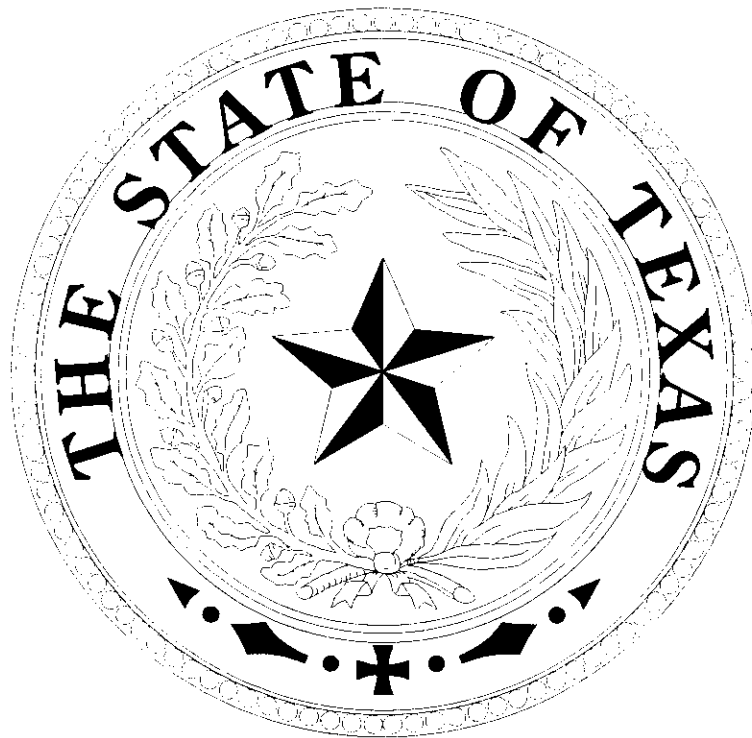


Thursday Afternoon  
August 1, 2013  
Essay Questions 7 - 12



## TEXAS BAR EXAMINATION

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If **WRITING**, answer Question 7 in the **RED** answer book.  
If using **LAPTOP**, be certain you answer in the **correct** screen.

### QUESTION 7

Will, a never-married, retired sixty-five year old, lives alone in a modest one-bedroom house, where he has lived for the last thirty (30) years. Will and his long-time neighbor and close friend, George, have seen each other virtually every day in that time and have spent countless hours fishing, playing cards, and discussing baseball.

Recently, George has noticed Will becoming more forgetful about things like dates and telephone numbers. Occasionally, Will has appeared momentarily disoriented. George also suspects that Will has missed meals due to his forgetfulness. George became very alarmed when Will told him recently that he had withdrawn all his life savings from the bank, about \$50,000, and placed the cash in a suitcase under his bed to “keep it safe.”

Will’s only surviving family member, a distant uncle, recently died and left his entire estate to Will. The uncle’s sizable estate includes real property, securities, and cash valued at \$10 million.

George, a partner in a large accounting firm, is concerned that, in light of Will’s recent, erratic behavior, he is not capable of managing his sizable inheritance. George files a guardianship proceeding in probate court and asks that he be appointed as the guardian of Will’s person and Will’s estate.

At the hearing on whether to appoint a guardian, George provides evidence regarding Will’s recent behavior. He also presents a report from a doctor who concludes that Will is beginning to suffer from slight memory loss, lacks an appreciation for the sizable estate he has inherited and is completely unsophisticated in financial matters. In the doctor’s opinion, Will is incapable of managing a sizable estate.

Will testifies on his own behalf and disclaims any physical or mental impairment, and asks the court to dismiss the proceeding. Alternatively, Will specifically requests that his former Banker be appointed as his guardian and, annoyed with what he considers interference with his personal affairs by George, further requests that it not be George, his “former friend.” A physician presented by Will’s attorney ad litem testifies that, while Will is inexperienced in financial matters, Will is otherwise capable of taking care of his basic needs.

1. **Applying the factors that the court is required to consider under the Texas Probate Code, is the court likely to appoint a guardian of Will’s person, his estate, or both? Explain fully.**
2. **If the court decides to appoint a guardian, what options may the court consider as to the person or entity appointed to act as guardian, and, in this case, who would the court be most likely to appoint? Explain fully.**

If WRITING, answer Question 8 in the LIGHT GREEN answer book. If using LAPTOP, be certain you answer in the correct screen.

### QUESTION 8

Peter purchased a disability income insurance policy from Insureco, an insurance company doing business in Texas. The policy provided that, in the event Peter was disabled and unable to work, he would receive a monthly benefit equal to his regular salary for the length of his disability.

About a year after he obtained the policy, Peter was involved in an automobile accident that left him with a serious back injury. After a thorough medical examination, Peter's doctor determined that Peter's medical condition would require on-going treatment, and that Peter was totally disabled and would be unable to return work for at least 12 months.

Peter submitted a proper notice of claim with all other required medical documentation to Insureco and requested payment of the monthly benefits under the policy.

After a month passed without hearing anything from Insureco, Peter called to check on the status of his claim. Peter spoke with Albert, an agent of Insureco, who told him that he was in charge of reviewing Peter's claim and that:

--Insureco was aware of his "debilitating injury," but had not gotten around to reviewing the claim or the information Peter had provided;

--As a matter of company practice, Insureco always took at least six months to complete its review of a "total disability" claim, regardless of the information provided in support of the claim; and

--Insureco wouldn't pay on the claim if Peter had other insurance that applied, even though this condition was not set forth in the policy.

Peter explained to Albert that, in addition to daily living expenses, he had a monthly home mortgage payment, as well as a car loan payment to make and that, without the disability benefits, he was at risk for foreclosure and repossession. Albert told Peter those were his problems and that he would get back to him when he "got around to it."

Over the next several months, Peter began receiving foreclosure and repossession notices on his house and car, and he made numerous frantic telephone calls to Albert, who never returned the calls.

Six months after Peter submitted his claim, he finally received a one-sentence letter from Insureco saying that his claim was being denied, but providing no further explanation. Peter immediately called Albert, who said that he never finished reviewing Peter's claim or conducted any investigation. He explained that, once he recognized Peter's doctor as the same doctor who had been involved in a prior "total disability" claim filed with Insureco, denial of the claim was automatic, due to "suspicious circumstances."

Peter was forced to file for bankruptcy in order to prevent foreclosure on his house and repossession of his car and his credit rating was negatively impacted. In addition, Peter was so deeply upset and stressed by the handling and denial of his claim that he had to be placed under the care of a psychiatrist.

- 1. What violations, if any, of applicable Texas consumer protection laws were committed by Insureco and Albert, and what recovery might Peter obtain as a result thereof? Explain fully.**
- 2. Under Texas consumer laws, does Peter have any claim on which he might recover punitive, additional or exemplary damages? Explain fully.**

If **WRITING**, answer Question 9 in the **YELLOW** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

**QUESTION 9**

Jennifer and Craig married in Texas in 2001 and had two children. In 2010, Jennifer was killed in an automobile accident. A year later, Craig took the children with him to a neighboring county to live on a commune. Craig is an atheist and is raising his children as atheists. Jennifer's parents, the Smiths, are extremely religious and had considerable contact with their grandchildren while Jennifer was alive. Since her death, Craig has denied the Smiths access to their grandchildren. The Smiths disapprove of Craig's lifestyle and believe that it is extremely harmful to their grandchildren. They want a court to either name them managing conservators of their grandchildren or, at the very least, order that they have reasonable possession of or access to their grandchildren. Craig objects to the Smiths' request.

1. **Do the Smiths have standing to petition the Court to either be appointed managing conservators of, or for gaining possession of or access to, their grandchildren under the Texas Family Code, and, if so, what is the procedure for asserting their claim? Explain fully.**
2. **Can the Smiths satisfy the evidentiary requirements under the Texas Family Code for being appointed managing conservators of their grandchildren? Explain fully.**
3. **Can the Smiths satisfy the evidentiary requirements under the Texas Family Code for an order granting them possession of or access to their grandchildren? Explain fully.**

If **WRITING**, answer Question 10 in the **BLUE** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

**QUESTION 10**

Jack and Frances married in 2000 in San Antonio, Bexar County, Texas, and resided there throughout their marriage. They had one child, Kelly, who was born in 2004. Jack and Frances divorced in 2006, and Frances was named sole managing conservator of Kelly. In 2010, Frances began dating Richard.

Upon learning of Frances' new relationship, Jack became furious and began sending harassing text messages and emails to Frances. The messages contained profanity and threatened physical violence unless Frances stopped seeing Richard. On one occasion, when Jack came to pick up Kelly for a scheduled visitation, he forced his way into Frances' house and started screaming obscenities at her. Frances called the police after Jack shoved her into a desk and threatened to hit her. Jack left before the police arrived.

In early 2012, Jack confronted Richard and Frances in the parking lot of a restaurant. Jack was extremely agitated and stated that if Richard did not stay away from Frances he would have to "take care" of the situation "once and for all". As he made that statement, he looked at Frances and used his right hand to make a motion that mimicked the firing of a gun towards her.

Frances has petitioned the court for a 5-year protective order imposing the broadest possible prohibitions against Jack.

1. **Can Frances establish a prima facie case for a protective order against Jack? Explain fully.**
2. **Assuming Frances establishes a prima facie case -**
  - (a) **What range of prohibitions could the court impose against Jack? Explain fully.**
  - (b) **Can the court issue an order of 5-years duration? Explain fully.**

If **WRITING**, answer Question 11 in the **ORANGE** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

**QUESTION 11**

Abby, Bobby and Cathy, each Texas residents, own and operate a for-profit business called ABC Partners ("ABC"). ABC's only office is in Texas and all of its business is conducted in Texas. By unanimous vote of the partners, Abby serves as managing partner. ABC's written partnership agreement, the sole copy of which is in Abby's possession, contains the following provisions:

- a. Only Abby has the right to access ABC's books and records;
- b. Only Abby has the power to admit new partners;
- c. A partner can be expelled only by vote of the partners, not by a court;
- d. Bobby's and Cathy's personal liability to ABC's creditors is limited to the amount of their respective initial investments in ABC;
- e. No partner can be held liable to ABC for breach of the duty of care or the duty of good faith unless the partner in question is adjudged by a court to have engaged in willful or intentional misconduct;
- f. A partner is permitted to withdraw only upon the death or incapacity of that partner; and
- g. The partnership's affairs are governed by California law.

1. **What type of partnership is ABC partners? Explain fully.**
2. **Which of the above-listed provisions of ABC's partnership agreement are valid and which are not? Explain fully.**

If **WRITING**, answer Question 12 in the **PURPLE** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

**QUESTION 12**

Abner and Blake are licensed Texas lawyers and the only members of “Abner and Blake PLLC” (“PLLC”), a validly formed Texas professional limited liability company. Carrie is a certified public accountant, licensed to practice in Texas. Pursuant to a written contract with PLLC, Carrie performed valuable accounting services for PLLC, but PLLC has failed to pay Carrie. Carrie has threatened to sue PLLC and Abner and Blake, as individuals, for the amount owed under her contract with PLLC. To avoid the lawsuit and to satisfy PLLC’s debt to Carrie, Abner has offered to assign one-half of his PLLC membership interest to Carrie and to admit Carrie as a member of PLLC. Blake does not oppose the assignment of Abner’s interest to Carrie or to Carrie becoming a member of PLLC.

1. Is Abner’s assignment to Carrie valid and, if so, what rights will Carrie obtain by the assignment? Explain fully.
2. Can Carrie be admitted as a member of PLLC? Explain fully.
3. If Carrie elects to sue, what liability, if any, will each of PLLC, Abner, and Blake have to Carrie for PLLC’s failure to pay for her accounting services? Explain fully.

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

**BE CERTAIN THAT YOU WRITE THE PLEDGE ON THE BACK OF  
YOUR PURPLE ANSWER BOOK.**