

Part II

Section A

Short Answer/Short Essay

Suggested time 20-30 minutes

PAGE LIMIT IS 2 PAGES, WRITING ON EVERY OTHER LINE.

A PAGE IS ONE SIDE OF ONE PAGE.

1. Describe the philosophical/theoretical difference, as well as the practical difference, between community property and separate property systems of marital property ownership, with regard to distribution of property at the death of one of the spouses.
2. Critique the Uniform Probate Code's approach to the spousal elective share.
3. Describe how one probates a will (with no problems) in Bexar County. (Stick to the basic process -- the essentials.)

Section B

Essay

One question, suggested time 60-70 minutes

PAGE LIMIT IS 6 PAGES, WRITING ON EVERY OTHER LINE

A PAGE IS ONE SIDE OF A PAGE

All events occur in the State of Happiness.

Tabitha Testator (Tabby to her friends) died on August 1, 1996. At the time of her death, her children, Cora and Caleb were her heirs at law. They tell you the following:

Tabby was married from 1966 to 1986 to Hank. During the marriage Cora and Caleb were born. In 1980, Tabby executed a will purporting to leave all of her property to Hank, and if Hank did not survive her, to her children. This will appears to be property executed. Hank is still alive.

Tabby divorced Hank in 1986. She wanted to "find" herself, so she left the children with Hank. Cora and Caleb saw Tabby only periodically between the time of the divorce and the time of her death.

Tabby found Lois while she was searching for herself, and Tabby and Lois established a household and a relationship together. Lois was an attorney, and specialized in the wills and trusts area. Tabby was an artist. Lois managed the assets of both parties, wrote checks, paid bills, etc. They lived together from 1986 until Tabby's death.

In 1992, Tabby was diagnosed with a serious, and probably fatal disease. At that time, she purported to "execute" a video will. In the videotape, Tabby is sitting in a chair in her living room. She states that she wishes all of her property to go to her partner, Lois. However, she goes on to say that she wants her children to have her paintings.

In 1995, Tabby wrote a letter to Lois. In it, Tabby says, "in addition to the other provisions in my videotaped will I want you have my fertilized eggs." Sometime after Tabby was diagnosed with her illness, she went to a specialty clinic, and had some of her eggs fertilized with donor sperm. She thought that Lois might want to try to have a child, using the eggs. This way Tabby would be the genetic mother and Lois would be the birth mother.

In June of 1996, Tabby executed a formally attested will. It purports to revoke all previous wills and leaves all of Tabby's property to Memorial Hospital, where Tabby was treated for her illness. One of the two witnesses to the will is the chief hospital administrator of Memorial. The other witness stated that Tabby appeared to believe that Lois was frequently talking with aliens from another planet. After Tabby's death, this will was found, but it was torn in two pieces.

Cora and Caleb also tell you that Lois wishes to attempt to become pregnant with Tabby's fertilized eggs. During 1993, fire destroyed all of Tabby's paintings. However, she was particularly prolific during her last years. Also, her popularity as an artist grew during this time, and the value of her artwork increased greatly after her death. At the time of her death, her estate was worth approximately \$5 million.

Discuss the legal issues raised by the facts as stated above. What are the rights and liabilities of the parties in this situation?