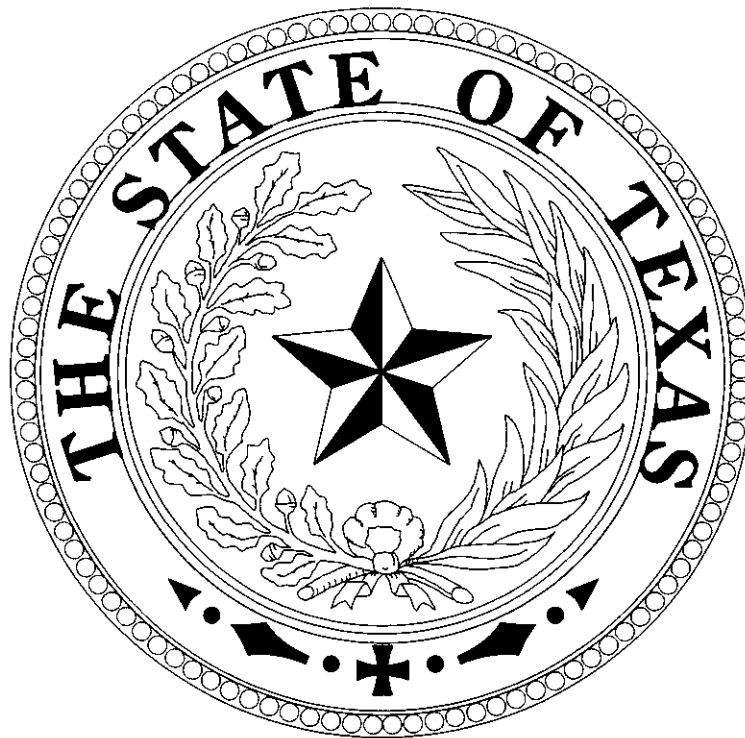


Thursday Morning
July 31, 2008
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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ANSWER QUESTION 1 IN THE GOLD ANSWER BOOK

QUESTION 1

In 2003, Fred, a widower and lifelong resident of Texas, gave his brother, Harry, a gift of \$500,000 to help Harry to start a business. Harry was unmarried and had an only child, Bob.

In 2004, Fred and Harry signed a handwritten note by which Harry acknowledged that the 2003 gift from Fred was intended as a part of whatever Harry might eventually receive as an heir of Fred at the time of Fred's death.

In February 2006, Fred executed a valid attested self-proved will that left his entire estate, both real and personal, valued at approximately \$2,000,000 to his brother, Harry, and to his sister, Susan, in equal shares.

In March of 2007, Harry died in an automobile car accident. His son, Bob, survived him.

In April 2007 Fred died, survived by his sister, Susan, and Harry's son, Bob.

To whom and in what amounts should the Fred's estate be distributed? Explain fully.

Answer the next question in the GRAY answer book.

ANSWER QUESTION 2 IN THE GRAY ANSWER BOOK

QUESTION 2

Ann, an elderly Texas widow, signed a valid attested self-proved will believing that the will disposed of her \$10,000,000 estate one-third each to her sister Belva and her nephews, Jack and Roger, who were children of Ann's deceased brother. Roger, who was an attorney, drafted the will for Ann. Relying on Roger's representation that the will devised her estate according to her wishes – one-third to each Jack, Roger, and Belva – Ann signed the will without reading it. In fact, the will devised $\frac{1}{2}$ of the estate to Roger and only $\frac{1}{4}$ each to Jack and Belva.

Ann died in late 2004, and her will was admitted to probate in 2005. Belva, who was independently wealthy, had one adult son, Tom. Within six months of Ann's death, Belva signed and filed with the probate court a written disclaimer of her interest in Ann's estate.

Jack never liked Roger. Nevertheless, Jack accepted the $\frac{1}{4}$ benefits in the amount of \$2,500,000 under the will after the will was admitted to probate in 2005 without questioning Roger's integrity at that time.

In January 2008, Jack filed a will contest, alleging that Roger had fraudulently induced Ann to sign the will to deprive Jack and Belva of their rightful shares. Jack also alleged that he had only recently discovered this fraud. Roger moved to dismiss the will contest on the grounds that (i) it had not been filed timely, and (ii) the court should deny the will contest on the merits because Jack had accepted benefits under Ann's will.

1. How should the court rule on each ground of Roger's motion? Explain fully.
2. What happens to the share of Ann's estate that Belva would have taken if she had not filed the disclaimer? Explain fully.

Answer the next question in the BLUE answer book.

ANSWER QUESTION 3 IN THE BLUE ANSWER BOOK

QUESTION 3

Bart sold Jane a digital camera that he had stolen. In consideration, Jane signed and gave Bart a promissory note payable to the order of Bart for \$1,500 payable in 60 days. Bart later indorsed the note to Carl in exchange for \$500 cash and Carl's agreement to paint Bart's sailboat, a job that Carl and Bart agreed was worth \$1,000.

Jane told Bart she wasn't going to pay the promissory note because the police had identified the digital camera as stolen and confiscated it. Bart told Jane he had transferred the note to Carl and that she could find Carl on the sailboat. Carl was just setting up his materials to paint the boat, when Jane told Carl she wasn't going to pay anything on the promissory note because the camera was stolen property.

Tedford Travel Co. ("Tedford") employed Bart as its bookkeeper to pay Tedford's accounts payable each month by issuing checks on Tedford's account at Forest Bank. Bart issued two checks on Tedford's account at Forest Bank:

- (a) A \$900 check payable to Map Company, a supplier of Tedford, even though Tedford did not then owe anything to Map Company; and
- (b) An \$1,800 check to Widget Co., a non-existent entity.

Bart then indorsed both checks, signing the backs of the checks, "Map Company by Bart, President" and "Widget Co. by Bart, President" respectively. He then simultaneously cashed both checks at Forest Bank. Forest Bank debited Tedford's account.

1. What, if any, recourse does Carl have against Jane on the promissory note? Explain fully.
2. What, if any, recourse does Tedford have against Forest Bank? Explain fully.

Answer the next question in the PINK answer book.

ANSWER QUESTION 4 IN THE PINK ANSWER BOOK

QUESTION 4

Gloria operated a new and used office furniture business. She bought her new inventory from manufacturers and her used inventory from the general public. On January 2, Gloria borrowed \$25,000 for working capital from Bank and signed a security agreement giving Bank a security interest in all of her current and after acquired inventory. The following day, Bank filed a financing statement with the Secretary of State describing the loan to Gloria and the collateral.

Attorney Sara purchased an office table for \$900 cash from Gloria on January 13. A month later, Sara closed her office to take a job with the State. Sara asked Gloria to put the table in Gloria's store to see if any of Gloria's customers would be interested in buying it from Sara for \$900. Gloria agreed and Sara placed the table in Gloria's showroom.

On February 15, Gloria purchased an oriental rug from Tom on credit for \$3,000. Gloria intended to use the rug in her showroom to display a new line of oak desks. Gloria signed a security agreement giving Tom a security interest in the rug and in all the rest of her office equipment and furnishings, which included an autographed portrait of Davy Crockett.

On February 20, Gloria sold Maude an antique roll top desk she had in inventory.

On February 22, Willy had the sheriff levy upon all of the assets of Gloria's business to satisfy a \$50,000 judgment he had obtained against Gloria.

On March 1, Tom filed a financing statement with the Secretary of State describing the debt with Gloria and the collateral.

Which party has the superior interest in each of the following goods: Explain fully.

1. The office table;
2. The oriental rug;
3. The Crockett portrait; and
4. The antique roll top desk?

Answer the next question in the DARK GREEN answer book.

ANSWER QUESTION 5 IN THE DARK GREEN ANSWER BOOK

QUESTION 5

Abe, Bob, and Chuck formed Grocery Co., a Texas general partnership, and made the following contributions into an operating account:

Abe: \$50,000

Bob: \$25,000

Chuck: \$25,000

Abe, Bob, and Chuck did not sign any documents, but orally agreed that they were partners and that profits from the business would be used first to repay each of them the money they contributed. The partners' grocery store opened on May 1. Abe worked in the store and was principally responsible for running the business.

In June, Grocery Co.'s produce cooler stopped working. Abe contracted with Refrigeration, Inc. to replace the cooler, which cost \$5,000. Abe signed Refrigeration, Inc.'s work order: "Abe, Partner, Grocery Co." Abe did not consult with Bob or Chuck before having Refrigeration, Inc. install the cooler.

In July, Edith, a Grocery Co. employee injured Seth, a customer, while Edith was stocking shelves in the store. Seth sued Grocery Co., Abe, Bob, and Chuck for this personal injury.

In August, Chuck purchased a copier from Machines Co. for \$10,000. He told Machines Co. that he was purchasing the copier for "the store," and he signed a promissory note in his own name to cover the cost. He took the copier to his law office where he used it for his law firm's business only. Abe and Bob knew nothing about Chuck's purchase from Machines Co.

At the end of the year, Grocery Co. had achieved a \$190,000 net profit from operations. Abe, Bob, and Chuck agreed to distribute the entire \$190,000 to the partners. Abe, however, demanded that he first be paid a \$60,000 "bonus" from the net profit for having been primarily responsible for running the business that year.

1. Which, if any, of the individual partners is personally liable to the following? Explain fully.
 - a. Refrigeration, Inc.
 - b. Seth
 - c. Machines Co.
2. Is Abe entitled to the bonus he seeks? Explain fully.
3. How much of the \$190,000 net profit should each partner receive? Explain fully.

Answer the next question in the TAN answer book.

ANSWER QUESTION 6 IN THE TAN ANSWER BOOK

QUESTION 6

Zap Construction Corp. ("Zap") is a close corporation founded in 2001. The corporation is governed by a shareholder agreement, part of which agreement is that all stock is subject to a right of first refusal giving existing shareholders the right to purchase stock before it is sold to an outsider. When Zap was founded, 1000 shares of common stock were authorized and issued: 400 to Mark and 200 each to Steve, Amy and Craig. Steve was president of Zap.

The following events happened in the following order:

- In 2003, Mark retired, and Zap purchased his 400 shares, holding them as treasury stock.
- On December 1, 2006, Craig, without giving notice to Steve and Amy, pursuant to the shareholder agreement, sold his shares to Phil, an outsider. The stock certificate Craig delivered to Phil did not contain any indication that there was any restriction on transferability. The sale to Phil was duly recorded in Zap's books on December 15, 2006.
- On February 1, 2007, Steve sent a notice to Amy and Craig informing them that he was calling a special shareholders' meeting. The notice contained the following information and nothing else: that the meeting would be held on February 14, 2007, at 4:00 p.m. at the corporate headquarters and that only those people holding stock on December 1, 2006 would be entitled to vote.
- On February 14, 2007, at the meeting, Steve announced that the purpose of the meeting was to discuss and vote on a proposed merger of Zap into XYZ Corp. Steve provided details regarding the merger and called for a vote. Amy objected that the meeting was not lawfully called or convened and walked out. Steve voted in favor of the merger, as did Craig. Steve also voted the 400 shares of treasury stock in favor of the merger. Phil was not present.

1. Should Phil have been given notice of the meeting and been entitled to vote? Explain fully.
2. Was the notice of the meeting sent by Steve deficient in any respects? Explain fully.
3. Was there a proper quorum present at the meeting? Explain fully.

This concludes the morning portion of the Texas Essay exam.