



## **NELF Sample Exam**

**Released October 2019**

**MORNING SECTION**  
**EXAM INSTRUCTIONS**

**HANDWRITING PARTICIPANTS:**

1. The exam answers are to be identified by your exam number only. Do not put your name anywhere on the examination or answer sheets. If you do so, your exam will not be graded.
2. Be sure to:
  - A. Answer Each Essay on the Answer Sheets, Starting Each Question on a Separate Page.
  - B. Answer the Multiple-Choice Questions on the Examination Itself.
  - C. Write your exam number on each answer sheet and also write the pages (For example, Exam #123 Question #1, Page 1 of 3).

**EXAMSOFT PARTICIPANTS:**

The exam answers are to be identified by your exam number only. Do not put your name anywhere on the examination or answers. If you do so, your exam will not be graded. If the program or your laptop malfunctions, you must complete the exam manually. Refer to the above directions if you need to use the Answer Sheets.

**ALL EXAM PARTICIPANTS:**

1. At the conclusion of the morning session, put all of the answer sheets and the examination itself into the envelope provided. Seal the envelope and write your exam number on it. The entire envelope for the morning session must be turned in at the conclusion of the morning session. If you fail to include the exam or to follow the instructions, your exam will not be graded, and you will have to apply to take a subsequent exam.
2. *Answer only the question asked. Do not assume anything that is not stated in the question. Do not answer the question based on your state's laws unless the question specifically asks you to do so. Do not use abbreviations without an explanation of the abbreviation.*
3. You are not allowed to use any materials during the examination. You may use pens, no pencils. Do not bring books, papers, cellular phones, calculators etc. During the course of the examination you may not talk to anyone or confer with anyone inside or outside the examination room regarding the examination itself, nor may you remove the examination from the assigned room. Violation of this will disqualify you from this exam and require that you apply to take a subsequent exam.
4. The exam is worth 300 points. It is suggested that you give yourself approximately one minute per point in allotting your time. This will enable you to finish the exam with a few minutes to review your answers.
5. You must receive a 70% total passing grade to pass the examination (210 points). The value of each question is indicated at the beginning of the section. The time allocation per question is for your use in determining how you allocate your time among the questions in a section during the examination itself. You are free to allocate your time any way you wish within the morning session.

6. You must immediately stop when time is called. If you fail to immediately stop writing when time is called, your exam will not be graded; you will be disqualified from this examination and will be required to apply to take a subsequent examination.
7. Proctors will be available throughout the examination. Proctors will not be able to answer any questions about specific questions on the examination.
8. For the purpose of this exam, the following terminology, if used, is defined as follows:

*Personal representative:* fiduciary appointed by court order to administer decedent's estate, whether testate or intestate.

*Guardian:* person appointed by court order to make personal, medical and residential decisions for an incapacitated/protected person

*Conservator:* fiduciary appointed by court order to handle financial and property matters for an incapacitated/protected person.

***If an answer calls for a discussion of any of the above, use these terms rather than your state's terms.***

You will have a total of 180 minutes (3 hours) to complete the Morning Section of the Exam. The morning portion of the exam is worth a total of 170 points out of the exam total of 300 points.

**Morning Exam:**

<b>30 Multiple Choice</b>	<b>60 minutes</b>	<b>60 points</b>
<b>1 Long Essay</b>	<b>30 minutes</b>	<b>30 points</b>
<b>1 Long Essay</b>	<b>30 minutes</b>	<b>30 points</b>
<b>1 Short Essay</b>	<b>20 minutes</b>	<b>20 points</b>
<b>1 Short Essay</b>	<b>20 Minutes</b>	<b>20 points</b>
<b>1 Short Essay</b>	<b>10 Minutes</b>	<b>10 points</b>

**Morning Multiple Choice Questions**  
**60 points – 60 minutes**

- 1. You represent William Tell, originally Agent of his sister and now Executor of her estate. The sister was admitted to Shifting Sands nursing home on January 1, 2019 and died fourteen days later because the wrong drug was administered to her. Which of the contract provisions is effective?**

  - A. The admissions agreement signed on her behalf contained a clause requiring that all disputes be submitted to arbitration in prominent and unambiguous language.
  - B. The admissions agreement signed on her behalf offered a lower rate for patients who agreed to arbitration, and she elected the lower rate.
  - C. After the wrong drug was administered (but while she was still capable of understanding), she and her agent agreed to binding arbitration when the facility explained that she would otherwise have to be discharged based on insurance company requirements.
  - D. All of these provisions violate federal regulations for nursing homes.
  
- 2. Carl, a retired lawyer age 78, has been employed for a year as a greeter at Small Mart, a national chain of big box stores. One day, his supervisor tells him that he is being let go, to be replaced by the store manager's father, who is also age 78. Carl tells you he has filed an employment discrimination claim, but he wonders if he qualifies for Unemployment benefits to tide him over while that discrimination claim is pending. You tell him:**

  - A. He is not entitled to unemployment benefits because he is older than age 70+1/2.
  - B. He is entitled to unemployment benefits.
  - C. He cannot file a claim for unemployment benefits while his discrimination claim is pending.
  - D. None of the above.
  
- 3. Medicare beneficiaries may receive hospice benefits if they are terminally ill:**

  - A. For 6 months.
  - B. For 12 months.
  - C. For up to 18 months, if the hospice organization recertifies the patient as terminally ill after 6 months and again after 12 months.
  - D. With no time limit, so long as a hospice doctor certifies at required intervals that the beneficiary's prognosis is six months or less.

**4. Your client, a widower, has retained you to advise him on applying for Medicaid. He's a resident of the Slippery Slope Nursing Home, and he is rapidly going through his resources. At the time of his wife's death, ten years ago, he contracted for a fairly elaborate funeral; the cost was \$65,000. Contemporaneously with, his wife's funeral he and the Funeral Director entered into an irrevocable contract for exactly the same funeral for himself, securing the contract with a valid irrevocable assignment of a single premium funeral insurance policy for which he paid \$60,000. The average cost of a funeral in your area is \$10,000. Which of the following statements accurately describes the treatment of this policy in a Medicaid application?**

- A. The cash value of the funeral insurance policy will not be considered a resource.
- B. Any portion of cash value of the policy in excess of \$10,000 will be treated as a resource.
- C. Any portion of the cash value of the policy in excess of \$12,500 will be treated as a resource.
- D. Any portion of the cash value of the policy in excess of \$1,500 will be treated as a resource.

**5. Ada Jones just discovered that she is HIV-positive. When she disclosed this to her dentist at the start of her annual checkup, her dentist canceled the appointment, saying, she couldn't expose herself and her assistants to the possibility that Ada would develop AIDS. Ada wants to file a complaint under the Americans with Disabilities Act.**

- A. She cannot file, since discrimination in a private professional office is not covered by the ADA.
- B. She can file with the US Department of Justice.
- C. There is no private right of action. She can file only if her State has ADA-protected rights and an enforcement process.
- D. She cannot file unless she develops AIDS since HIV-positive is not a disabling condition.

**6. The fastest growing age segment of the population in terms of percentage increase is:**

- A. Females age 65 and over.
- B. Persons age 65-74.
- C. Persons age 75-84.
- D. Persons age 85 and over.

**7. For applicants for admission to a nursing home who do not have capacity to sign the admissions agreement, which of the following is a permitted provision in the admissions agreement:**

- A. If a person signs as responsible party and represents that the resident qualifies for Medicaid, the signer is personally liable for the nursing home bill if Medicaid does not pay.
- B. The responsible party is personally liable for the nursing home bill, if the responsible party uses the resident's income or assets for some purpose other than payment of the nursing home bill.
- C. Medicaid rules prohibit any contract term that provides for any ground for personal liability to any person other than the Resident.
- D. A nursing home may not require a responsible party to personally guarantee all non-Medicaid covered charges.

**8. Which of the following proofs may not be helpful to an employer asserting a bona fide occupational qualification defense under ADEA?**

- A. The age limit is reasonably necessary to the essence of the business.
- B. That all or substantially all individuals excluded from the job involved are in fact disqualified.
- C. That some of the individuals excluded from the job possess a disqualifying trait that cannot be ascertained except by reference to age.
- D. That hiring individuals beyond the age limit would be uneconomical for the business.

**9. Which of the following is NOT true regarding Quality Improvement Organizations?**

- A. They make initial determinations of Medicare coverage upon admission to the hospital.
- B. They have responsibility for quality control of the prospective payment under Medicare.
- C. They handle payments to hospitals under Medicare.
- D. They make determinations as to when Medicare coverage is terminated.

**10. George, a 77-year-old man, is seeking a federally insured reverse mortgage. Which of the following properties would qualify as security for the loan?**

- A. A single-family home owned by George alone.
- B. A duplex owned by George and his 55-year old daughter and occupied by George.
- C. A duplex owned by George's 55-year old disabled daughter and occupied by George and his daughter.
- D. All of the above.

**11. Mandatory reporting, under elder abuse statutes, generally requires that the suspected victim:**

- A. Consent to the reporting.
- B. Be 65 years of age or older.
- C. Lack capacity.
- D. All of the above.

**12. Kim created a trust and appointed her friend Sue as trustee. The trust contained the following provision; "the trustee shall not be liable for any loss, cost, or damage, or expense sustained through error or judgment or in any other manner except for and as a result of a trustee's own bad faith or gross negligence." Which of the following statements is most accurate regarding the application of this provision in most jurisdictions?**

- A. Sue would probably not be liable for malfeasance.
- B. Sue would probably not be liable for ordinary negligence.
- C. Both A and B are accurate.
- D. This provision is void as against public policy.

**13. Michelle's mother, Diane, is a Medicaid recipient and is currently being cared for at home. However, her care needs have recently increased and the doctor informed Michelle that placement in a skilled nursing facility is now appropriate. Michelle calls Shady Acres Nursing Home, a Medicare and Medicaid facility, to inquire regarding availability and is told there are vacancies, but no Medicaid beds are available. Which of the following is TRUE regarding the beds in that facility?**

- A. Diane may not be admitted if there are no available Medicaid beds.
- B. Diane may be admitted for a private pay bed only.
- C. Every bed in that facility is available for a Medicaid recipient.
- D. None of the above.

**14. Under the Americans with Disabilities Act, in addition to dogs, which of the following may qualify as service animals:**

- A. Cats.
- B. Miniature Horses.
- C. Potbelly Pigs.
- D. None of the above.

**15. Under HUD Rehabilitation Mortgage Insurance, the following transactions are insurable:**

- A. Renovations to the home of a senior citizen to eliminate health and safety hazards.
- B. Purchase of a home by a senior citizen requiring rehabilitation to eliminate health and safety hazards.
- C. Renovations to the home of any person to eliminate health and safety hazards.
- D. All of the above.

**16. In a Will contest based on undue influence, which of the following need NOT be proved to make a prima facie case:**

- A. The alleged perpetrator intended to commit undue influence.
- B. The alleged perpetrator was in a confidential relationship with the decedent.
- C. The alleged perpetrator benefited from the new Will.
- D. The alleged perpetrator was active in the procurement of the new Will.

**17. Mr. Alan's advance directive directs withholding of artificially supplied nutrition and hydration if he is unable to recognize loved ones or communicate with them due to diagnosed dementia, regardless of whether death is imminent. His state's advance directive statute limits withdrawal of nutrition and hydration to terminal conditions where death is imminent. Mr. Alan's directive:**

- A. Cannot be enforced because the directive does not comply with the statute.
- B. May be enforced but only if his doctors determine that nutrition and hydration would be futile.
- C. Should be enforced because Mr. Alan has a constitutional right to refuse treatment.
- D. Should not be enforced because the state has a countervailing interest in preserving life.

**18. Harry and Sally signed a prenuptial agreement which stated that both waived all rights to retirement plan benefits. Sally and Harry divorce but Sally fails to change her beneficiary from Harry. After Sally's death does Harry have any rights to survivor benefits under ERISA?**

- A. No, as the prenuptial agreement waived those rights.
- B. Yes, because ERISA does not recognize a prenuptial agreement as a waiver of rights.
- C. No, because they were divorced.
- D. Yes, because the beneficiary designation controls.

**19. In a will contest, Plaintiff claims that the decedent lacked capacity to sign a will that disinherited the Plaintiff in favor of the Defendant. Which of the following pieces of evidence would NOT be admissible if offered by the Plaintiff?**

- A. The statement of the Defendant three days before the will was signed saying he thought the decedent was "losing it."
- B. Statement of the next-door neighbor to the Plaintiff three days before the will was signed stating "I'm watching your uncle walk down the street in his pajamas."
- C. The doctor's statement to the Plaintiff, made three weeks before the will was signed, that the decedent was suffering from dementia - Alzheimer's type.
- D. All of the above are not admissible.

**20. What gift from a single person qualifies for the annual exclusion for the current year?**

- A. A valid and binding promise to give \$15,000 to a child next year.
- B. A transfer to a donor's child of \$30,000 and the check was delivered to the child last year but not deposited in the bank until this year.
- C. A transfer of \$15,000 cash today to a nonresident alien.
- D. A transfer of \$15,000 to the grantor's revocable trust established for the benefit of the child.

**21. Molly was 48 and inherited her Uncle's IRA. At the time of her Uncle's death Molly had a life expectancy of 36 years. If Molly died at age 63, what is the longest period her successor beneficiary would be entitled to receive the remaining IRA payments?**

- A. The successor beneficiary would be entitled to receive no payments under the IRA.
- B. The successor beneficiary would be entitled to receive payments over a period of 21 years.
- C. The successor beneficiary would be entitled to receive payments over a period of the successor beneficiary's life expectancy.
- D. The successor beneficiary would be required to withdraw all funds over a period of 5 years.

**22. In a contested guardianship proceeding, an attorney is court-appointed to represent an alleged incapacitated person. The guardianship petition is based on allegations of alcohol abuse. The attorney talks with the client and he believes the client is incapacitated and in need of a guardianship as she has told the attorney she is still drinking daily. The client is adamant about fighting against any form of guardianship. The attorney believes, based on past experience that if the court learns through the client's testimony that the client is still drinking the petition will be granted. During the testimony of the client, the Court asks the client if she is still drinking, and the client says no she is not drinking any longer. What is the attorney's ethical obligation here?**

- A. Do nothing, the conversation she had with the client is protected under the client/attorney privilege and the attorney did not elicit the false statement.
- B. Inform the court about the inconsistent statement as a guardianship proceeding is non-adversarial.
- C. Immediately tell the court that the client has been drinking so the court can act in the best interest of the client.
- D. Ask the court for a recess and tell the client she is going to tell the court about the client's statement if the client does not tell the court about drinking every day.

**23. Which of the following is not an Activity of Daily Living?**

- A. Walking.
- B. Dressing.
- C. Managing medication.
- D. All of the above are activities of daily living.

**24. Rule 1.14 of the Model Rules of Professional Conduct addresses representation of a client with diminished capacity. Under this rule, which of the following are true?**

- A. It would be a conflict for an attorney to take an adverse position with respect to the interest of a client by seeking the appointment of a guardian over the client's objection.
- B. Guardianship should be the first protective action considered by the attorney, since guardians are regulated by state law and the interests of the client would be better protected.
- C. Guardianship should be considered by the attorney only as a last resort.
- D. It would be a conflict for an attorney to seek guardianship of a client under any circumstances.

**25. A claim brought, under 42 U.S.C. §1983, in which the plaintiff alleges an improper denial of Medicaid eligibility in a State where Medicaid is administered by the State, would ordinarily name as defendant:**

- A. The head of the state agency administering Medicaid.
- B. The Governor of the State.
- C. The State itself.
- D. All of the above.

**26. Which of the following are permissible reasons per se for discharge from a skilled nursing home under federal law?**

- A. Non-Payment.
- B. Wandering.
- C. Fall Risk.
- D. Refusing Treatment.

**27. Your client was sold a policy of whole life insurance when his three children were very little. He paid premiums for fifteen years. When his oldest child started college eight years ago, he stopped making payments and financed the premiums through loans against the cash value. He believes he no longer needs this insurance. The cash value of the policy is less than the sum of the premiums. What should he do?**

- A. Stop paying, since eventually the loans will consume the cash value, and the policy will automatically terminate with no further liability.
- B. Terminate the policy, since he will be entitled to receive remaining cash value minus the amount of the loan including interest incurred under the insurance contract with no further liability.
- C. Terminate the policy. Since he will receive the net cash value as in B but will owe income tax on the difference between the cash value and the sum of all premium payments during the life of the policy.
- D. None of the above.

**28. Your client is a drug addict who was just awarded Social Security Disability Benefits as a result of this condition. Your client is seeking to qualify for government-subsidized housing. What effect will the nature of his condition have on his application?**

- A. A person who is currently engaged in the illegal use of drugs is statutorily excluded from the definition of "individual with handicaps" under the Americans with Disabilities Act.
- B. A person who has become disabled as a result of the voluntary use of illegal drugs even if rehabilitated and currently abstinent is statutorily excluded from the definition of "individual with handicaps" under the Americans with Disabilities Act.
- C. Drug use is irrelevant, since the facility may not look behind the Social Security Disability award to determine the reason for the award.
- D. None of the above.

**29. Which of the following describes a right protected by Olmstead v. L.C., 527 U.S. 581 (1999)?**

- A. A person entitled to Medicaid benefits Federal law may not be denied this benefit because of a contradictory state law provision.
- B. A person receiving Medicaid benefits is entitled to the same quality of care as a person paying privately for the same service.
- C. A person with a disability has a right to placement in the least restrictive setting.
- D. A person's right of self-determination has priority over what the physician believes is in the person's best interests for an end of life treatment decision.

**30. A psychologist who has a solo practice with only one employee refuses to treat patients who are military veterans, saying “these folks all suffer from PTSD, and that masks their other symptoms, so I generally cannot treat them effectively.” Does this practice violate Title III of the Americans with Disabilities Act?**

- A. No, because unless her patients actually suffer PTSD, they are not disabled and not entitled to the protection of the ADA.
- B. No, if she believes she cannot treat a patient with PTSD, it is a genuine professional basis for discrimination and an absolute defense.
- C. Yes, since she regards all military veterans as suffering from PTSD.
- D. It depends whether she treats patients from states outside the state where her office is located.

SAMPLE

**Question #31**  
**Long Essay 30 points – 30 minutes**

Veronica Smith was born in 1946. She was a member of the Army Nursing Corps stationed for six months in Vietnam in 1965. She was never in a combat zone but served entirely at the 27<sup>th</sup> Surgical Hospital at Chu Lai Vietnam and was Generally Discharged in 1968. Her husband, Harry, was never in the service. Harry is physically healthy but declining mentally, Veronica was recently injured in a car accident, and has lost the use of her dominant hand and left leg and received no recovery. Veronica has been told that when she gets out of the hospital, they can no longer live independently, since she can no longer bathe or dress herself, move except in a wheelchair or help Harry perform bathing, dressing and grooming tasks. Neither of them has any other health problems.

The Smiths are planning to move into the Restful Acres Assisted Living (which has both independent living and skilled nursing components). Their doctor tells them that while life is not certain, he sees no reason they will not be able to continue to live at Restful Acres for the five to ten years, at least. They have three children, all of whom live in the same state, but some distance away. George, the oldest, is a lawyer and in the middle of a divorce; Martha is a nursery school teacher's assistant, and Franklin is a police officer.

The Smiths have not purchased long term care insurance, and your state offers no aid for assisted living. The basic rate for assisted living services provided at Restful Acres is \$6,500/month for the two of them (\$10,000/month/person/ for skilled nursing). Veronica was referred to you by a local veteran's service officer who told you that she has no compensable health issues but that she was concerned that the Smiths might need your help to figure out how to pay the monthly bill.

Veronica and Harry have the following assets and no debts:

- Their rural home (worth \$600,000), located on 3 acres.
- Two vehicles (2015 Honda Civic, and the 2018 Cadillac that was damaged in the accident) The Honda is worth \$5,000, and the Cadillac has been declared a total loss at \$22,500)
- They have a joint bank account with \$80,000, and a joint investment account with securities worth \$125,000.
- Harry has a paid-up life insurance policy, which has a \$500,000 death benefit and a \$90,000 cash value.
- Veronica's IRA is \$40,000.
- A rural cabin and substantial acreage (including a trout stream) which has been in Veronica's family since the 1800s, theoretically worth \$1,000,000, although property in this area rarely changes hands.

Veronica receives \$500/month social security. Harry has a pension paying \$2,500/month and Social Security paying \$1,500/month. These figures are net of all deductions. Upon Harry's death, his pension will end.

VA Benefits: Veronica has heard that the VA will sometimes offer assistance to Veterans such as herself. There are no local VA treatment facilities, and she does not want to leave Restful Acres.

1. Explain what financial benefits are potentially available and what the non-financial qualifications are. (6 points)
2. Apply the benefits discussed in 1 to the facts of the Smiths' case,
  - a. Do their income and assets presently qualify them to receive any of the benefits discussed in 1? Explain your answer (4 points)
  - b. Analyze how the following assets will affect an application for VA needs-based benefits: (8 points)
    - i. Residence
    - ii. Vehicles
    - iii. Investments
    - iv. IRAs

Medicaid Benefits: Assume that the health of one of the Smiths deteriorates to the point that he or she now needs skilled nursing. Their assets are the same, and they do not live in an income cap state.

3. Discuss how their assets would affect their Medicaid eligibility and what they could do with the assets to qualify for Medicaid. (12 points)

**Question #32**  
**Long Essay 30 points – 30 minutes**

Your office staff receives a telephone call from Esther Caldwell, “Dad needs some estate planning work. May we make an appointment to bring him into your office? I’m going to pay for this appointment, since I believe he needs help, but Dad doesn’t.” Assume that neither Esther nor Dad is an existing client.

Your staff member makes the appointment, sends out the estate planning packet, and at the appointed time, you find Dad, Esther, and her two siblings, Fred and George in your conference room.

You learn from Dad that he would prefer that Esther be in the room, and he generally defers to Esther in answering your questions. You learn that Esther recently returned to your area following a bitter divorce and the loss of her job as a realtor, and she moved in with Dad following Mom’s death. She tells you that upon her return home, she discovered that Dad’s affairs are in terrible disorder, and she blames her brother Harry (who is not present), who was acting as Dad’s agent under a power of attorney. “Dad doesn’t have much left. He wants to change his power to name me as his agent, followed by Fred and George as my successors,” she says, “and he wants to re-write his will to exclude Harry. He’s already taken enough of Dad’s money.”

Dad can’t recall the names of his grandchildren or his phone number and has not spoken much during the discussion. He nods affirmatively as Esther asks him to confirm what she is saying; however, he looks troubled when Esther talks about disinheriting Harry.

Discuss the following issues and actions you would take based on your answer:

1. Who is the client? (9 points)
2. What are the implications of having family members in the conference room? (4 points)
3. What factors would you consider in evaluating capacity and how would they apply to this case? (9 points)
4. Whether there are any factors indicating the possibility of undue influence? (8 points)

**Question #33**  
**Short Essay 20 points – 20 minutes**

George and Martha Washington have come to you for estate planning advice. Their only child and his wife died of an opioid overdose about ten years ago, and they raised two grandchildren, Alexandra Hamilton Washington (called “Sandi”), age 24, and Aaron Burr Washington (called “Ari”), age 19. Both George and Marsha are retired government workers in relatively good health for their advanced ages (both are 80). Early in their careers, they purchased single premium long-term care insurance from a solvent insurance company that you find is sufficient for asset protection planning purposes.

Ari was diagnosed with Autism Spectrum Disorder at an early age. He has difficulty in interacting with other people and engages in repetitive behaviors. He continues to live with George and Martha now. George and Martha believe that Ari will never be able to live independently, and they worry that he will not be able to fully support himself.

Sandi is a classic overachiever. President of her high school, college and MBA school classes. Sandi is presently chief executive of a company that she founded, and which recently went public. She lives in the nearest major city to you and visits the Washingtons frequently. She is supportive of Aaron, and they have a good relationship, but George and Martha worry that her business interests may cause her eventually to move away, and they expect that she will ultimately have a family of her own.

During the course of their government service, George and Marsha each accumulated a substantial estate. Each’s holdings are about equally divided between IRA accounts and individual investment accounts.

They tell you that they want the bulk of their estate be used to provide for Ari. Sometime after the meeting you speak with Sandi (whom they want to name as successor agent in their POAs), and Sandi —without prompting—encourages you to emphasize providing for Ari’s needs over hers. They hope that as Ari gets older, he will find a place in society where he can function with some guidance

The Washingtons recently completed a community learning course on estate planning, and they have been members of a parent support group for many years. They tell you they’ve heard about various strategies from their friends. One set disinherited their child with a disability in favor of another child; another set’s attorney recommended a trust. A third set of parents said “we are not going to do anything. We want each child to receive a fractional share of our estate so they can decide”.

Discuss the merits (and demerits) of each of the following strategies

1. Disinheritance of child with disability in favor of other child (5 points)
2. Trust (5 points)
3. Outright equal shares (5 points)
4. Write a single, *short* paragraph recommending the course of action you favor and explaining your reasons to lay persons like the Washingtons. (5 points). Please note that complex sentences or jargonistic language will receive no credit.

**Question #34**  
**Short Essay 20 points – 20 minutes**

Mildred Flowers (age 55) and her husband, Sylvester (age 45), have consulted you for estate planning advice. They were both in good health, but Mildred was recently diagnosed with stage-4 esophageal cancer. They have long term care insurance. You suggest analyzing their assets to form a plan to retitle assets to protect all or some from Medicaid spend down requirements, and they both say they would prefer to pay their own way.

Mildred, who took early retirement, was involved with a private hedge fund, and she has an IRA worth \$2,450,000. Sylvester is still working as an assistant librarian, with an IRA worth \$75,000. Their home is worth \$300,000. They have no debts and no other investments of any significant size. They are comfortably supporting themselves, but live “paycheck to paycheck” on Mildred’s Social Security, a private pension from her hedge fund (which will end with her death) and Sylvester’s salary. Their three children are triplets. They are all healthy, in good marriages, and self-supporting.

They ask you to assume that Mildred will be dying first. They believe Sylvester will need income from Mildred’s IRA after her death.

Describe and analyze each of the options Sylvester will be considering for himself with respect to Mildred’s retirement account; explain the advantages and disadvantages of each option. A correct answer need not discuss contingent beneficiary options.

1. Spousal Rollover (6 points)
2. Inherited IRA (6 points)
3. Annuitized IRA (6 points)
4. Other options (2 points)

**Question #35**  
**Short Essay 10 points – 10 minutes**

Terry and Lynn Hunsaker have come to you for advice. Terry is a Sergeant Major in the service, and Lynn has been a homemaker for Terry’s entire career. They have one child, Sam. Sam (age 24) suffered an injury at birth and lives in a nearby group home. The Hunsakers believe Sam will need to live in a group home (or a facility offering more intensive service) for the balance of his life. Terry has sufficient time in service for an excellent retirement pay program from the military, and they ask you how to structure the benefit. Terry and Lynn are both in excellent health. They want to provide for Lynn if something happens to Terry and for Sam after both their deaths.

1. Explain if/how they can use his retirement pay program to provide for Lynn and Sam (10 points total)
  - a. What options are available? (4 points)
  - b. What considerations would you apply in recommending an option to elect? (6 points)

**AFTERNOON SECTION  
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1. The exam answers are to be identified by your exam number only. Do not put your name anywhere on the examination or answers. If you do so, your exam will not be graded. If the program or your laptop malfunctions, you must complete the exam manually. Refer to the above directions if you need to use the Answer Sheets.

**ALL EXAM PARTICIPANTS:**

1. At the conclusion of the afternoon session, put all the answer sheets and the examination itself into the envelope provided. Seal the envelope and write your exam number on it. The entire envelope for the morning session must be turned in at the conclusion of the morning session. If you fail to include the exam or to follow the instructions, your exam will not be graded, and you will have to apply to take a subsequent exam.
2. *Answer only the question asked. Do not assume anything that is not stated in the question. Do not answer the question based on your state's laws unless the question specifically asks you to do so. Do not use abbreviations without an explanation of the abbreviation.*
3. You are not allowed to use any materials during the examination. You may use pens, no pencils. Do not bring books, papers, cellular phones, calculators etc. During the examination you may not talk to anyone or confer with anyone inside or outside the examination room regarding the examination itself, nor may you remove the examination from the assigned room. Violation of this will disqualify you from this exam and require that you apply to take a subsequent exam.
4. The exam is worth 300 points. It is suggested that you give yourself approximately one minute per point in allotting your time. This will enable you to finish the exam with a few minutes to review your answers.
5. You must receive a 70% total passing grade to pass the examination (210 points). The value of each question is indicated at the beginning of the section. The time allocation per question is for your use in determining how you allocate your time among the questions in a section during the examination itself. You are free to allocate your time any way you wish within the afternoon sessions
6. You must immediately stop when time is called. If you fail to immediately stop writing when time is called, your exam will not be graded; you will be disqualified from this examination and will be required to apply to take a subsequent examination.

7. Proctors will be available throughout the examination. Proctors will not be able to answer any questions about specific questions on the examination.

8. For the purpose of this exam, the following terminology, if used, is defined as follows:

*Personal representative:* fiduciary appointed by court order to administer decedent's estate, whether testate or intestate.

*Guardian:* person appointed by court order to make personal, medical and residential decisions for an incapacitated/protected person

*Conservator:* fiduciary appointed by court order to handle financial and property matters for an incapacitated/protected person.

***If an answer calls for a discussion of any of the above, use these terms rather than your state's terms.***

You will have a total of 150 minutes (2½ hours) to complete the Afternoon Section of the Exam. The afternoon portion of the exam is worth a total of 130 points out of the exam total of 300 points.

**Afternoon Exam:**

<b>20 Multiple Choice</b>	<b>40 minutes</b>	<b>40 points</b>
<b>1 Long Essay</b>	<b>30 minutes</b>	<b>30 points</b>
<b>1 Short Essay</b>	<b>20 minutes</b>	<b>20 points</b>
<b>1 Short Essay</b>	<b>20 minutes</b>	<b>20 points</b>
<b>1 Short Essay</b>	<b>20 minutes</b>	<b>20 points</b>

**Afternoon Multiple Choice Questions**  
**40 points - 40 minutes**

- 1. Which of the following are defined as “public accommodations” under Title III of the Americans with Disabilities Act? Assume that all are open to the public.**
  - A. A motion picture theater owned by a sole proprietorship.
  - B. A stadium at a private parochial school.
  - C. A bed and breakfast in the owner’s residence with less than twelve rooms for hire.
  - D. All of the above.
  
- 2. Under DeCambre v. Brookline Housing Authority, the following is true:**
  - A. Housing authorities are required to disregard distributions from principal of a 1<sup>st</sup> party special needs trust.
  - B. Housing authorities are required to disregard distributions from principal of a 3<sup>rd</sup> party supplemental benefit trust.
  - C. Housing authorities are required to disregard distributions from income but not principal of a 1<sup>st</sup> party special needs trust.
  - D. All of the above.
  
- 3. Mary worked for the post office and retired with a civil service pension of \$600. Her husband Tom worked for a grocery store and retired with Social Security benefits of \$800. When Tom dies, what Social Security Benefit will Mary receive?**
  - A. Mary will receive the \$800 Tom received.
  - B. Mary will receive no Social Security, since she did not pay into that system.
  - C. Mary will receive \$400 – Tom’s \$800, reduced by two thirds of her \$600 civil service pension.
  - D. Mary will receive \$200 – Tom’s \$800 reduced by all of her \$600 civil service pension.
  
- 4. Your client lives in a state which participates in the Long-Term Care Partnership program. They have asked you to give them a one sentence summary of this program. Which of the following is accurate?**
  - A. It provides long term care coverage, and each dollar of premium payment provides an additional dollar of resources that are excluded from counting under the state’s Medicaid program.
  - B. It provides long term care coverage, and each dollar of benefit purchased provides an additional dollar of resources that are excluded from counting under the state's Medicaid program.
  - C. It provides long term care coverage that is coordinated with the State’s Medicaid program to supplement benefits under the Medicaid program.
  - D. Any funds protected under the Long-Term Care Partnership program are subject to estate recovery.

**5. Which of the following is true regarding service animals and emotional support animals:**

- A. The Americans with Disabilities Act applies to both service animals and emotional support animals.
- B. The Americans with Disabilities Act applies to only service animals.
- C. The Fair Housing Act applies to only service animals.
- D. None of the above.

**6. John was honorably discharged after military service from 1969-1973. He was in good health, until an automobile accident occurred last year. He is now laid up and has been told he qualifies for housebound benefits from the VA. He has been paying his late wife's nephew's college and graduate school tuition at \$5,000 per semester for the last six years from savings, reimbursing him each June and December when he successfully completes a semester. He has no income, and presently his only asset is a money market account which still has \$123,600. Thus, during each of the last four years, he had given his nephew \$10,000. Will his application in January of this year be granted?**

- A. No, because his assets exceed \$80,000.
- B. Yes, because his current assets do not exceed the maximum net worth allowance.
- C. No, unless he can show that his gifts to his nephew were for a purpose other than qualifying for VA benefits.
- D. No, until he satisfies a \$30,000 transfer penalty.

**7. In a probate proceeding in Ohio, Fabio, living in Hawaii, received a certified letter containing a complaint filed in the probate proceeding from the executor of the probate in Ohio, alleging that Fabio is personally liable for breaching a contract with the decedent with damages exceeding \$50,000. Fabio is not a beneficiary of the will. Fabio should:**

- A. Do nothing since he was not personally served with a summons.
- B. Hire an attorney to file an answer within the response time listed on the complaint.
- C. Hire an attorney to file a motion to dismiss, challenging the complaint.
- D. Hire an attorney to file a motion to quash the certified letter.

- 8. Eric Employee was employed as a baggage handler for Crash Airlines. He suffered an injury while on vacation that has caused him to be unable to perform baggage handling duties permanently. He has asked to be moved to the mailroom where he can perform the essential functions. Under Crash's seniority system, changes to employment assignment are based on a seniority-based bidding process, and for each of the last four openings, a (healthy) baggage handler with seniority has won the assignment. Eric asks his employer to permanently assign him to the next opening as a reasonable accommodation to his condition. How will this end?**
- A. Denied: Since he suffered his disabling injury off the job, he is not entitled to retain this placement as a reasonable accommodation.
  - B. Denied: Since he is clearly capable of some substantial gainful employment, he is not disabled, and therefore has no right to any accommodation.
  - C. Granted: Modifying the seniority system for his condition is a reasonable accommodation.
  - D. None of the above.
- 9. You represent Joseph Krizen as agent for his sister, Edie Jones, who is about to be released from the hospital after three days of observation. She has been told she needs to go to a nursing home, and you have located Placid Acres a local facility that provides skilled services to Medicaid and private pay recipients. Joseph was asked to sign a lengthy admissions agreement. Which of the following clauses are allowed in a nursing home agreement under regulations promulgated by CMS:**
- A. Patient waives the right to trial by jury and agrees to submit any dispute arising during her occupancy at Placid Acres to binding arbitration.
  - B. Placid Acres does not provide psychiatric services and may discharge Patient if these services are required.
  - C. Placid Acres has no responsibility for Patient's personal property; Patient or Patient's representative must safeguard the same.
  - D. None of these clauses are permitted in a nursing home admissions agreement.
- 10. Your client asks you to explain what "Medigap" insurance is. Which of the following would be included in your answer:**
- A. "Medigap" insurance provides comprehensive coverage for persons over age 65 who for some reason do not qualify for Medicare.
  - B. "Medigap" insurance is the same thing as a Medicare Advantage plan.
  - C. "Medigap" insurance is a supplement to traditional Medicare and covers some medical expenses that Medicare doesn't cover.
  - D. None of the above.

**11. The federal Fair Housing Act protects individuals who are handicapped due to:**

- A. Blindness.
- B. Chronic Fatigue.
- C. Alcoholism.
- D. All of the above.

**12. Which of the following is an eligibility requirement for a Section 8 rent supplement program?**

- A. The applicant must be disabled or over age 62.
- B. The applicant must have resources of \$5,000 or less.
- C. The applicant's countable income may not exceed 50% of the median income in the local area.
- D. The applicant must participate in SSI or some other public benefits program.

**13. An assisted living facility that allows a resident to own pets may NOT adopt a policy that:**

- A. Limits the number of pets a resident may own.
- B. Limits pets to service animals only.
- C. Limits the breed of pets based on the breed's designation as dangerous.
- D. Limits pets to service animals or emotional support animals only.

**14. Under the POMS, how long at a minimum do you have to revise rejected Special Needs Trust language?**

- A. 60 days if beneficiary was already receiving SSI and the Special Needs Trust was previously approved.
- B. 60 days if the same language had previously been approved in another SSI recipient's trust.
- C. 90 days if court approval to modify the Special Needs Trust is required.
- D. 90 days if the beneficiary was already receiving SSI and the Special Needs Trust was previously approved.

**15. Under NAELA's Aspirational Standards, in representing a person (the "fiduciary/client") who is the fiduciary of an individual who is incapacitated (the "protected person"):**

- A. The Attorney represents the fiduciary/client and owes no duty to the protected person.
- B. If the fiduciary/client proposes an action that the Attorney believes is contrary to the protected person's best interests, the Attorney should refuse to carry out the proposed action.
- C. If the proposed action represents a change in the protected person's existing estate planning documents that is inconsistent with his or her best interests, the Attorney should refuse to carry out the action.
- D. If the fiduciary/client proposes an action that the Attorney believes is contrary to the protected person's best interests, the Attorney should consult with other family members of the protected person and, if appropriate, other professionals disclosing the proposed action and the Attorney's concerns.

**16. A federally insured reverse mortgage “tenure payment plan” provides for payments to the borrower:**

- A. In unscheduled installments, at times and in an amount of the borrower’s choosing, until a certain amount is exhausted
- B. In equal monthly amounts for the fixed period of months selected.
- C. In a lump-sum amount plus monthly amounts for a fixed period of time selected by the borrower.
- D. In equal monthly amounts as long as a borrower or spouse lives and continues to occupy the property as a principal residence.

**17. Johnny, age 69 ½, applies for a promotion that would be a 10% raise. He is denied the promotion, and the job is given to a younger woman with less experience. Would Johnny have a case for Age Discrimination?**

- A. Yes, only if Johnny can prove that the denial was not based on a reasonable factor other than age.
- B. No, since gender is a protected classification.
- C. Yes, unless the employer can prove the promotion was based on a reasonable factor other than age.
- D. No, because age is not a protected category.

**18. In a nursing facility, which of the following statements accurately describes resident rights with respect to treatment:**

- A. A resident has the right to choose any licensed doctor to treat them in-house, regardless of whether the doctor has a contract with the nursing facility.
- B. If the chief medical officer believes that the resident’s health care proxy is not acting in the resident’s best interests, the officer must report the proxy in the manner provided under state law.
- C. In developing a plan of treatment for a resident who has a substantially limiting mental condition, the facility is not required to include the resident in the development of his plan of care.
- D. A resident must use services such as physical therapy that are offered in the facility rather than such services that are offered elsewhere.

**19. Harry and Wilma purchased their second to die term life policy several years ago; the death benefit is \$250,000 for their two children. Wilma recently suffered a stroke and is being admitted to a nursing home. They want to know what will happen to this policy if they need to apply for Medicaid.**

- A. Since its face amount is in excess of \$1,500, it is a countable resource.
- B. They may keep the policy but must name the Medicaid agency as a contingent beneficiary to the extent of benefits paid for the institutionalized spouse.
- C. At the annual payment date, they may give this policy to their children without Medicaid liability.
- D. None of the above.

**20. Amelia has recently been diagnosed with a neurological disorder known as Tourette's syndrome (late onset). She is 26 years old and is one of the approximately 10% of Tourette's patients who exhibit uncontrollable and socially inappropriate cursing and other language that could be deemed threatening. She lives in a privately-owned multi-building apartment complex that contains a child-care center on the first floor of her building. A group, comprising substantially all of the parents of children using the center, has complained to the apartment manager and asked that she be evicted since many of the children are afraid to enter and leave the building, and a number have started complaining of nightmares. Which option should management undertake?**

- A. Move Amelia to another building in a location remote from the day care center.
- B. Proceed to evict Amelia. A person's disability cannot be used as a shield for conduct that is offensive or possibly threatening.
- C. Do nothing. The Fair Housing Act only applies to dwellings operated by or with the financial assistance of the federal government.
- D. Proceed to evict Amelia. A person with a neurologic disorder is not in a protected class.

SAMPLE

**Question #21**  
**Long Essay 30 points – 30 minutes**

Harry and Wilma Jones, husband and wife, (aged 76 and 75) are your clients. They have three children, Stanley (who lives in Wilmington, NC), Deborah (who lives in New York City), and Sylvester, who lives with Harry and Wilma in a townhouse condo they own in Philipsburg. Sylvester is disabled, receiving SSI benefits.

Last year, Wilma was diagnosed with “beginning dementia.” In your preliminary discussions, you perceive that while Wilma seems able to grasp simple ideas; she is very tentative and clearly nervous about her future. Harry seems a little shell shocked, since given his medical background (see below), he understands the meaning and effect of Wilma’s diagnosis.

Harry and Wilma tell you that their doctor has suggested that Wilma now needs a nursing home, and they tell you they think the Windy Hill Village would be a great place for Wilma. They understand that Windy Hill accepts Medicaid.

Harry is a retired physician who was on staff at the Philipsburg hospital. Upon his retirement, he withdrew a portion of his funds from his retirement account to establish an IRA, and the balance was used to fund a pension that pays Harry for life, with 50% going to Wilma if she survives, plus Social Security. Wilma is a retired nurse who has Social Security income and an IRA account.

Their other assets include a home, a checking account, a Christmas Club, an investment account, and one vehicle, a 2007 Chevy Silverado with 105,000 miles. When Harry was in his 50s, they established an irrevocable life insurance trust, which owns a second to die whole life policy with a face value of \$380,000, a death benefit of \$600,000, and still has premium payments of \$200/month, which they fund with “Crummey” monthly payments.

At the same time, they created the life insurance trust, they each executed powers of attorney with broad gifting authority, naming each other as primary agents, with Deborah as the first alternate and Sylvester as the second.

The asset values are as follows:

Home	\$ 285,000
IRA (H)	\$ 350,000
IRA (W)	\$ 85,000
Checking Account	\$ 14,500
Christmas Club	\$ 1,500
Investment Account	\$ 375,000
Truck	\$ 6,000
Insurance Policy	\$ 380,000

Harry’s pension is \$4,000/month, his Social Security is \$2250/month. Wilma’s Social Security is \$750/month.

They explain that their primary goals are to qualify Wilma for Medicaid and provide for their son, Sylvester. Harry and Wilma tell you that they do not wish to engage in any Medicaid strategy, which might cause a period of ineligibility. They live in a state which is not an “income cap” state.

1. Analyze the assets of Harry and Wilma under current federal laws applicable to Medicaid. (9 points)
2. Does Wilma presently qualify for Medicaid? If not, why not? If (or when) she does qualify for Medicaid, discuss the effect of any facts which may delay her receipt of benefits? (6 points)
3. Are there any asset protection steps would you advise for this couple? If so, explain what you would advise them to do. (15 points)

SAMPLE

**Question #22**  
**Short Essay 20 points – 20 minutes**

You have known Mr. and Mrs. Swift for many years, although you have not performed estate planning services for them. Mrs. Swift recently had a stroke leaving her aphasic and without the ability to write. She appears alert. Mr. Swift made an appointment for you to meet with them at their nursing home residence. When you arrived, Mr. Swift tells you that he and Mrs. Swift want to re-write their estate planning documents to accomplish two things—change the trustee of their living trusts from Bigbank to Friendlybank and to change the remainder clause. Their regular estate planning attorney (for whom Bigbank is a prominent referral source) has declined to assist them, since he believes that Mrs. Swift lacks capacity to change her estate planning documents. Mr. Swift’s prior estate plan was to distribute the remainder of his trust in two equal shares—his nephew Robert and the local YMCA. Mrs. Swift’s trust was to go to her niece Gwendolyn. Now they both want to name the YMCA as the 100% beneficiary. You discuss the reasons for the changes, and Mr. Swift makes a plausible explanation for both; you are personally satisfied from the nonverbal cues that Mrs. Swift understands and concurs, even though she cannot confirm this in words. You have the Swifts execute authorizations to allow you to get a copy of the prior lawyer’s file, and she sends it to you. In view of Mrs. Swift’s health issues, you request permission to engage a psychologist, and Mr. Swift refuses, saying he just wants a simple change and not to spend a lot of money. Mr. Swift explains that he accompanies Mrs. Swift to all medical appointments, and none of her physicians ever expressed a concern about Mrs. Swift’s mental abilities to her.

1. What factors would you consider regarding capacity in determining whether to accept representation of Mrs. Swift and what strategies would you adopt? (12 points)
2. Discuss joint representation as it may relate to this case. (5 points)
3. Assume you decide to take the case; how would you document your file against a future challenge? (3 points)

**Question #23**  
**Short Essay 20 points – 20 minutes**

Frank Jones was hospitalized after a serious car accident. Initially, the doctors took emergency measures, including providing nutrition and hydration through a feeding tube, a number of prescribed medications and various treatments necessary to keep him alive.

His doctors have now diagnosed him as being in a persistent vegetative state and have concluded that any further treatment would be futile. They have advised Frank's long-time partner, Amanda, that treatment should be stopped. Amanda says Frank had executed a living will/health care proxy, but it has not been located. Amanda believes she was named as Frank's agent. Frank has no living next of kin. Amanda thinks that the doctors have not properly diagnosed Frank's condition and that if the treatment were continued and modified, he would regain consciousness. She objects to any cessation of treatment and has threatened to go to the media.

1. Does Amanda have authority to be involved in Frank's medical decisions? Explain why or why not, and what other options she could pursue? (8 points.)
2. What are the processes that the hospital should follow in this case? (8 points)
3. Assume that it has been legally established that Frank would want treatment continued. How would the medical futility doctrine impact the treatment decision? (4 points)

**Question #24**  
**Short Essay 20 points – 20 minutes**

You have represented George for several years in connection with his business and in connection with George's recent appointment as guardian (of the person) and conservator (of the estate) for his Uncle Bill. You continue to advise him in both matters. When George asks you to review a buy-sell agreement in connection with his business, you discover that George has invested at least some of Uncle Bill's assets into his business.

1. What is your legal and ethical obligation to George? (5 points)
2. What is your legal and ethical obligation to Uncle Bill? (5 points)
3. After confronting George, he discharges you and forbids you to take any further action. What is your legal and ethical obligation to the court? (10 points)