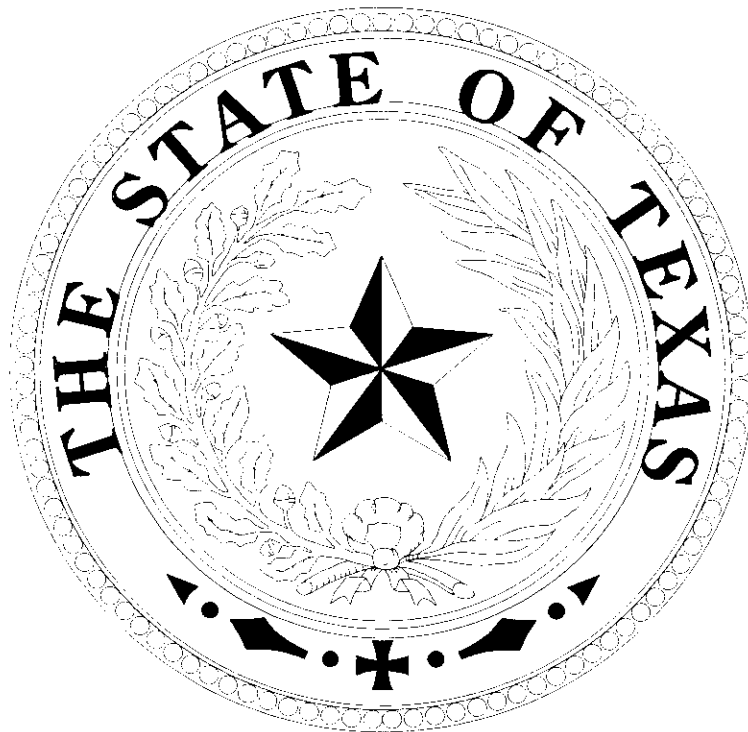


Thursday Afternoon  
February 27, 2014  
Essay Questions 7 - 12



## 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**

Linda, a Texas widow, died in January 2013 with a valid attested will dated November 1, 2012. The will was not self-proved. Linda's husband, Peter, had died in 2008.

After Peter's death, Linda had reunited and become engaged to her high school sweetheart, Jack. Shortly before the wedding, Linda realized Jack was a liar and a cheat, and, in September 2012, she broke off the engagement.

Linda's son, Hank, her stepdaughter, Elizabeth, and her ex-boyfriend, Jack, survived her. At the time of her death, Linda owned the following assets:

- a. A \$500,000 Retirement Account earned during Linda's employment with Micro Systems, Inc., that designates Jack as the beneficiary. The beneficiary designation was signed by Linda on June 1, 2012;
- b. A \$100,000 Certificate of Deposit, held with Peter, as joint tenants with right of survivorship;
- c. A Home, valued at \$250,000;
- d. A Checking Account in the amount of \$100,000 held as joint tenants with Jack. However, Linda owned 100% of the funds deposited to the account, and she had added Jack as a signer on the account only as a matter of convenience.

The dispositive paragraphs of Linda's will stated as follows:

- A. I hereby leave my Micro Systems, Inc. Retirement Account to my son, Hank, and my stepdaughter, Elizabeth, in equal shares.
- B. I leave my Certificate of Deposit to my son, Hank,
- C. I leave my home to my son, Hank, and my stepdaughter, Elizabeth, in equal shares.
- D. I leave the rest of my estate to my son, Hank.
- E. I absolutely do not want Jack to have any of my assets.

Hank asserts that the since the will was signed after Linda's relationship with Jack ended, and that Linda clearly intended for her Retirement Account and all of her other property to pass under the will, Jack should take nothing.

1. **Since the will is not self-proved, how may the attested will be proved in court and what proof must be presented? Explain fully.**
2. **Assuming the will is admitted to probate, analyze fully to whom and in what proportions the following assets should be distributed:**
  - a. **Retirement Account?**
  - b. **Certificate of Deposit?**
  - c. **Home?**
  - d. **Checking Account?**

**Explain your answers 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**

Thomas and Julie, both Texas residents, married in 1983. Thomas and Julie had two natural children, Betsy and Alice, and an adopted child, Evan. Julie died in 2000. Evan died two years ago in 2012, leaving two children, Sarah and Claire. Betsy has one daughter, Laura. Alice has no children. Thomas died intestate in January 2014.

Thomas had a brief romance with Nancy right after Julie's death. A year before his death, Thomas was told by Nancy that he was the father of her 13-year-old son, Dudley. Thomas denied that he was Dudley's father. Nancy had listed a fictitious name for the father on Dudley's birth certificate. A paternity test was never administered.

Thomas is survived by Betsy, Alice, Sarah, Claire, Laura, and Dudley, ("Claimants") all of whom claim the right to inherit from Thomas.

At the time of his death, Thomas owned the following assets:

- a. A Homestead purchased in 1983 with Julie;
- b. A \$500,000 Life Insurance Policy naming Thomas as the insured, Julie as the beneficiary, and Thomas's estate as the default beneficiary;
- c. A \$100,000 savings account, held with Betsy and Evan as joint tenants with right of survivorship;
- d. A \$200,000 Retirement Account, the contractual language of which states that "succession to the rights of the account holder is limited to the following named beneficiaries: The descendants of Thomas as equal beneficiaries, per stirpes;" and
- e. A Certificate of Deposit in the amount of \$50,000, held with Julie as joint tenants with right of survivorship.

1. **Which of the Claimants are entitled to inherit from Thomas and which are not? Explain fully.**
2. **To whom and in what proportions should the following assets be distributed:**
  - a. **Homestead?**
  - b. **Life Insurance Policy?**
  - c. **Savings Account?**
  - d. **Retirement Account?**
  - e. **Certificate of Deposit?**

**Explain your answers fully.**

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

**QUESTION 9**

Tom is a single man and currently rents an apartment in Dallas, Texas. Tom's grandmother, Halah, recently died. Halah's will left three different parcels of improved property to Tom:

Parcel One: Halah's former home, which is located within the City of Dallas and has been in Halah's family for over 100 years. This home is comprised of two acres of improved land.

Parcel Two: Halah's former ranch retreat consisting of 200 acres of improved land in rural Wise County. Halah won this ranch retreat in a card game in 2010. It was conveyed to Halah by a quitclaim deed.

Parcel Three: Halah's rural rental property, consisting of 90 acres of land and a farm house, rented to Farmer Brown on a month-to-month lease. This parcel was deeded to Halah, in the form of a special warranty deed, by her father in 1968, who had received it by quitclaim deed in settlement of a debt in 1945. No title claim has since been made on this parcel.

Assume that the highest quality deed that may be given is a general warranty deed and that the lowest quality deed that may be given is a quitclaim deed.

1. **Upon conveyance to Tom of Parcel One, Parcel Two, and Parcel Three by the Executor of Halah's Estate, on which Parcel(s) could Tom opt to claim a valid homestead? Explain fully, including the type of homestead, if any.**
2. **Taking into account the brief descriptions given, what is the highest quality of deed that the Executor of Halah's Estate may use to convey:**
  - a. **Parcel One to Tom? Explain fully.**
  - b. **Parcel Two to Tom? Explain fully.**
  - c. **Parcel Three to Tom? 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**

Rob owned Blackacre, a 150-acre tract of land in Bell County, Texas, subject to a one-eighth (1/8th) royalty interest in oil, gas, and other minerals reserved by Sean, the previous owner of Blackacre. Rob farmed Blackacre and received income from the sale of water from a water well located on Blackacre.

Rob signed an oil and gas lease, leasing Blackacre to Ace Oil Company ("Ace"). Ace began exploration activities and preparation of a drill site. For access to the drill site, Ace constructed a new road that intersected the existing road to Rob's water well. In the process of construction, Ace left large piles of dirt obstructing part of the existing road, making it impassable. The dirt could have easily been located a short distance away from the road. As a result, Rob lost income from water sales because the trucks that carried the water were unable to reach the well. Because Rob was angry, he installed a locked gate across the new road and refused to provide a key to Ace.

Big Oil Company ("Big") was aware that Ace had begun exploration on Blackacre. Determined to purchase royalty interests in the area, Big searched the Bell County real property records and discovered Sean's reserved interest in Blackacre. Big purchased Sean's royalty interest.

A few days later, Big informed Rob that, since Sean had conveyed his royalty interest to Big, Rob was obligated to pay Big a share of the proceeds of sales of water when those sales resumed.

- 1. Was Rob entitled to deny Ace access to Blackacre? Explain fully.**
- 2. What are Rob's rights, if any, against Ace for obstructing the road? Explain fully.**
- 3. Is Big entitled to a share of the water-sale proceeds from Blackacre? 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**

Prior to her death in 2000, Sandi set up an express trust for the benefit of her son, Miguel, and named her good friend, Tom, as the Trustee. The trust instrument provided, in part, the following statement:

“Trustee is hereby immune from liability for any negligent or intentional acts or omissions committed while acting as Trustee. Furthermore, any legal claim against the Trustee for any breach of duty must be filed in court no later than six (6) months from the date of the breach. Otherwise, the claim is waived.”

Miguel received minimal cash distributions from the trust but had not actually communicated with Tom for several years. Late in 2013, Miguel met with Tom to discuss the status of the trust. During their meeting, Tom reported that, except for the minimal payments to Miguel, the trust had been “mostly inactive” and had “lost money in the market.” When Miguel asked to see all accounting records prepared for the trust, Tom said there weren’t any.

Upset by what Tom told him at the meeting, Miguel sent a letter to Tom demanding that Tom produce, within 24 hours, a written statement of all accounts covering all transactions since the creation of the trust, and that he do so on a monthly basis “from now on.” Tom never produced an accounting, and he ignored Miguel’s demand for one within 24 hours and on a monthly basis “from now on.”

After making his request and receiving no response, Miguel hired an attorney and sued Tom for breach of his duties as Trustee. Miguel asked the court to: (i) order Tom to restore to the trust all losses and inappropriate expenditures; and, (ii) remove Tom as Trustee.

During Tom’s pretrial deposition, Miguel learned the following facts for the first time:

- Shortly after Tom was appointed Trustee, he used trust funds to purchase a \$90,000 luxury vehicle and signed the sales agreement “Tom, as Trustee.” Tom claimed that he used the vehicle “mainly” to conduct trust business.
- In 2002, Tom loaned himself \$250,000 interest free from trust funds. Six months later, he paid the trust back the total sum of \$250,000.
- In 2005, Tom invested \$100,000 of trust money in a new alternative fuels business that was started that same year by two of his former business partners. Although the business is still a going concern, it has yet to produce any income for the trust.

Tom asserted that all of his actions as trustee were proper and that there was no intent on his part to breach the trust. Tom also argued that Miguel’s claims were not filed within six months of any alleged breach and were, therefore, waived under the trust instrument.

- 1. Did any of the following actions violate Tom’s duties as Trustee? Explain fully.**
  - a. Failing to prepare an accounting for the trust.**
  - b. Purchasing a luxury vehicle.**
  - c. Loaning himself \$250,000.**
  - d. Investing trust money in the alternative fuels business.**
- 2. What remedies, if any, does Miguel have as a result of Tom’s actions as Trustee? Explain fully.**
- 3. Did Miguel waive his claims of breach, if any? 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

On November 1, Pablo contacted Alex, an insurance agent who represented Insko, an insurance company. Pablo requested that his newly licensed minor son, Sam, be added to the automobile insurance policy Pablo maintained with Insko. Alex quoted the amount of the additional premium, and Pablo sent a check in that amount to Alex.

On November 10, when Pablo received his regular annual bill and renewal notice from Insko, he noticed that Sam was not listed as an insured driver. He immediately called Alex, who reassured Pablo that the paperwork had been submitted to Insko, that Sam had been added to the policy, and that an updated policy would arrive in a few days.

Unbeknownst to Pablo, on October 15, Alex had received word from Insko that his agency was being terminated effective November 15. Also unbeknownst to Pablo, on November 10, Insko had returned to Alex the paperwork that he had submitted to Insko adding Sam to Pablo's policy because the paperwork was so deficient that it required "further detail."

After Pablo's November 10 telephone call with Alex, Pablo told Sam he could drive.

On November 11, while driving to school, Sam failed to stop at a red light and collided with another vehicle. Sam was not hurt, but his car was a total loss, and the driver in the other vehicle sustained injuries that required hospitalization. On the same day, as soon as Pablo heard about the accident, he contacted Insko to report the accident and the property damage to Sam's car. Insko, without investigating the circumstances, told Pablo that it had no record of Sam being added as a covered driver and, therefore, there was no coverage for the property damage or any other claim arising out of the accident. Insko also told Pablo that Alex was no longer an agent for Insko, and Insko could not be held liable for any of Alex's actions.

On November 14, Pablo was served with a personal injury lawsuit filed by the driver of the other vehicle involved in the accident with Sam. Pablo promptly forwarded the lawsuit to Insko, but Insko denied coverage for the lawsuit without further explanation. Quite distressed by Insko's denial of coverage, Pablo engaged the services of an attorney to handle the lawsuit.

1. **What rights and remedies, if any, does Pablo have against Insko under Texas consumer protection laws? 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.**