

Thursday Afternoon
March 1, 2018
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

On January 2, ABC, Inc. (ABC) was duly formed and incorporated in accordance with the Texas Business Organizations Code. Brad and Carol were its only officers, directors, and shareholders. Each was issued a certificate representing 50% of ABC's shares upon payment of consideration.

Six months after ABC was incorporated, Brad and Carol decided that they wanted to govern ABC pursuant to a shareholders' agreement. ABC's attorney drafted a shareholders' agreement that Brad and Carol signed. Among other things, the agreement: (1) eliminated ABC's board of directors; (2) provided that Carol would be ABC's president and sole manager; and (3) provided that the shareholders' agreement would remain in place for 25 years.

On September 15, Brad sold his shares of ABC to Ted and gave Ted the stock certificate that Brad had received in January. The next day, Ted discovered from Carol that ABC was being governed pursuant to a shareholders' agreement and that he could have no role in managing ABC, because Carol was the sole manager.

On November 1, Ted wrote Carol to demand that his accountant be allowed to inspect ABC's books and records at a time convenient for Carol. Ted did not state a purpose for the inspection. Carol informed Ted that she would not comply with his request.

On December 1, Ted sued Brad, Carol, and ABC seeking: (1) a declaratory judgment that the shareholders' agreement was not properly adopted; (2) a declaratory judgment that the shareholders' agreement contains unlawful terms; (3) an order compelling Carol to allow Ted's accountant to inspect ABC's books and records; and (4) rescission of his purchase of shares in ABC.

- (1) Was the shareholders' agreement properly adopted? Explain fully.**
- (2) Does the shareholders' agreement contain unlawful terms? Explain fully.**
- (3) Did Carol properly refuse to allow Ted's accountant to inspect ABC's books and records? Explain fully.**
- (4) Is Ted entitled to rescission of the purchase of ABC's shares? Explain fully.**

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

Question 8

George and Martha want to go into business together to make and sell taffy. They want to name their company “The Best Taffy in Texas” (BTT). George and Martha plan to open BTT retail stores throughout Texas and are trying to decide whether to form a limited liability partnership, a limited partnership, or a limited liability company.

They have come to you seeking advice.

Under the Texas Business Organizations Code:

(1) What are the relative advantages with respect to liability in creating

- (a) a limited liability partnership,**
- (b) a limited partnership, and**
- (c) a limited liability company?**

Explain fully as to each.

(2) What steps are required to form BTT as

- (a) a limited liability partnership,**
- (b) a limited partnership, and**
- (c) a limited liability company?**

Explain fully as to each.

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

Question 9

Steve, a widower, had two children, Amanda and Bob.

In 1975, Steve purchased a \$1,000,000 life insurance policy and named Amanda as beneficiary.

In 1980, Steve married his second wife Cathy.

Steve and Cathy purchased a Farm in 1982. The Farm is their only real property, but they have lived in a rented retirement cottage since 2014.

Amanda died in 2015. Steve never changed the beneficiary designation on the life insurance policy.

In 2016, Steve signed a handwritten, but undated, will that stated:

This is my last will and testament. I am of sound mind.
I leave the Farm to my son Bob.
I leave the proceeds of my \$1 million life insurance policy to my wife Cathy.
I leave to my alma mater, University, \$20,000.
I leave to the local Library, \$20,000.
/s/ Steve

Steve died in 2017, leaving the following assets:

- (a) The Farm, worth \$400,000;
- (b) The \$1,000,000 life insurance policy; and
- (c) A bank account with a balance of \$30,000.

Steve was survived by his wife Cathy and his son Bob.

Three of Steve's closest friends, who were with him when he wrote the will in 2016, recognize both the handwriting and the signature as being Steve's.

- (1) Is Steve's will valid? Explain fully.**
- (2) Assuming Steve's will is valid, who is entitled to:**
 - (a) The Farm?**
 - (b) The proceeds of the life insurance policy?**
 - (c) The money in Steve's bank account?**

Explain fully as to each.

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

Question 10

In 2010, Zach executed a valid, attested, and self-proven will. The will contained only one dispositive provision: "I, Zach, leave my entire estate to my wife, Jill." The will also stated, "I want Jill to serve as Independent Executor of my estate."

In 2014, Zach and Jill divorced. A final divorce decree was entered on December 1, 2014. All of their property was divided in the final decree.

Zach died in 2016. Zach was survived by three children: Ann, Bart, and Charles. Ann was the biological child of Zach and Jill. Bart was the biological child of Jill and her first husband, but Zach adopted Bart when Bart was 10. Ann and Bart are now adults. Charles was the biological child of Zach and a woman whom Zach never married. Zach's paternity of Charles was established in 2014.

At Zach's death, he owned the following assets:

- (a) All shares in Zach's Plumbing (Shares);
- (b) A checking account at First State Bank with a balance of \$100,000 (Account); and
- (c) A home where he lived with his minor son Charles (House).

Zach's Plumbing is located in Tyler, Texas. Ann works for Zach's Plumbing as a journeyman plumber.

Bart was added as a signatory to the Account following Zach and Jill's divorce. He now lives in Nome, Alaska.

Bart has filed an application to probate Zach's will, arguing that the Court should appoint his mother Jill, or in the alternative, Bart, as personal representative of Zach's estate.

- (1) Who should the Court appoint as personal representative of Zach's estate? Explain fully.**
- (2) How should Zach's estate be distributed, and what are the parties' respective rights in each of the following assets:**
 - (a) Shares**
 - (b) Account**
 - (c) House**

Explain fully as to each.

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

Question 11

Connie, a personal trainer, suffered a short illness requiring extensive medical treatment from her physician, Dr. Smith. As a result of the treatment, Connie incurred significant medical expenses.

Connie received several billing statements from Dr. Smith's office but, unable to pay the bills immediately, she ignored them. Connie began receiving telephone voice messages from David, an employee in Dr. Smith's office, who said he was the "Credit Bureau Manager for Dr. Smith" and was calling about the amount she owed. The telephone calls increased in frequency, up to three to four times daily, and Connie finally called David.

David began by telling Connie that her failure to pay the medical charges was a "felony crime" and that he could have her arrested "with one phone call." David also said that if Connie did not pay the amount owed immediately, her house and car would be repossessed. David then told Connie that, unless she paid "right away," he would call her clients and tell them about her illness. Horrified, Connie hung up the phone. Extremely distraught over the call with David, Connie suffered a panic attack that required hospitalization. After she was released, Connie consulted an attorney about her legal rights.

(1) Did David's actions violate any Texas consumer laws? Explain fully.

(2) Under Texas consumer laws, what rights and remedies, if any, does Connie have against

(a) David?

(b) Dr. Smith?

Explain fully as to each.

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

Question 12

After learning that the City of Austin intended to build a downtown sports complex, Settlor established a valid charitable trust (Trust) under Texas law, for the purposes of “promoting healthy lifestyles in the City of Austin” and “funding the maintenance of a downtown sports complex, forever.” Settlor named Trustee, a real estate developer, as trustee.

The City of Austin subsequently decided not to build a downtown sports complex. Trustee then notified Settlor that, as Trustee, he was designating Sports Parks, Inc. (SPI), a private, for-profit construction company specializing in sports parks, as a replacement charitable beneficiary of the Trust. Trustee also told Settlor that the Trust would provide funding to SPI to build a sports complex on property owned by Trustee’s real estate development company.

Settlor has filed a suit in Travis County District Court challenging Trustee’s designation of SPI as a replacement beneficiary and seeking to remove Trustee. Trustee contends that his actions were authorized under Texas law.

- (1) Under Texas law, what rights, if any, does Settlor have to challenge Trustee’s designation of SPI as a replacement beneficiary and to remove Trustee? Explain fully.**
- (2) How is the District Court likely to rule in the suit? Explain fully.**
- (3) What role, if any, may the Texas Attorney General have in the suit? Explain fully.**

This concludes the Texas Bar Examination.

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

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Examinee # _____