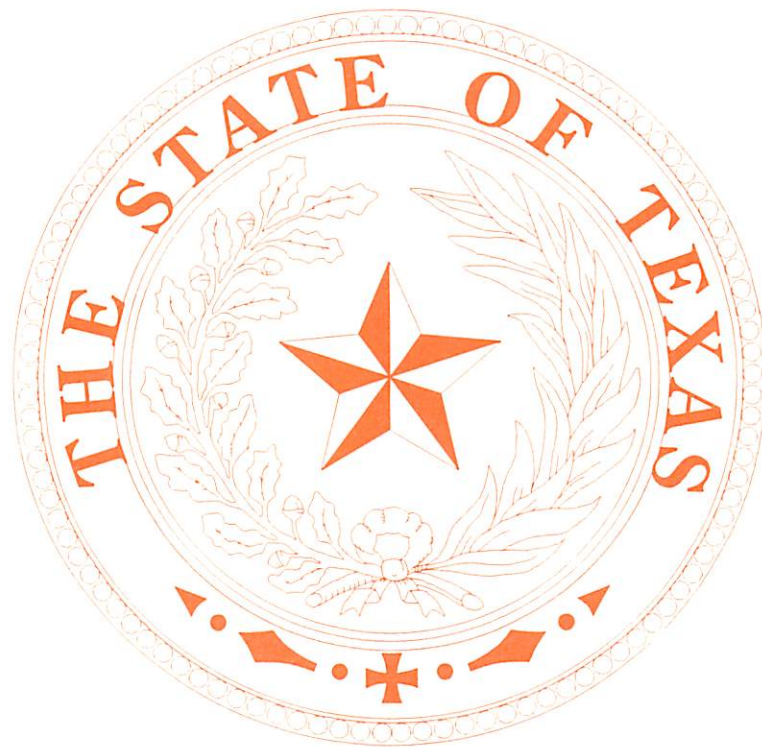


Thursday Morning  
March 1, 2012  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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If **WRITING**, answer Question 1 in the **GOLD** answer book.  
If using **LAPTOP**, be certain you answer in the **correct** screen.

**QUESTION 1**

Esther, a Texas resident, died intestate last month. Her husband Jack, whom she married in 1964, died in 1999. They had two natural children, Alfred and Billye, and an adopted child, Christy. Alfred had died six months before Esther, leaving two children: Xavier and Yadira.

Prior to her marriage to Jack, Esther had given birth to Zeb, a child born out of wedlock. Immediately after Zeb's birth, she placed him for adoption. Although there had been no formal proceedings to terminate Esther's parental relationship with Zeb, another family legally adopted him as an infant. Esther had no contact with Zeb until a week before her death, when Zeb visited her.

Esther is survived by Billye, Christy, Xavier, Yadira, Zeb and Jack's sister, Millie, all of whom claim the right to inherit from Esther ("Claimants").

At the time of her death, Esther owned the following assets:

- a. A retirement account that names Billye and Christy as equal beneficiaries in the event of Esther's death ("Retirement Account");
- b. A life insurance policy that names Billye and Christy as equal beneficiaries ("Life Insurance Policy");
- c. A certificate of deposit account, held with Alfred as joint tenant with right of survivorship ("Certificate of Deposit"); and
- d. Money, real property and personal property ("Other Property").

**1. Which of the Claimants are entitled to inherit from Esther and which are not? Explain fully.**

**2. To whom and in what proportions should the following assets be distributed? Explain fully.**

- a. **Retirement Account**
- b. **Life Insurance Policy**
- c. **Certificate of Deposit**
- d. **Other Property**

If **WRITING**, answer Question 2 in the **GRAY** answer book.  
If using **LAPTOP**, be certain you answer in the **correct** screen.

**QUESTION 2**

Kevin, a widower and Harris County, Texas resident, executed a valid, attested, self-proved will in 2004, in which he left all of his modest estate to his daughter, Sheila. In 2007, after Sheila was arrested for drug possession for the fifth time, Kevin hand wrote the following language on the back of the last page of his 2004 will, did not date it, and signed only his first name:

I hereby change my will to now give to my next door neighbor, Donald, the sum of \$50,000 at my death, instead of to my daughter Sheila as stated in my will.

/s/ Kevin

In January 2008, Kevin was seriously injured in a car accident while on vacation in El Paso, Texas, and was admitted to an El Paso hospital. Sheila came to the hospital to visit her father and learned from the doctors that he was near death. Wanting to make amends with her father, Sheila asked him to forgive her for her past drug use and promised that she would not use drugs again. Kevin forgave Sheila and immediately announced, in the presence of Sheila and two hospital staff members, the following: "I hereby revoke the \$50,000 bequest to Donald, and I give it all to my daughter Sheila at my death."

Kevin died in the hospital five days later. On the date of Kevin's death, Sheila and the two hospital staff members wrote, signed and had notarized affidavits stating the substance of what Kevin had said in their presence. Kevin's estate at death consisted of \$75,000 in cash and miscellaneous personal belongings.

Within six months of Kevin's death, Sheila filed Kevin's 2004 will for probate, along with her affidavit and the affidavits of the two hospital staff members. Donald timely claimed that he was entitled to the \$50,000 based on the language Kevin had written on the back of the last page of the will.

1. **How should the court rule on Donald's claim? Explain fully.**
2. **How should Kevin's estate be distributed? Explain fully.**

**If WRITING, answer Question 3 in the BLUE answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

### QUESTION 3

Sally was an officer and employee of XYZ Corp., a Texas corporation based in Austin, Texas, that sells playing cards and poker chips via an internet website. While she worked at XYZ Corp., she was running a lucrative “side business” taking and laying bets as a bookie on sporting events, an activity that is unlawful in Texas. She resigned from XYZ Corp. and decided to form a corporation to carry on her gambling business and related activities.

Sally wishes to form a corporation under the Texas Business Organizations Code and to sell shares of stock to a few selected friends. The corporation is to be called Gaming Corp. She will be the incorporator, director, officer, and significant shareholder of the corporation. Sally wants the articles of incorporation to provide:

- the corporation is incorporated to engage in bookmaking (i.e., making and laying bets on sporting events) and selling board games with gambling motifs for home-use;
- the corporation may loan money to its officers;
- the corporation shall provide a profit-sharing plan for its officers and employees;
- the corporation may donate corporate funds to charities of its choosing from time to time; and
- she will have limited liability to Gaming Corp.’s shareholders for acts taken or omissions made in her capacity as an officer of the corporation.

Recently, Sally learned that Ben, an XYZ Corp. shareholder, is threatening to sue her for actions she allegedly took as an XYZ Corp. officer while she was still employed at XYZ Corp. The theory of the proposed suit is that she improperly received a personal benefit from her actions.

Sally, who is still on good terms with XYZ Corp.’s board of directors, has met with them and asked them to adopt a corporate resolution agreeing to indemnify her for any expenses she might incur and judgment she might suffer in the event Ben pursues the lawsuit. She has told the board of directors that she believes Ben’s assertions are meritless but she acknowledges the possibility that she could lose the suit.

- 1. Can the articles of incorporation for Gaming Corp. contain the provisions Sally has requested? Explain fully.**
- 2. Under what circumstances, if any, does the Texas Business Organizations Code *require* XYZ Corp. to indemnify Sally and *permit* XYZ Corp. to elect to indemnify Sally, and what is the scope of the indemnification XYZ Corp. can provide to Sally in either event? Explain fully.**

**If WRITING, answer Question 4 in the PINK answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

**QUESTION 4**

Cathy and Gary are lawyers. They formed PLLC, professional limited liability company, to provide legal services to clients. Last year, Gary borrowed money from Dave, a certified public accountant, and assigned his membership interest in PLLC to Dave as security for the loan. Gary defaulted on the loan. Dave has demanded that: (i) he be admitted as a member of PLLC and be allowed to participate in the management of PLLC; (ii) he receive Gary's distribution of income earned by PLLC until the debt is satisfied; and (iii) he be allowed to inspect the books and records of PLLC. Cathy and Gary have refused all of Dave's demands.

Last month, Cathy negligently failed to file a lawsuit on Ed's behalf before the statute of limitations expired. Ed has sued Cathy, Gary, and PLLC for damages arising from Cathy's negligence.

- 1. Could Gary lawfully assign his membership interest in PLLC to Dave, and, if so, which of Dave's demands, if any, can Dave enforce? Explain fully.**
- 2. What liability, if any, do Cathy, Gary, and PLLC each have to Ed for Cathy's negligence? Explain fully.**
- 3. If Cathy and Gary had formed a limited liability partnership instead of forming a professional limited liability company, what liability, if any, would Cathy, Gary, and the limited liability partnership each have had for Cathy's negligence? Explain fully.**

If **WRITING**, answer Question 5 in the **DARK GREEN** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

### **QUESTION 5**

Abby owned fee title to 100 acres of land in Travis County, Texas, with a house on it. A producing oil well on the property provided a royalty payment of about \$50 per month to Abby under a written mineral lease. It was the only land owned by Abby in Travis County.

Abby orally leased the house to Wyatt with the only agreement between them being that Wyatt would pay Abby \$250 rent for each month he lived there. Abby borrowed \$50,000, signed a real estate lien note payable to Bank providing for quarterly interest-only payments for the next ten years, and secured the loan with a deed of trust lien on the land.

Later, Abby executed a deed conveying the property to Courtney for life, then to Madisen in fee simple. The deed, which was duly recorded, described the property as “the 100-acre tract of land and house that I own in Travis County, Texas” and recited that the conveyance was “subject to the mineral lease, the oral lease to Wyatt, and Bank’s deed of trust lien.” Abby told Courtney and Madisen what she had done and described the contents of the deed. Courtney and Madisen orally expressed their appreciation and said they were happy to accept the conveyance, but neither of them actually received a copy of the deed or signed any written acknowledgement of it.

Three months after the conveyance to Courtney and Madisen, Abby received Bank’s quarterly interest statement and the County’s ad valorem property tax bill for the coming year. Abby forwarded these bills to Courtney and Madisen for payment. Abby declined to pay the interest and sent notice to Bank that she had conveyed the property and that Courtney and Madisen were responsible for future payments. Courtney and Madisen insisted that neither of them was liable for either the interest or the property tax.

Wyatt continued to pay the monthly rent to Abby, and the mineral lessee continued to pay the royalty to Abby as well. Abby insisted that she was entitled to keep those payments inasmuch as the deed conveying the land to Courtney and Madisen recited that it was “subject to” those encumbrances. Courtney and Madisen each claimed the right to receive those payments.

A few months later, Wyatt gave timely and proper notice to Abby that the lock to the front door of the house and the carpet in the living room, by reason of age and ordinary wear and tear, had worn out and demanded that they be replaced. Abby forwarded the notice to Courtney and Madisen directing them to “take care of this.”

- 1. Was the deed executed and recorded by Abby valid as a conveyance of the property to Courtney and Madisen? Explain fully.**
- 2. As among Abby, Courtney, and Madisen, who is entitled to receive the rent and royalty payments? Explain fully.**
- 3. As among Abby, Courtney, and Madisen, who, if any of them, is obligated to replace the front door lock and the worn out carpet in the house? Explain fully.**
- 4. As among Abby, Courtney, and Madisen, who is obligated to pay the interest to Bank and the ad valorem taxes to Travis County? Explain fully.**

**If WRITING, answer Question 6 in the TAN answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

**QUESTION 6**

Tenant lives in a house in Waco, Texas leased from Landlord for a period of five years ending December 2013. The lease, which is in writing and signed by both Landlord and Tenant, is not witnessed, notarized, or recorded. The lease is silent regarding events that might justify early termination and regarding who is responsible for repairs and maintenance. Tenant is current on all rent obligations to Landlord.

Tenant hired a contractor to remodel the bathroom and install a new shower. Tenant was displeased with the placement of the shower, refused to pay the contractor and relocated the shower on his own. In the process, Tenant disrupted the plumbing so that there is now improper drainage. He gave notice to Landlord of the improper drainage and requested that Landlord remedy it at Landlord's expense.

In addition, Tenant has given Landlord notice of the following matters and demands that Landlord remedy them at Landlord's expense: (a) the roof recently developed leaks and needs to be repaired; (b) the kitchen walls have become smoke-stained over the last three years and need to be repainted; (c) the smoke detectors installed by Landlord at the commencement of the lease no longer work and need to be replaced; and (d) the window latches on two of the exterior windows, which were broken by Tenant's carelessness, need to be replaced.

The City of Waco is taking an easement for a sewer line across the front lawn of the property under its power of eminent domain and will pay a condemnation award for such taking.

Landlord recently received an offer from Buyer to purchase the house. Buyer is concerned about the presence of the lease, and Tenant has said he will not voluntarily vacate the property.

- 1. Is the lease valid? Explain fully.**
- 2. What are Landlord's statutory responsibilities, if any, with regard to the drainage problem, roof leaks, kitchen painting, smoke detectors, and broken window latches? Explain fully.**
- 3. Would Tenant have any right to recover all or any portion of the condemnation award paid by the City for the sewer line easement? Explain fully.**
- 4. What causes of action, legal or equitable, are available to Buyer in an attempt to terminate Tenant's lease? Explain fully.**
- 5. Would Buyer be likely to succeed in terminating the lease and evicting Tenant? Explain fully.**

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