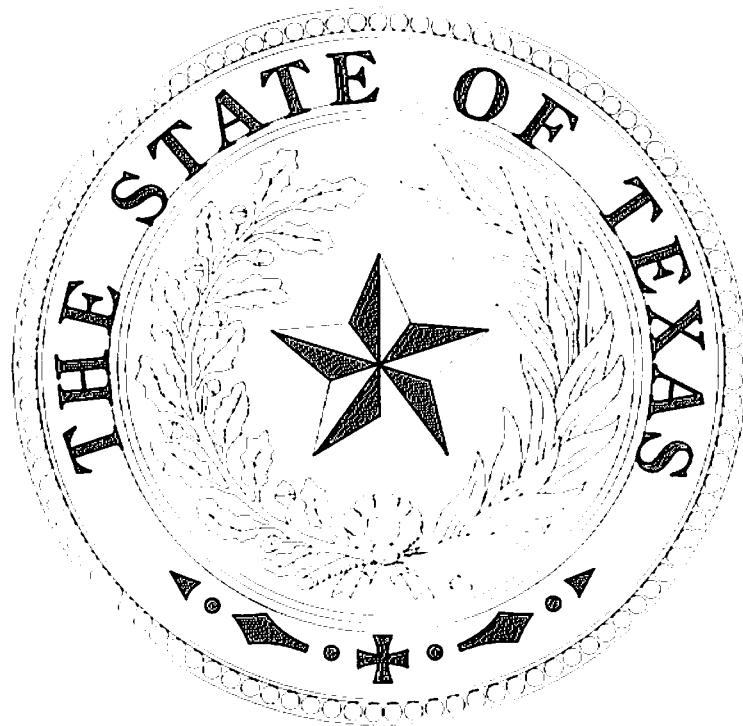


Thursday Afternoon  
February 26, 2015  
Essay Questions 7 - 12



## 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**

E-Cig, Inc. (“E-Cig”), a Texas corporation, was formed in 2012. E-Cig’s certificate of formation stated that its purpose was “to manufacture and/or market tobacco-free, electronic cigarettes, and no other purpose.” E-Cig’s shares are traded on the New York Stock Exchange.

Sara purchased shares in E-Cig during its initial public offering in 2012. Several months later, E-Cig’s board of directors duly and properly called a directors’ meeting to discuss and vote on whether E-Cig would invest \$500,000 in a North Carolina tobacco farm. Although not directors of E-Cig, Sara and other E-Cig shareholders appeared at the directors’ meeting to object to the proposed investment. Over the shareholders’ objections, E-Cig’s board of directors voted unanimously to invest in the tobacco farm. A week later, E-Cig wired \$500,000 to its broker and the investment transaction was completed.

Disgusted with E-Cig’s investment in the tobacco farm, Sara sold all of her shares to Lola the day after the investment transaction was completed. Within a year, the value of E-Cig’s investment in the tobacco farm had fallen to zero, which caused the value of E-Cig shares to drop dramatically.

- 1. Prior to selling her shares to Lola, what action, if any, could Sara have taken to prevent E-Cig from investing in the tobacco farm? Explain fully.**
- 2. What action, if any, could a qualified shareholder take to recover damages suffered by E-Cig as a result of the tobacco farm investment, and is Lola a qualified shareholder to take such action? 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**

Effective January 1, 2014, Bill and Steve formed a Texas limited liability partnership named Bill & Steve LLP (“LLP”) to practice law. Their written Limited Liability Partnership Agreement contained the following clause:

We both have the authority to enter into agreements on behalf of LLP. We will not be personally liable to third parties for any contractual or legal obligation of LLP. We will not be personally liable for malpractice or any other tort committed by any partner or employee of LLP.

In February 2014, Angela was injured when a bookshelf fell on her during her visit to LLP’s offices. The bookshelf fell because an employee of LLP failed to properly secure it to the wall. Angela filed a personal injury lawsuit, naming LLP, Bill, and Steve as defendants.

In March 2014, LLP entered into a contract with Big Wig Jets to purchase an airplane. The buyer named in the contract was “Bill & Steve LLP” and the contract was signed by both Bill and Steve on signature lines that read, “Individually, and as authorized representative of Bill & Steve LLP.” Although Big Wig Jets timely delivered the airplane, LLP defaulted on its payment obligations under the contract. After Bill and Steve refused Big Wig Jets’ demand that they personally pay the balance due under the contract, Big Wig Jets filed a breach of contract lawsuit, naming LLP, Bill, and Steve as defendants.

In April 2014, Don engaged LLP to file a lawsuit on his behalf. Responsibility for Don’s representation was assigned to Bill, who inadvertently allowed limitations to run on Don’s claim. Don filed a malpractice lawsuit, naming LLP, Bill, and Steve as defendants.

- 1. In Angela’s personal injury lawsuit, which of the named defendants are liable to Angela and which are not? Explain fully.**
- 2. In Big Wig Jets’ lawsuit, which of the named defendants are liable to Big Wig Jets and which are not? Explain fully.**
- 3. In Don’s malpractice lawsuit, which of the named defendants are liable to Don and which are not? 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

Ginger, a resident of McLennan County, Texas, had been diagnosed with a mental illness which made her delusional when she was not taking her medication.

On March 17, 2014, Ginger, who had been taking her medication regularly, became angry with her sister, Abby, and tore up her will, which had left all of her property equally to Abby and her brother, Hank. Ginger executed a new will ("New Will") that stated, "I leave my entire estate to my loving brother, Hank, and I disinherit my sister, Abby."

New Will was signed by Ginger in the presence of her good friends, Oscar and Betsy, who signed as witnesses. New Will was not self-proved.

When New Will was signed, Ginger told Oscar and Betsy that her 1/3 share of the family ranch, which she owned with Hank and Abby, would go to Hank. Ginger said, "I have been thinking about this for a very long time, and I think it is the right thing to do." The ranch was a family business in which Ginger, Hank, and Abby had all participated. Oscar and Betsy were not surprised by this decision, as they had observed how antagonistic Abby had been toward Ginger over the years.

Thereafter, Oscar moved to California, and Betsy died. Ginger died on July 15, 2014. Ginger's interest in the ranch was the primary asset in her estate.

Ginger is survived by Hank and his daughter Claire, and Abby.

On August 1, 2014, Hank filed New Will for probate, and he simultaneously executed and filed a disclaimer. Before New Will was admitted to probate, Abby contested New Will alleging that it was not properly executed and that Ginger lacked the testamentary capacity to execute it, due to her mental illness.

- 1. What must Hank prove to have New Will admitted to probate, and, in light of Abby's contest, is it likely that Hank will succeed? Explain fully.**
- 2. If Hank is successful in having New Will admitted to probate, what is the effect of Hank's disclaimer on the distribution of his share of the estate? 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**

Bill and Linda, husband and wife, had two children, Tom and Ann. When Tom and Ann left for college, Linda decided to separate from Bill and move to New York. Bill thought their marriage would end in divorce.

After Linda left, Bill executed a valid, self-proving will in October 2014, that stated, "I leave all of my property to my two children, Tom and Ann, including my Life Insurance Policy. I leave nothing to my wife, Linda." When Linda realized Bill might divorce her, she came home and begged Bill to give her another chance, which he did. Bill and Linda then had a third child, Peter.

Bill intended to revise his will and once again leave Linda his estate, and he told his adult children, Tom and Ann, of his intent. Bill died unexpectedly without revising his will. Bill was survived by Linda, Tom, Ann, and Peter. At the time of his death, Bill owned the following assets:

- a. A \$500,000 Life Insurance Policy that designated Linda as the beneficiary. The beneficiary designation was signed by Bill on June 1, 1999.
- b. A \$100,000 Certificate of Deposit created with funds earned by Bill and Linda during their marriage, held in the name of Bill and Tom, as joint tenants with right of survivorship.
- c. A Homestead purchased by Bill and Linda during the marriage valued at \$300,000.
- d. A Vacation Home that Bill inherited from his father during his marriage to Linda.
- e. A Checking Account in the amount of \$100,000 held as joint tenants with Linda.

**1. Is Peter entitled to a share of Bill's Estate? Explain fully.**

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

- a. **The Life Insurance Policy**
- b. **The Certificate of Deposit**
- c. **The Homestead**
- d. **The Vacation Home**
- e. **The Checking Account**

**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**

Diego and Maria, residents of Harris County, Texas, and parents of 10-year old Wally, tragically died in a plane crash while on business. The crash was caused by negligent maintenance work performed on the plane right before the flight.

Under their properly executed wills, both Diego and Maria left Wally their substantial estate, valued at \$5 million and consisting of real property, securities, cash, and luxury vehicles. Wally's only surviving family members are his aunt, Agnes, who is an artist, and his grandfather, Gabe, a retired investment adviser. Shortly after the plane crash, Gabe retained legal counsel to file a wrongful death claim on Gabe's behalf against the negligent airplane maintenance company that caused the accident.

Neither Maria nor Diego's will included a provision designating Wally's guardian in the event of their simultaneous death. However, Diego left behind a document, entirely in his handwriting and signed by him, designating Agnes as Wally's guardian. The document also provided that Agnes could serve as guardian without having to post a bond.

Because of her work as an artist, Agnes does not have a permanent residence. She calls Austin, in Travis County, Texas, "home." But, she moves around frequently, staying in New Mexico, California, and Austin for several months at a time at each place. Agnes also has a reputation for lacking good business sense, and she declared bankruptcy early in her career. Recently, though, Agnes has begun to enjoy commercial success with the sale of her paintings.

Agnes filed an application in Travis County to be appointed the guardian of Wally and his estate, and submitted Diego's handwritten document in support of the application. Gabe filed his own application in Harris County to be appointed guardian and objected to Agnes's application on the grounds that Diego's document is legally insufficient and Agnes is not qualified to serve. An attorney *ad litem* appointed to represent Wally filed an affidavit in which Wally stated that he wants Agnes to be appointed as his guardian because Agnes is his "best friend."

- 1. What venue is proper for the guardianship action? Explain fully.**
- 2. What factors will the Court consider in deciding guardianship of Wally and his estate, and how should the Court rule? Explain fully.**
- 3. If the Court were to appoint Agnes as the guardian of Wally and his estate, would the Court give effect to Diego's document stating that Agnes can serve without having to post a bond? 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**

Polly joined Workout Health Club (“Workout”) and signed a one-year membership contract with an annual fee of \$1,200. Under the terms of the contract, Polly was responsible for payment of the entire fee, even if she stopped going to Workout. However, Fred, Workout’s employee, verbally told Polly that there was a “three-day free trial period,” and she would not owe anything if she quit within three days. Based on Fred’s comment, Polly signed the contract. The contract did not include a “trial period” provision.

Two days later, Polly decided to cancel her membership and sent an email to Fred advising of her decision. One month later, Polly received a telephone call from Dan, the owner of Workout, who said Polly was late in paying her membership fee. When Polly explained what Fred had told her about the “three-day free trial,” Dan said Fred had been fired weeks earlier, and there was no “free trial” under the contract. Dan then began shouting and accused Polly of being a “fraud” and a “crook.” He told her that, unless she paid the fee “immediately,” Workout would sue her for the entire amount of the contract, plus “massive additional fines.” The contract did not provide for any fines.

Distraught, Polly tracked down Fred. Fred said he left Workout because of its “shady business practices” and that Dan knew that Fred had offered Polly the three-day trial period.

Polly sent Dan a letter denying that she owed anything. Dan continued to make phone calls to Polly on a daily basis and at all hours. Dan also sent her numerous emails demanding payment, including one that said Workout was preparing to file a lawsuit against Polly that could result in her going to jail. In one voicemail, Dan said he was going to call Polly’s employer about the “outstanding debt clearly owed by you.” As a result of Dan’s conduct, Polly became extremely distraught and suffered a panic attack, which required medical attention and kept Polly home from work for several weeks, causing her to lose pay for that time.

Polly consulted an attorney regarding her legal rights.

- 1. What Texas consumer laws can Polly invoke, and what violations, if any, can she assert against Dan and Workout? Explain fully.**
- 2. What remedies, if any, are available to Polly for any such violations? Explain fully.**

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

**BE CERTAIN THAT YOU WRITE THE PLEDGE ON THE BACK OF  
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**I UNDERSTAND THAT THE FOLLOWING ACTS ALSO CONSTITUTE MISCONDUCT: OBTAINING OR SEEKING TO OBTAIN ACCESS TO THE ACTUAL QUESTIONS CONTAINED ON THIS EXAMINATION PRIOR TO THE START OF THE EXAMINATION, COPYING OR RECEIVING ANY INFORMATION FROM ANY EXAMINEE, GIVING OR TRANSMITTING INFORMATION TO ANY EXAMINEE, DISCUSSING QUESTIONS WITH ANYONE BEFORE THE CONCLUSION OF THE EXAM, LEAVING THE SECURED AREA DURING ANY PORTION OF THE EXAM, WRITING AFTER TIME IS CALLED, TAKING ANY EXAM ANSWERS OUTSIDE OF THE EXAM ROOM, AND ANY OTHER ACT THAT MIGHT COMPROMISE THE SECURITY OR INTEGRITY OF THE EXAM. I UNDERSTAND THAT ANY SUCH MISCONDUCT MAY RESULT IN A HEARING BEFORE THE BOARD, THE OUTCOME OF WHICH COULD INCLUDE NULLIFICATION OF MY EXAM SCORES OR A FINDING THAT I LACK THE PRESENT GOOD MORAL CHARACTER REQUIRED FOR ADMISSION.**

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