credit.**
- (3) Husband paid his ex-wife spousal maintenance of \$1,000 per month during the first 12 months of Husband and Wife's marriage.**
- (4) Wife has two children from her first marriage. The children were teenagers at the time she married Husband. Wife insisted the children attend private school and enrolled them in same. Husband did not agree, but community funds were used to pay a total of \$80,000 in private school tuition.**
- (5) Before they married, Wife owned the home that became their marital residence. It was worth \$200,000, and she owed \$50,000 on the mortgage, which has now been paid in full through income earned by Husband and Wife during their marriage.**

**This concludes the morning portion of the Texas Essay Questions.**

**Write the pledge on the back of this question book.**

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