

Thursday Afternoon  
July 27, 2017  
Essay Questions 7 - 12



## TEXAS BAR EXAMINATION

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**If hand-writing, answer in the section marked Question 7.  
If laptop, answer in the screen marked Question 7.**

Question 7

In 2010, Alex, who was 20 years old and unmarried, inherited a substantial portfolio of stocks and bonds from his father. Shortly after his father's estate was settled and the portfolio was distributed to Alex, he signed a valid typewritten will in which the only dispositive provision was the following bequest: "I leave to my sister Beth all of the stocks and bonds that I inherited from my father and that are still in my estate at the time of my death."

Alex signed the will in the presence of Beth and a friend, Zach. Beth and Zach signed as witnesses at Alex's request. The will was not self-proved.

In 2012, Alex married Carol. In 2014, Carol gave birth to their son Daniel.

On February 2, 2017, Alex and Carol were involved in a serious automobile accident. Alex died on February 2, 2017. Carol died intestate on February 9, 2017.

At the time of Alex and Carol's accident, they owned the following property:

- (a) the portfolio of stocks and bonds Alex had inherited from his father in 2010, together with the increases from periodic stock splits and stock dividends received since that time (Portfolio);
- (b) a house, subject to a mortgage lien, which Alex and Carol had purchased in 2013 and lived in with Daniel (Home);
- (c) household goods and furnishings valued at \$3,000 (Goods and Furnishings); and
- (d) a joint checking account, with a balance of \$2,000, in the names of Alex and Carol, with rights of survivorship (Checking Account).

**(1) Assume Beth files an application to probate Alex's 2010 will in the county court and satisfies the jurisdictional requirements. What additional proof must Beth offer to probate the will?**

**(2) Assume Beth successfully probates Alex's 2010 will. What rights, if any, do Beth and Daniel have in each of the following:**

- (a) the Portfolio;**
- (b) the Home;**
- (c) the Goods and Furnishings; and**
- (d) the Checking Account.**

**Explain fully as to each.**

**If hand-writing, answer in the section marked Question 8.  
If laptop, answer in the screen marked Question 8.**

**Question 8**

John and Sally married in 1990. At the time of their marriage, John had one child from a previous marriage, Andrew. Sally had two children from a previous marriage, Ben and Chris. Two additional children were born to John and Sally during their marriage: David (born in 1993) and Edward (born in 1995).

John died without a will on January 15, 2017. John is survived by Sally and all of their children, including those from their previous marriages. At the time of John's death, John and Sally owned the following:

- (a) a home, valued at \$300,000 and unencumbered by any lien, which John and Sally had purchased with their earnings during their marriage;
- (b) a joint savings account in the names of John and Sally, with a balance of \$30,000;
- (c) a \$200,000 life insurance policy John had purchased on his life, naming Sally as the beneficiary; and
- (d) a limited edition Picasso lithograph, valued at \$9,000, which John inherited in 1995 from his uncle.

- (1) To whom and in what proportions should John's estate be distributed? Explain fully.
- (2) To whom and in what proportions should the proceeds of any non-probate assets, which are payable as a consequence of John's death, be distributed? Explain fully.

**If hand-writing, answer in the section marked Question 9.  
If laptop, answer in the screen marked Question 9.**

**Question 9**

Connie collected antique furniture that she stored in a warehouse. The furniture collection was valued at over \$500,000. Nervous about protecting her collection, Connie purchased an insurance policy from Insureco, an insurance company, covering any damage or loss to the warehouse and its contents, except for damage or loss caused by arson.

On May 5, 2016, a major fire erupted at the warehouse that caused extensive damage to the furniture collection. The Fire Department investigated and issued a report on May 10, 2016, determining that the fire was accidental.

Distraught, Connie contacted Insureco to find out what she needed to do to file a claim. An Insureco representative told Connie “all” she needed to do was submit a one-page claim form. Connie submitted the claim form, together with a copy of the investigation report, on May 15, 2016.

For many months after filing her claim, Connie heard nothing from Insureco, despite making numerous phone calls to Insureco to ask about the status of the claim. On October 15, 2016, Connie received a letter from Insureco, informing her that her claim had been denied because: (i) Insureco “assumed” the cause of the fire was arson; and, (ii) Connie failed to submit “all the required forms.” Connie sought the advice of an attorney and files a lawsuit against Insureco.

- (1) Under Texas consumer laws, what rights and remedies, if any, does Connie have against Insureco? Explain fully.**

**If hand-writing, answer in the section marked Question 10.  
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**Question 10**

Sam established a valid, irrevocable trust for the use and benefit of himself and his son Ben. Sam funded the trust by depositing cash into an account with Bank, a financial institution. The trust instrument designated Bank as trustee and included the following language:

This is a spendthrift trust. At Trustee's sole discretion, Trustee may pay all net trust income to Sam and Ben during Sam's lifetime. In addition, Ben may be paid from the trust principal for any necessary college expenses. Sam and Ben's interests in the principal and income of the trust may not be voluntarily or involuntarily transferred.

Thereafter, the following debts and obligations were incurred:

- (a) An adverse money judgment against Sam in a personal injury lawsuit.
- (b) Unpaid credit card charges by Ben for a Hawaiian vacation.
- (c) An IRS tax lien against Sam for unpaid taxes.
- (d) An unpaid hospital bill against Ben for an emergency room visit.
- (e) An outstanding child support obligation owed by Sam from a prior marriage.

Also, Ben enrolled at State University and requested that Bank pay his tuition from the trust principal.

- (1) Which of the following debts and obligations, if any, may be satisfied with the principal and/or income from the trust? Explain fully as to each.**
- (a) Adverse money judgment against Sam in a personal injury lawsuit.**
  - (b) Unpaid credit card charges by Ben.**
  - (c) IRS tax lien against Sam.**
  - (d) Ben's unpaid hospital bill.**
  - (e) Outstanding child support obligation owed by Sam for a child from a prior marriage.**
- (2) How should Bank respond to Ben's request to pay his tuition? Explain fully.**

**If hand-writing, answer in the section marked Question 11.  
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Question 11

Pursuant to their Texas divorce decree, Tom is required to pay Jill \$1,000 per month in child support. Tom was fired from his job 12 months ago because of excessive absences. After he was fired, Tom stopped paying child support. Six months ago, he started working for his brother's business where he is paid in cash. He has not resumed paying child support. Tom continues to be able to pay certain living expenses (including his food, car, insurance, and gas), but he lives with his brother and pays no rent.

Jill properly filed and served Tom with a suit seeking (i) a judgment for unpaid child support, (ii) attorney fees, (iii) a finding that Tom is in contempt of court, and (iv) an order that Tom be jailed until he has paid all arrears.

In response, Tom filed an answer as a pro se litigant claiming that he is unable to pay the child support arrears. He requests (i) a retroactive reduction of unpaid child support back to the date he was fired, and (ii) a period of seven years to repay any arrears.

The parties appeared for trial. Tom requested appointment of an attorney, but his request was denied because the trial court determined he was not indigent. The trial court gave no instructions regarding a right to jury trial.

**Discuss whether the following rulings by the trial court would be proper:**

- (1) Granting Tom's request for a retroactive reduction of unpaid child support back to the date he was fired. Explain fully.**
- (2) Granting Jill's request for a judgment for attorney fees and ordering the amount be withheld from Tom's wages as additional child support. Explain fully.**
- (3) Denying Jill's request for a finding that Tom is in contempt of court. Explain fully.**
- (4) Allowing Tom seven years to repay the child support arrears. Explain fully.**

**If hand-writing, answer in the section marked Question 12.  
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**Question 12**

Husband and Wife are divorcing. The marital estate consists of the following assets:

Wife's Retirement Account: Before marriage, Wife worked at Company and contributed to an Individual Retirement Account (IRA). She stopped working at Company the day before her wedding and made no contributions to or withdrawals from the IRA during the marriage. The value of the IRA on her last day of work was \$20,000. The IRA has been invested in a mutual fund throughout the marriage. The mutual fund is now worth \$30,000. The increase in value came from \$2,000 in reinvested quarterly cash dividends, \$3,000 in reinvested capital gains distributions, and \$5,000 from market appreciation.

The Boat: Husband and Wife purchased a boat during the marriage for \$11,000. They paid an initial \$1,000 from their own funds, and Husband's father wrote a check for \$10,000 payable to Husband for the balance. In the check's memo line, Husband's father wrote, "For Happy Weekends on the Lake with Wife."

Husband's Rental Property: Husband kept a house he purchased prior to marriage and used it during the marriage as rental property. On the date of the marriage, the house was worth \$100,000, and Husband owed \$80,000 on the mortgage. The house is now worth \$120,000, and he owes \$40,000 on the mortgage. All of the mortgage payments, taxes, and insurance on the house have been paid out of the rental income. Husband has paid \$10,000 in taxes and insurance on the property during the marriage.

**How should each of the following assets be characterized in their divorce?**

**(1) Wife's Retirement Account? Explain fully.**

**(2) The Boat? Explain fully.**

**(3) Husband's Rental Property? Explain fully.**

## **This concludes the Texas Bar Examination.**

Write the Honor Pledge on the back of this question book.

**Laptop Examinees:** Follow the Laptop Instructions that were handed out to you at the beginning of this session.

**Handwriting Examinees:** If you finish *before* the 15-minute warning, write the Honor Pledge on the back of this question book, give your question book and answer book to your proctor, gather your belongings—including your Admission Ticket and your ID—and exit the Secure Area. If you finish *after* the 15-minute warning, you must remain seated until you are dismissed.



