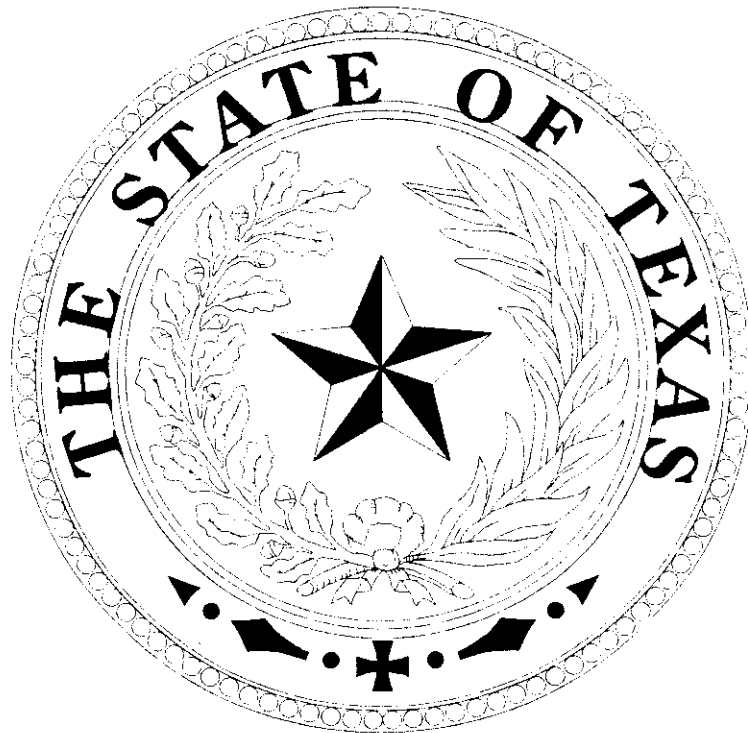


Thursday Afternoon
July 31, 2008
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

In 2005, after Robert's wife, Sandra, died, Connie and Larry agreed to take Robert's children while Robert rearranged his work and travel schedule. Connie is Sandra's mother and the children's grandmother, and Larry is Connie's husband and the children's step-grandfather.

For six months, Larry and Connie were the children's primary caregivers. Initially, Robert, Connie and Larry worked cooperatively on the children's behalf. Once his work schedule settled down, Robert reasserted himself as the children's primary caregiver, and tension developed between Robert and Connie and Larry. Robert discontinued Connie and Larry's access to the children. Within 90 days of the date Robert denied them access to the children, Connie and Larry filed a petition in court for grandparent access.

At the hearing on the petition, Robert testified that, in the months since he denied Connie and Larry access to the children, the children began to heal from their depression caused by their mother's death. Robert also testified that he took the children to counseling, and they have since been released from the counselor's care because of good progress in coping with their depression. The evidence established that the children's social and academic success in school has improved dramatically, and they are no longer on antidepressant medications.

Connie and Larry testified that Robert's excessive work schedule and his reliance on teenage babysitters endangered the children and significantly impaired the children's physical health and emotional development.

Dr. Smith, a psychologist appointed by the court to evaluate Robert, Connie, Larry and the children, testified that in his opinion the children would not be harmed by renewed contact with their mother's family. Dr. Smith had concern, however, that Connie's frequent involvement would undermine Robert's position as their father. Dr. Smith further testified that the children had formed attachments to Connie and Larry, which would not be healthy to cut off. Dr. Smith also testified that Robert had a reasonable interest in preserving the children's hard-won feelings of peace and security regained after contact with Connie ceased.

Following the evidentiary hearing, the court found that: (1) under the Texas Family Code, Connie and Larry had standing to assert their right to access; and (2) based on the evidence, denying access would significantly impair the children's physical health or emotional well-being. The court signed temporary orders granting Connie and Larry visitation with the children on the first Saturday of each month.

1. Did the trial court properly rule that Connie and Larry each had standing to seek grandparent access? Explain fully.
2. Assume Connie and Larry had standing. Did the trial court properly award grandparent access to Connie and Larry? Explain fully.

Answer the next question in the LIGHT GREEN answer book.

ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK

QUESTION 8

In 2000, Louis created a corporation called HomeBuilders, Inc. ("HBI") for the purpose of purchasing land and constructing custom homes. Louis was the president and sole shareholder.

In 2001, Louis married Janice. They had two children, one born in 2002 and the other in 2004. Louis worked at HBI, and Janice stayed at home to take care of the children. In 2006, Louis filed for divorce.

During the marriage, the couple acquired a house, furnishings, two automobiles (an SUV and a Lexus) and a savings account. Also during the marriage, Louis purchased three lots, taking title to each lot in his individual name. Louis built a custom home on each lot with loans, which he acquired in his individual name. Louis advertised the homes for sale under HBI's name. Although the deeds were in Louis' individual name, the proceeds from the sale of the homes went into HBI's checking account. At the time of the divorce, there was \$400,000 in HBI's checking account as proceeds from the sales of these three homes.

Louis testified that, in purchasing the lots, he was acting as an agent for HBI and that the lots were purchased with funds from HBI's checking account. However, Louis was unable to produce any documentation supporting his testimony. According to Louis, all his documents had been destroyed in a flood.

Before the divorce, Janice was the primary caretaker of their two sons. Once Louis filed for divorce, pursuant to temporary orders, the children spent an equal amount of time with each parent. At trial, a court-appointed psychologist testified that it is not in the best interest of children to split time equally with each parent. He also testified that it is most beneficial for children to have one secure residence where they spend most of their time and think of as their home, and then have another house to visit on the weekends. The psychologist further testified that, although both Louis and Janice had deficiencies as parents, Janice's problems were more significant. Janice, according to the psychologist, exhibited difficulty thinking logically and was prone to rage episodes. The psychologist believed that Louis had a better chance to provide a stable, consistent, and safe environment for the children, and the psychologist recommended that the children's primary domicile be with Louis. However, several neighbors and family members testified that Janice was a good, loving and caring mother.

In the final divorce decree in 2007, the trial court determined that all assets and accounts held by HBI were Louis' separate property. The court divided the balance of the property as follows: the house, furnishings and the SUV (total value \$200,000) were awarded to Louis; the Lexus and savings account (total value \$300,000) were awarded to Janice. The court appointed Louis and Janice joint managing conservators, but ordered that Louis shall exercise exclusively the right to determine the children's primary residence and to possession of the children at all other times except certain weekends.

1. Did the trial court properly characterize HBI's assets and accounts as Louis' separate property? Explain fully.
2. Was the trial court's award a just and right division of the community estate? Explain fully.
3. Did the trial court err in its child custody order? Explain fully.

Answer the next question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

In 1994, Lake Sales Co. sold Lot 5 in a subdivision in Jackson County, Texas to Ron. A proper subdivision plat had been recorded. Ron recorded the warranty deed in the Jackson County Real Property Records. The warranty deed from Lake Sales Co. to Ron did not include any reservation of oil, gas or other minerals. The sale of Lot 5 to Ron was inadvertently omitted from the records at Lake Sales Co.

In 1995, Ron sold to Ben an undivided one-half of all the oil, gas and other minerals, in, under or that might be produced from Lot 5. A mineral deed from Ron to Ben was promptly recorded in the Jackson County Real Property Records.

In 1996, Lake Sales Co., believing Lot 5 was still unsold, sold it to Sue, and gave her a warranty deed that purported to convey to Sue the same Lot 5. The warranty deed from Lake Sales Co. to Sue did not include any reservation of oil, gas or other minerals. After recording her warranty deed in the Jackson County Real Property Records, Sue discovered the warranty deed conveying Lot 5 from Lake Sales Co. to Ron and reported it to Lake Sales Co. Sue did not search the records further and was not aware of the recorded mineral deed from Ron to Ben.

The salesperson at Lake Sales Co. told Sue that she could keep Lot 5 because Ron would accept a conveyance of a different lot as a substitute for Lot 5. The salesperson discussed the idea with Ron, but neither of them acted on the discussions. In 1996, Sue fenced Lot 5, built a cabin on it, and thereafter regularly used the cabin and timely paid all ad valorem taxes that accrued on Lot 5 from 1996 to the present. There have never been any drilling operations or production of any oil, gas or other minerals from Lot 5.

1. Who owns the surface of Lot 5? Explain fully.
2. Who owns the Lot 5 mineral estate? Explain fully.

Answer the next question in the BLUE answer book.

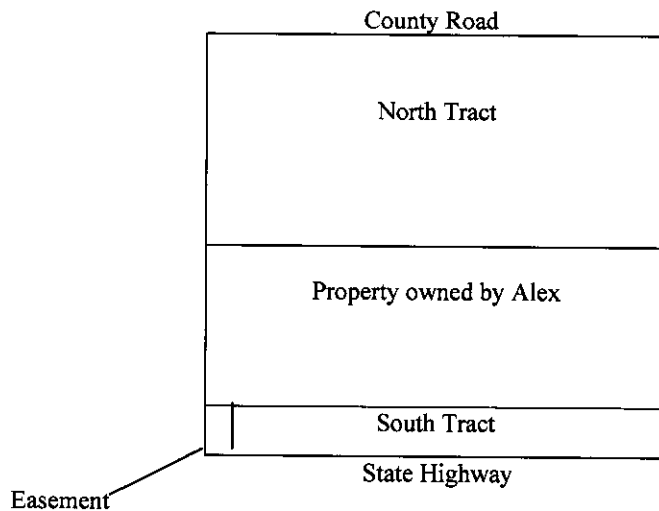
ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Alex owned an 800-acre tract of land in Bell County, Texas, bounded on the north by the County Road and on the south by the State Highway. Alex sold and conveyed parts of the tract by properly executed and recorded deeds as follows:

- In 2004, he sold the north 400 acres to Carlos (the “North Tract”).
- In 2005, he sold to Bella the south 100 acres along the State Highway (the “South Tract”).
- To provide access to the otherwise landlocked 300-acre tract retained by Alex, Alex reserved in the warranty deed to Bella a perpetual nonexclusive easement 50 feet in width along the entire western boundary of the South Tract (the “Easement”). The reservation stated that the easement was for pedestrian and vehicular ingress and egress from the State Highway to and from the 300-acre tract retained by Alex.
- After these conveyances, Alex retained only the 300-acre tract and the Easement.

The following diagram depicts (not to scale) the tracts after all of the foregoing conveyances:



In 2007, Alex and Carlos each executed separate leases with Oil Co. for the lease of their respective mineral interests. The leases allowed for pooling because it was believed that drilling on Alex’s land might drain Carlos’ land and vice-versa. In 2008, Oil Co. drilled a producing oil well on Alex’s property. No well has been drilled on the land leased from Carlos, and Carlos’ land has not been pooled with Alex’s property. To facilitate transporting the oil, Oil Co. wants to construct a pipeline either within the Easement from Alex’s property to the State Highway or across the North Tract to the County Road.

1. Is Oil Co. entitled to construct the proposed pipeline on either the Easement or the North Tract? Explain fully as to each.
2. If Oil Co. does not drill a well on the land leased from Carlos, what obligations, if any, does it have to Carlos arising from the production on Alex’s land? Explain fully.

Answer the next question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

QUESTION 11

Tom created a revocable express trust (Trust A) naming himself as trustee and beneficiary. The trust was funded with \$250,000 in cash and contained a spendthrift clause consistent with the Texas Property Code. Under the terms of Trust A, Tom was to receive the trust income for his life, and, at his death, the remainder passed to State University.

Tom also created an irrevocable express trust (Trust B) naming Ray as trustee and David as beneficiary. The trust was funded with \$1,000,000 in cash and contained a spendthrift clause consistent with the Texas Property Code. Under the terms of Trust B, David was to receive the trust income for his life, and, at his death, the remainder passed to David's son Mark.

First Bank obtained a \$50,000 judgment against Tom, in his personal capacity, arising out of non-trust business activities. First Bank obtained a writ of execution to levy on the assets of Trust A and Trust B. State University objected to the execution, claiming that Trust A assets were not subject to execution for Tom's personal debts. Ray, as trustee of Trust B, refused to honor First Bank's writ of execution.

David had incurred the following debts, which he was unable to pay: pharmacy charges for medicine to treat his diabetes; credit card charges for travel and entertainment; bank debt for a sports car; an IRS tax lien against him; and a judgment against him for unpaid child support. The creditors on each of these debts made demand on Ray, as trustee of Trust B, to pay these debts. Ray refused to pay them.

1. Can First Bank collect its judgment from Trust A despite State University's objections? Explain fully.
2. Can First Bank collect its judgment from Trust B despite Ray's refusal to honor First Bank's writ of execution? Explain fully.
3. Which of David's creditors, if any, must Ray pay out of Trust B? Explain fully.

Answer the next question in the PURPLE answer book.

ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

QUESTION 12

RRH Nursery (RRH) sold plants, chemicals and fertilizers for home use. RRH stocked Clean Beds, a product made by Good Yard Chemical Company (Good Yard). Clean Beds is a chemical to be sprayed in flowerbeds to kill common grasses. RRH also stocked its own blend of rose fertilizer called Rose-Gro.

While Sam was shopping for plant fertilizers, Mark, an RRH manager, asked Sam if he raised roses. Sam told Mark that he had raised roses for years, including a unique hybrid certified as being worth \$25,000 by American Rose magazine. Mark recommended that Sam use Rose-Gro because it was safe and would not harm his prize roses. Sam purchased a bag of Rose-Gro as recommended by RRH.

Mark also recommended that Sam use Clean Beds because it was guaranteed by Good Yard not to damage plants other than grasses in flowerbeds. The label on the bottle of Clean Beds contained an express warranty declaring that the product was safe and would not harm any plants other than grasses. Sam purchased a bottle of Clean Beds.

The front of the RRH sales ticket issued when Sam paid for the products contained a statement as follows: "Customer satisfaction money-back guarantee on all chemicals; plants not included." In small print on the back of the sales ticket was the following disclaimer: "RRH Nursery expressly disclaims any warranty, express or implied, on any product or service sold by us."

Sam applied Rose-Gro and Clean Beds to his roses and other plants in accordance with the instructions on the packages. Three days later, Sam noticed that all of Sam's roses and other plants in the bed had died. A horticulturist determined that the loss of the roses and plants was caused by the use of Rose-Gro and Clean Beds. Sam was very upset about the loss of his roses and other plants, but he did not visit a health care professional about his great disappointment.

Sam developed a rash on his hands and arms, which required medical attention by a physician. Sam missed work because he was hospitalized for four days. His physician was unable to determine whether the rash was caused by either Rose-Gro or Clean Beds. Assume Sam is a consumer under Texas consumer laws. He has sued RRH and Good Yard under Texas consumer laws.

1. What consumer law claims, if any, can Sam assert against RRH and Good Yard? Explain fully.
2. Would RRH likely succeed if it asserted as a defense the disclaimer of warranties on the back of its sales ticket? Explain fully.
3. What consumer law relief, if any, is available to Sam if he prevails against RRH and Good Yard? Explain fully.

This concludes the Texas Essay portion of the exam.

**Be certain that you write the pledge on the
back of your PURPLE answer book.**