

Thursday Morning

February 26, 1998

Essay Questions 1-6



TEXAS BAR EXAMINATION

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Question 1

PART A

Jay Snyder wanted some lights installed at some concert site. He hired Q Electric (“Q”) to install lights. Jay signed the contract, “Jay Snyder, individually.”

Snyder was the contact person who Q dealt with on a regular basis regarding each project. While Q was performing the work, Snyder told Q that he and Z Entertainment Inc. (“Z”) were partners in the concert business.

Q submitted to Snyder invoices for the work it performed. The checks Q received in payment of those invoices were issued from an account in the name of Z and were signed by Snyder.

Q has not been fully paid for work performed under the contract, and it has hired a lawyer to bring suit against Z and Jay Snyder jointly as partners for the amount due.

Investigation by Q’s lawyer revealed the following:

1. Snyder’s office space was in an office owned by Z and that office space was provided to Snyder by Z free of charge.
2. Z made over \$500,000 in unsecured loans to Snyder.

Snyder has admitted personal liability on the contract, but Z has denied all liability.

Assume that you are the lawyer for Z. Discuss what legal theory and what facts could reasonably be used by Q’s lawyer to sustain the contention of Q that Snyder and Z are liable as partners under the contract.

PART B

Discuss what legal theory and what facts you would use to rebut Q’s arguments.

PART C

Assume that more discovery revealed a written agreement between Snyder and Z stating that Z would advance all costs of producing each concert, and that after the sum was reimbursed from concert ticket sales, the balance would be divided 60% to Z for return on investment and 40% to Snyder as salary. Q’s lawyer claims that these facts alone show that Snyder and Z are joint venturers under the contract.

Discuss whether these facts are legally sufficient to establish a joint venture between Snyder and Z.

Question 2

PART A

Adam and Ben are the members of “A & B Ltd.” Adam is the general partner, and Ben is the limited partner.

Adam’s son runs a separate business, and that business uses the same machine parts used by A & B Ltd. Adam’s son ran short of parts. Without notice to Ben, Adam sold some of the parts owned by A & B Ltd. to his son. Adam sold the parts to his son for \$5000. Less than the fair market value of the parts.

When Ben discovered these facts he requested Adam to reimburse the partnership \$5000. Adam has refused. Adam contends that since he is the general partner he has the authority to set the price for a sale of partnership assets and that he has the power to sell partnership assets without notice to Ben.

Discuss whether or not Adam must reimburse the partnership \$5000.

PART B

Tony is a creditor of A & B Ltd. Tony comes to you seeking to recover \$3000. From A & B Ltd. For a past due bill for supplies he sold to that entity.

Tony has learned that there are no assets in the name of A & B Ltd., but that both Adam and Ben have plentiful non-exempt personal assets.

Tony wants to know what the name A & B Ltd. Signifies, and Tony wants to know if you can recover his money from the personal assets of Adam and Ben if A & B Ltd. Has no assets.

Answer Ben's questions and fully discuss you answers.

Answer the next two questions in the GREY answer book

ANSWER QUESTIONS 3 AND 4 IN THE GREY ANSWERBOOK
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QUESTION 3

Louis, a resident of Dallas County, Texas, died intestate on June 1, 1997, in Harris County, Texas. He was survived by his wife Martha, a resident of Dallas County, and his two adult children by a prior marriage, Ray and Kevin, who each live in Harris County with their wives and children. There is a judgement lien against Kevin. Lois' estate consists of (1) his separate property homestead in Dallas County valued at approximately \$105,000.00, where Louis and Martha resided at the time off his death, (2) a joint savings account with Martha of \$10,000.00 at a financial institution, with the right of survivorship language on the account signature card signed by Louis only, (3) a \$5,000.00 savings bond, and (4) community household furnishings values at approximately \$5,000.00. Known debts consist of \$5,000.00 owed to a Funeral Home in Houston for funeral expenses, and \$25,000.00 separate property debt owed by Louis to a Fort Worth Bank and secured by a lien on the homestead. The family thinks that Louis may have owed some other debts, but they are not sure to whom or how much.

Martha, Ray and Kevin consult you in regard to the best way to handle the estate.

- A. What procedure under the probate code could the family consider to clear up questions as to the debts and ownership of property, without the appointment of a personal representative of the Estate? In which county or counties could such action be taken in accordance with the Texas Probate Code?
- B. To whom does Louis' estate descend and pass? Explain why.
- C. Can Kevin effectively disclaim his interest, if any, in the estate after his father dies? Assuming he could, explain what he would have to do to disclaim and who would get the property. Please state the legal reasoning for your answer.
- D. What liens, rights, or obligations will the real property homestead be subject to and what are Martha's rights and obligations as to the homestead while she occupies the property?

Question 4

John, a Texas citizen, executed a typewritten will on August 1, 1989, before two disinterested persons, who signed as witnesses, one of whom was 17 and the other was 23 years of age. The will provided, among other things, that:

“First, I devise to my brother, Bill, my 100 shares of stock in roller, Incorporated.

“Second, I bequeath my friend, Larry, my cedar chest.

“Third, I bequeath my Lake Buchanan resort home to my wife, if she survives me, and if she does not survive me, then to my daughter, Mary.

“Fourth, I bequeath my entire art collection to my niece, Ginger, and

“Fifth, the rest, residue and remainder of my estate I bequeath to the American Red Cross.”

John exchanged the Lake Buchanan resort home for a \$120,000.00 residence in Austin in 1995, divorced his wife, Caroline, and married Joan in June 1996. He lived with Joan in the Austin residence until his death in May 1997.

Prior to his death, Roller declared a 100% stock dividend and thereafter merged with Roller Ball Corporation. The Roller shareholders received two shares of stock in Roller Ball in exchange for one share of Roller stock.

Niece Ginger predeceased John in April 1997, survived by her husband and a 10-year old adopted son, Don.

At the time of his death John owned the \$120,000.00 residence, the cedar chest, 400 shares of Roller Ball stock valued at \$100,000.00 which shares were located in the cedar chest, the art collection, and miscellaneous personal property valued at \$60,000.00, from an undeterminable source and time, plus \$10,000 in cash in a joint account with his wife, Joan.

Discuss fully the various legal issues involved in determining:

1. The validity of the will, and
2. The distribution of each of the items in John's estate.

Give your conclusion as to who inherits what interest and why.

Answer the next two questions in the BLUE answer book

ANSWER QUESTIONS 5 AND 6 IN THE **BLUE** ANSWER BOOK

QUESTION 5

Bill Rancher is the owner of a 640-acre tract of land known as Myacre and owns all of the oil, gas and other mineral interests under said tract. On January 1, 1994, Bill Rancher executed an oil and gas lease to Prolific Oil Company for a primary term of three (3) years and providing for annual delay rentals of \$6,400.00 due on or before the 1st day of January of each lease year. The lease did not have any provisions expressly dealing with drilling obligations, access or ingress and egress. Prolific Oil Company timely paid all delay rentals due through the year 1995. During the early part of 1995 (the second year of the primary term), extensive oil and gas drilling activity commenced in an area about four miles from Bill Rancher's 640 acre tract of land. Bill Rancher was advised, by Prolific Oil Company and others, that very good gas wells were being completed four and five miles away from Bill Rancher's tract. However, these wells were too far away to drain gas from Bill Rancher's tract. During the month's of April through October of 1995,

Bill Rancher made repeated and adamant demands on Prolific oil Company to either drill him a gas well or release the oil and gas lease in full. On December 20, 1995, Prolific Oil Company decided to drill a well and obtained a permit to drill a gas well on Bill Rancher's 640-acre tract of land. On December 22, 1995, Prolific Oil Company attempted to go onto Bill Rancher's Myacre to commence drilling operations for this well but it was chased off and locked out of the ranch by Bill Rancher and his employees. Bill Rancher told Prolific Oil Company that they could not drill this well because they had taken too long in attempting to commence drilling operations on his tract and they had lost their oil and gas lease and they no longer had any rights under that oil and gas lease.

Bill Rancher succeeded in keeping Prolific Oil Company from commencing drilling operations before December 31, 1995. However, on January 4, 1996, Prolific Oil Company tendered to Bill Rancher its check for \$6,400.00 representing delay rentals for the year 1996. On January 5, 1996, Bill rancher refused to accept the \$6,400.00 delay rental check and returned the check to Prolific Oil Company with the unequivocal statement that the lease had terminated in all respects and that the delay rentals were not timely tendered, and that the earlier contemplated drilling operations were not timely.

Discuss fully the following:

[1] The rights and responsibilities of Bill Rancher s they relate to having a well drilled on his 640 acre tract and to allowing Prolific Oil Company to use the surface of his property.

[2] The rights and obligations of Prolific Oil Company to conduct drilling operations following the events of December 22, 1995.

[3] The validity or invalidity of the January 1, 1994 oil and gas lease as of January 7, 1996, in view of the above facts.

Question 6

On December 25, 1970, Rancher A, who owned all of the surface and minerals under a 500 acre tract of land situated in Central Texas known as Bestacre, conveyed all of hi minerals under said tract to his favorite son named Smart Son. In 1970, Smart Son was a college professor in the State of Utah and very much appreciated his dad's gift. Rancher A was in possession and control of Bestacre until April 15, 1972, when Rancher A passed away and by Will left the surface estate of this 500 acre tract to his elderly brother, Farmer B, who lived on a small farm he owned in the State of Kansas.

Farmer B appreciated his brother's bequest to him but he continued to farm his own property in the State of Kansas and rarely visited this 500-acre tract in Central Texas. In February of 1975, Farmer B's Greedy Neighbor to the east of Bestacre knocked down the fence openly, adversely, and continuously farmed Bestacre until December of 1995 when Smart Son decided he would come visit Bestacre in Texas. When Smart Son went onto Bestacre he learned that Greedy Neighbor was claiming title by limitation to the 500-acre tract. Greedy Neighbor claims that, in addition to the surface estate, he also owns the mineral estate which Smart Son received from his father. Smart Son has now come to you for advice regarding his rights to the mineral estates under Bestacre. Throughout this time period, there has been no leasing or gas drilling activity on Bestacre.

Discuss fully the claims and defenses available to the parties and the likely outcome of a suit between Smart Son and Greedy Neighbor regarding ownership of the mineral estate.

This is the end of QUESTION 6