Question 12 – February 2013 – Selected Answer 1

(1) Grant's executor should not comply with Molly's telephonic request that the money left to Wade and Willa be delivered to her. At issue is an executor's duty when the testator bequeaths a large sum to minors. In Texas, when a minor inherits a large sum of money, a guardian of the estate must be appointed to manage and invest the money. Although parents are the natural guardians of their children, this rule applies only to guardianship of the person rather than guardianship of the estate. Because here, there has been no appointment of a guardian of the estate, the executor should not release the funds to anyone, even to Wade and Willa's mother. Wade's handwritten note is insufficient to require the executor to send Molly the money. Wade is a minor and lacks legal capacity to handle his financial affairs. For this reason, a guardian of the estate must be appointed. Grant's executor can then release the funds to the guardian of the estate.

(2) Williamson County is a county of proper venue, but Frank's application for guardianship is insufficient for Frank to be appointed guardian of the estate. In the guardianship proceeding of a child, the court of proper venue is located in the county where the child lives. Here, Wade and Willa spend two-thirds of the time in Williamson County. Thus, Williamson County is a county of proper venue. Frank's application is legally insufficient because it asks the court to establish a single guardianship for two children. Each child must have his or her own guardianship proceeding. Also, Frank, an interested witness, is the only person's account on the application of his vast experience handling money. Willa's handwritten letter is irrelevant. A court may consider a child's wishes regarding who should be the guardian of the person, but this is irrelevant in appointing a guardian of the estate. The Court does not have sufficient evidence before it solely on the basis of Frank's application to appoint Frank as guardian of the estate.

(3) The court's paramount consideration must be the best interests of Willa and Wade. The court must find by clear and convincing evidence that the appointment is in the best interests of the children. Here, the court may appoint Frank as guardian of the estate, may appoint Molly as guardian of the estate, or may appoint some third party as guardian of the estate. There is not enough evidence from these facts to determine what is in the best interests of the children, although it appears Frank might be a better choice due to his operation of a very successful financial management firm.

Question 12 – February 2013 – Selected Answer 2

1) Should Grant's executor comply with Molly's telephonic request that the money left to Wade and Willa in Grant's will be delivered to her? Explain fully. Absolutely not. When a minor has been bequeathed money, the courts typically require appointment of guardian of their estate so as to manage their money. While parents may be appointed as a guardian of their estate, this is not always the case and it certainly is not automatic. In making this appointment, the court will consider a number of factors, including the grantee's appointment (if any), whether any of the parties have the knowledge and the capability to handle such funds, and whether it will be in the child's best interests that this person be appointed to manage their estates. Additionally, an executor of an estate has a fiduciary duty to ensure that funds are properly dispensed with. While the court may consider a request from an older child as to he or she would like to manage their estate, the ultimate decision is based upon the best interests of the child.

In this case, Wade and Willa are 13 year old minors. They have no appointed guardians for their estates (as they really haven't had an estate until now). At this juncture, to limit his liability and properly effectuate the testator's will and his own duty, the executor of Grant's estate should put this money in escrow with the court and allow the court to decide how these resulting estates should be managed. Additionally, while both kids have purportedly expressed an interest in each of their parents to serve as guardian of his/her estate, the court must make this decision based upon the best interest of the child. Wade and Willa's mother is a full-time student at a local community college in Austin. Due to the vast nature of this bequest, the court is almost certainly going to find that she does not have the skills necessary to handle $20 million in a manner that effectuates the best interest of the child. This is further evidenced by the fact that she would open up accounts in the names of the children, presumably in which to deposit ten million dollars each. Funds of this amount should not be deposited into normal checking accounts--they should be invested, diversified, and handled with someone with the experience necessary to ensure that this money is not squandered or mishandled. Appointing Molly as guardianship of her children's estates is not in their best interest.

2) Was Frank's Application for Guardianship legally sufficient to allow the court to act on it, and is Williamson County a county of proper venue? Explain fully. Williamson County is a county of proper venue. Counties in which custody agreements are issued hold continuing jurisdiction after the close of such a case as long as one of the parties still resides in that county. In this case, Frank still resides in Williamson County, which is the county in which the custody agreement was issued. As such, Williamson County shall continue to be the court of continuing jurisdiction. It is unlikely that Molly's request for transfer of venue will be granted, as courts of continuing jurisdiction trump all other courts in the absence of undue hardship or burden in the case. Since the children spend 2/3 of their time in Williamson County, the court is unlikely to reach this determination. Frank's Application for Guardianship is not legally sufficient in order to allow the court to act upon it, other than to hold a hearing regarding appointment of guardians (that is to say, appointment of a guardian is NOT automatic). Additionally, the court would be unable to act upon this because it requests a single guardianship for two entirely different estates. Appointments of guardianships concerning estates require a hearing in which a court determines what is in the best interest of the child. An estate is an individual interest and requires it to be considered individually and not in correlation to someone else's rights, as what is good for one person may not be good for the next. Wade and Willa are each entitled to a guardianship hearing in which their interests are inspected and best interests are determined. While they may end up with the same guardian over their estate, this decision cannot be made concurrently, but has to be made on individual assessments as to each particular child's best interests. We have no information regarding Wade and Willa, and for all we know, they may be highly differently situated and have entirely different needs. To appoint one guardian without consider each child's best interests individually would be to deny them due process under the law. As such, the court cannot automatically grant their father guardian of their separate estates. It must first find that his appointment would be in their best interests. If that is the case (and it very well may be), the court will require him to post a surety bond before assuming his responsibilities. It will also need to assess whether he possesses the qualities necessary to manage each child's estate in each of their best interests.

3) What standard must the Court follow in determining the appointment of a guardian, and what are the Court's options under these circumstances? The Court must make the determination of guardianship based upon the best interests of the child. As discussed above, the court may consider many different things while making the determination of guardianship, but ultimately this test is key. The Court will be required to appoint a guardian to best represent each child's financial interests, and must appoint someone who can appropriately oversee large sums of money effectively. A Court may appoint any

guardian as long as it determines that this guardian meets requirements of handling this money appropriately and that this appointment is in the best interests of the child; this appointment may include a parent, a grandparent, an investment firm, a bank, a financial advisor, etc. The Court also has the option to create a trust in which this money shall be held and managed until the minors have reached such an age that they are capable of handling their money. Each child's interests must be handled separately, and the best interests must be determined as to each individual child, rather than the whole. In this case, since the estate involves such a huge amount of money, the court is likely to appoint a financial firm specializing in large accounts (the father may qualify as an appropriate guardian as well), and order that this money be delivered into a trust that is created for the future benefit of Wade and Willa.

Question 12 – February 2013 – Selected Answer 3

1. At issue is whether the executor of G's estate should deliver the $20 million he left to his two 13-year-old grandchildren, to their mother, per a phone request by the mother. In Texas, an executor of an estate has a legal duty as a fiduciary to do what's in the best interest of the estate and of the beneficiaries. Here, we have 13-year-old twins whose parents have divorced and who just inherited $10 million each. In Texas, a guardian must be appointed when (1) the person in incapacitated, (2) to protect the person and the property. Under the law, minor children are automatically incapacitated. Even if the court may consider M as the guardian of her children's estates, she cannot make such a request over the phone to the executor of the deceased's estate. A proper way to seek guardianship is to file an application for guardianship in the proper jurisdiction.
2. At issue is whether F filed legally sufficient documentation with the court in order for it to act on is application for guardianship. In Texas, when one wishes to be awarded guardianship, they must file an original petition for guardianship with the court, have a citation prepared by the clerk, and have each of the parties served, including the parents of the children and the executor. Here it does not appear that F has taken all of the proper steps to petition the court for guardianship of his children and their estates.
Also at issue is proper jurisdiction for the guardianship petition. Jurisdiction is typically proper where the child resides. There are limitations on that, if the child moves out of the jurisdiction for over six months, then in a later suit, the petitioner may ask the suit to be removed to a more convenient forum. Here, the SAPCR suit and the divorce both took place in Williamson County. Williamson County is also where the children spend 2/3 of their time. However, M has moved to Travis County, where she has been for one year, and she is currently the managing conservator with the right to designate primary residence. Although it may be proper for M to request the guardianship suit be removed to Travis County because it's a more convenient forum, Williamson County is a proper county of venue. Additionally, because the facts show the children spend most of their time there, and it is the court of original jurisdiction, it's not likely to be removed to Travis County.
3. In Texas, there are many things a court must look at when determining the appointment of a guardian. First it always considers what's in the best interest of the child. What happens to be in the best interest of the child, who the child resides with, and who manages her property/estate sometimes conflicts. A guardian who cares for a child may not be a proper choice to manage a sizeable estate, and one who may be chosen to manage the estate may not be a proper choice as a caretaker. Normally the Court will look at the parent's choice of guardian when it makes its determination of who to award guardianship to. The court may also take under advisement a child's (12 or older) wish of who she chooses to care for her, through a written request to the court. Here, guardianship of the children is not at issue, the only guardianship issue is who should be the guardian of the estates. The court uses a "best interest of the child" standard to determine guardianship.

Per the current custody order in place by the court, both parents, F and M, are joint managing conservators. M has the right to designate primary residence, even though the conservatorship is joint, the children, under the facts spend more time with F because M has a busy class schedule. Under the current circumstances here, the court will look at the background of the potential guardians, the education, the resources, ability and time, and criminal history, as well as any other factor the court deems appropriate. Under these facts, the court may find that F might be a better choice to be the guardian over both children's property because of his background in financial management. Although the court is not bound to award guardianship to only one parent. It may choose to allow one to be a guardian for one child and the other for the other child.