

Thursday Morning  
February 28, 2019  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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**If hand-writing, answer in the section marked Question 1.  
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**Question 1**

Effective September 1, 2016, Jack and Bob formed a Texas general partnership for the practice of law (Partnership). No formation documents were filed with the Texas Secretary of State. Their written partnership agreement contained the following clauses:

Partnership shall continue from year to year unless terminated in accordance with other provisions of this Agreement.

Partnership may be terminated at any time at a specially called meeting upon the affirmative vote of 50 percent of the partners.

In October 2016, Jack and Bob, in the name of Partnership, entered into an office lease for a term of five years (Lease). The Lease was signed only by Jack on a signature line that read “as an authorized representative” of Partnership.

In December 2017, Jack called a special meeting of Partnership and provided written notice of the meeting to Bob. The special meeting took place on January 12, 2018. Bob did not attend. At the special meeting, Jack withdrew from Partnership, effective immediately, and then provided written notice to Partnership of his withdrawal.

In March 2018, Sally, a new client with no knowledge of Partnership, engaged Bob to file a lawsuit on her behalf. Bob failed to file the lawsuit on Sally’s claim before the statute of limitations had expired. Sally filed a malpractice suit, naming Partnership, Jack, and Bob as defendants.

In April 2018, Partnership defaulted on the Lease, and the property owner brought suit against Partnership, Jack, and Bob.

**(A) What is the effect of Jack’s withdrawal from Partnership? Explain fully.**

**(B) Are the Partnership, Jack, or Bob liable for:**

**(1) The alleged malpractice? Explain fully.**

**(2) The Lease default? Explain fully.**

**If hand-writing, answer in the section marked Question 2.  
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**Question 2**

On January 1, 2015, Dawn and Erika formed a Texas limited liability company (Company) to sell tacos from a food truck. Dawn and Erika are the only members of Company.

Company's certificate of formation states that it will be member managed. The company agreement (Agreement) provides that the sole business of Company would be to sell tacos. It further provides that each member is an agent of Company for the purpose of carrying out Company's business.

In March 2015, Company began operating the food truck. On route to its first dining location, Erika inadvertently drove past a stop sign and struck a vehicle driven by Gayle, injuring Gayle and damaging the food truck. Gayle brought suit against Company, Dawn, and Erika.

While the food truck was damaged, and without the knowledge of Erika, and to supplement Company revenue, Dawn used Company funds to purchase a craft brewery from Sam, a third party. When Erika found out, she attempted to rescind the purchase.

**Answer each question in accordance with the Texas Business Organizations Code:**

- (A) In Gayle's lawsuit against Company, Dawn, and Erika, which of the named defendants are liable and which are not? Explain fully.**
- (B) Will Erika be able to force Company's rescission of the purchase of the craft brewery? Why or why not? Explain fully.**

**If hand-writing, answer in the section marked Question 3.  
If laptop, answer in the screen marked Question 3.**

**Question 3**

Sam and Penny married in 2011. Penny had two children from a previous marriage, Alan (then age 19) and Bob (then age 12).

In 2012, Sam legally adopted Bob.

In 2013, Sam executed a valid, self-proved will with the following provisions:

I hereby appoint my wife Penny as Independent Executor of my estate.

I devise and bequeath all of my personal and real property to my wife Penny.

If my wife does not survive me, I leave my entire estate to our son Bob.

In 2014, Sam and Penny had a child, Cathy.

Sam and Penny divorced in July 2017.

Sam died in December 2017, leaving a home worth \$250,000, home furnishings and other exempt personal property valued at \$50,000, and a checking account with a balance of \$10,000. Sam's home was mortgage free. When Sam died, he had over \$400,000 in debt from a failed business venture.

When Sam died, Cathy lived with Penny.

- (A) Who is the probate court likely to appoint as personal representative of Sam's estate? Explain fully.**
- (B) What rights, if any, do the following persons have in Sam's estate:**
- (1) Alan?**
  - (2) Bob?**
  - (3) Cathy?**
  - (4) Penny?**

**Explain fully as to each.**

**If hand-writing, answer in the section marked Question 4.  
If laptop, answer in the screen marked Question 4.**

**Question 4**

Husband died intestate. He was survived by Wife and their two minor children, Son and Daughter. When Husband died, Husband and Wife owned the following assets:

- (1) A house in Texas that Husband and Wife purchased shortly after they were married and lived in throughout their marriage (House);
- (2) Home furnishings, consumables, and clothing valued at \$50,000 (Household Effects);
- (3) Family heirlooms, which Husband inherited from his uncle, valued at \$30,000 (Heirlooms); and
- (4) A joint checking account with a balance of \$45,000 (Checking Account).

When Husband died, the only debt Husband and Wife had was \$5,000 owed to Credit Union on a credit card account.

- (A) As attorney for Husband's estate, how would you advise Wife to transfer Husband's assets to his heirs and satisfy the debt, if necessary? Explain fully.**
- (B) To whom and in what proportions should the following assets be distributed?**
- (1) House;**
  - (2) Household Effects;**
  - (3) Heirlooms; and**
  - (4) Checking Account.**

**Explain fully as to each.**

**If hand-writing, answer in the section marked Question 5.  
If laptop, answer in the screen marked Question 5.**

**Question 5**

After sustaining a back injury, Conrad decided to purchase disability insurance. He saw an advertisement from Insureco, an insurance company, for disability insurance that included the following statements: "ALL APPLICANTS ELIGIBLE!" and "All Applications Approved!"

Conrad went to Insureco's office and spoke with Agnes, an Insureco agent. Conrad told Agnes about his recent back injury and that he wanted disability insurance to cover any future injuries and to protect his family.

Agnes filled out Insureco's multi-page application and asked Conrad to sign the document. Conrad realized he'd forgotten his reading glasses, but Agnes told him, "No worries. It's just boiler plate stuff." Agnes also said, "This is not in the contract, but if you buy this coverage today, you'll get a \$100 rebate." Conrad signed the application, paid his initial premium, and was issued a policy. He never received the "rebate."

A year later, while moving furniture, Conrad sustained a serious back injury that left him disabled and unable to work. He filed a claim, but Insureco denied it and informed him that his policy had been voided under a coverage clause in the application that excluded anyone with a prior back injury. Insureco also admitted that Agnes failed to note Conrad's prior back injury on his application, but denied any responsibility because Agnes had since been fired. Distraught, Conrad consulted with an attorney.

- (A) Did the actions of Agnes and/or Insureco violate any Texas consumer laws? Explain fully.**
- (B) Under Texas consumer laws, what rights and remedies, if any, does Conrad have against Agnes and/or Insureco? Explain fully.**

**If hand-writing, answer in the section marked Question 6.  
If laptop, answer in the screen marked Question 6.**

**Question 6**

Sergio, a successful real estate investor, died and left a properly executed will that established a trust (Trust) for the benefit of his minor son, Brad. The trust instrument named Tim, Sergio's personal banker, as the Trustee and the stated purpose of the Trust was to "protect and preserve the value of Sergio's real estate and stock holdings" until Brad turned 18. The Trust also included the following clause: "Trustee is excused and released from liability for any conduct, negligent or intentional."

Shortly after Brad's 18<sup>th</sup> birthday, he requested a complete accounting from Tim, which showed the following:

- (1) Tim loaned himself \$100,000 from the Trust, interest free, and then repaid the Trust \$100,000 six months later;
- (2) Tim sold a \$1.5 million office building from the Trust and received a commission from the sale; and,
- (3) Tim used Trust funds to purchase stock for the Trust from Bank, where Tim works as a manager, and the stock value increased by 50 percent.

When Brad confronted Tim about the actions, Tim asserted the following defenses: his actions benefited the Trust, were proper under the "prudent investor" rule, and, in any event, were excused by the clause in the Trust releasing him from liability.

**(A) Did Tim violate any duties under Texas law and are his defenses valid with regard to:**

- (1) the \$100,000 loan?**
- (2) the commission from the \$1.5 million office building sale?**
- (3) the purchase of stock from Bank?**

**Explain fully.**

**(B) What remedies, if any, does Brad have as a result of Tim's actions as Trustee? Explain fully.**

**This concludes the morning portion of the Texas Essay Questions.**

**Write the pledge on the back of this question book.**

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