

Thursday Morning
March 1, 2018
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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**If hand-writing, answer in the section marked Question 1.
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Question 1

In June 2015, while living in New Mexico, Ann borrowed \$10,000 from Bank located in Texas. She borrowed the money to pay suppliers of the clothing store she owned in New Mexico as a sole proprietorship. Ann signed a \$10,000 promissory note (Note 1) and a security agreement giving Bank a security interest in a savings account she had at Bank. Bank did not record any documentation about this security interest.

In July 2015, Ann borrowed an additional \$8,000 from Bank and signed another promissory note (Note 2). She also signed a security agreement giving Bank a security interest in all business equipment then owned or thereafter acquired by her. On July 15, 2015, Bank properly perfected this security interest in New Mexico. At that time, Ann owned a clothing presser, among other things, that she used in her business.

On February 1, 2016, Ann moved to Texas, where she relocated her clothing store. She notified Bank of her move. On April 1, 2016, Ann borrowed money from Finance Company (FinanceCo). She signed a \$15,000 promissory note (Note 3) and a security agreement giving FinanceCo a security interest in all of her existing business equipment and also in the same Bank savings account that secured Note 1. On April 2, 2016, FinanceCo timely filed the signed security agreement for Note 3 with the Texas Secretary of State. Ann used the money borrowed from FinanceCo to purchase several display cases for her Texas clothing store.

As of January 1, 2017, Ann was in default on Notes 1, 2, and 3. Both Bank and FinanceCo claim security interests in the savings account, the clothing presser, and the display cases.

Answer the following under the Texas UCC:

(1) Which creditor has the superior security interest in the following:

- (a) The savings account?**
- (b) The clothing presser?**
- (c) The display cases?**

Explain fully.

**If hand-writing, answer in the section marked Question 2.
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Question 2

Emily lived in an apartment in Anywhere, Texas for several years. In July 2016, Emily moved to a single-family house, also located in Anywhere. The following events occurred in connection with her move.

Emily purchased appliances for her new home and was entitled to a rebate of \$500 from ABC Appliances (ABC). ABC mailed Emily a check for \$500 drawn on Community Bank (rebate check). ABC mailed the rebate check to Emily's old address even though she had given them her new one. An unknown person stole the rebate check from the apartment's mail center, indorsed it by signing Emily's name, and cashed it at Community Bank.

Emily hired Joe to bring a truckload of furniture to her new home. Upon completion of the job, Emily gave Joe a \$350 check for his services drawn on her account at Community Bank. Shortly thereafter, a thief stole the check from the locked glove compartment of Joe's locked truck. The thief indorsed the check by signing Joe's name and presented it for payment at Community Bank. Community Bank paid cash to the thief and charged Emily's account for \$350.

Answer the following under the Texas UCC:

(1) What claim, if any, does Emily have

- (a) against Community Bank for cashing the rebate check for the unknown person, and**
- (b) against ABC for the \$500 rebate?**

Explain fully.

(2) What claim, if any, does Joe have

- (a) against Community Bank for cashing the \$350 check for the thief, and**
- (b) against Emily for \$350 as payment for his furniture moving services?**

Explain fully.

**If hand-writing, answer in the section marked Question 3.
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Question 3

William owned Blackacre, a 100-acre tract of land located in rural Navarro County, Texas. In a properly signed and acknowledged Special Warranty Deed, William conveyed all of Blackacre to Doug, a single man, as a gift (Blackacre Gift Deed). Upon receipt of the Blackacre Gift Deed, Doug promptly put it in his desk drawer for safekeeping. As an annual gift, William continued to pay all taxes on Blackacre. Neither William nor Doug ever recorded the Blackacre Gift Deed.

Doug moved to Blackacre, where he built his dream home with his life savings. Blackacre met all the requirements for and became Doug's rural homestead.

Doug purchased patio furniture from Patio Supply Company (Supply Company) pursuant to a written purchase order. Doug did not pay Supply Company for the patio furniture. Supply Company timely filed a lien affidavit on Blackacre.

Doug subsequently died intestate.

Upon learning of Doug's death, William sold Blackacre by a signed and acknowledged Special Warranty Deed to Ellen for cash (Blackacre Cash Deed). Ellen did not know either William or Doug prior to purchasing Blackacre from William. She promptly recorded the Blackacre Cash Deed.

Answer each question pursuant to the Texas Property Code:

- (1) Was the unrecorded Blackacre Gift Deed binding on William? Explain fully.**
- (2) To be effectively recorded, where should the Blackacre Gift Deed have been recorded? Explain fully.**
- (3) Is the Supply Company lien affidavit on Blackacre for the unpaid patio furniture a valid lien? Explain fully.**
- (4) Was the Blackacre Cash Deed valid as to Ellen? Explain fully.**

**If hand-writing, answer in the section marked Question 4.
If laptop, answer in the screen marked Question 4.**

Question 4

Pursuant to a properly recorded general warranty deed, Margaret owns Greenacre, a farm located in Webb County, Texas in fee simple title. Margaret's fee simple interest in Greenacre is subject only to John's 1/16th non-participating royalty interest in all oil, gas, and other minerals.

In December 2016, Margaret signed an oil and gas lease on Greenacre for "two years and for so long thereafter as oil and gas is produced in paying quantities" (Lease) with Big Oil Company (Big Oil). The Lease provided that Big Oil would pay a royalty of 1/8th of the oil, gas, and other minerals produced, along with bonus and delay rentals. Big Oil promptly recorded the Lease in Webb County.

In April 2017, John sold a portion of his Greenacre royalty interest to Margaret and delivered a royalty deed that conveyed to Margaret "1/32nd of all oil, gas, and other minerals produced from Greenacre." Margaret promptly recorded the royalty deed in Webb County and sent a copy to Big Oil.

In May 2017, Big Oil drilled a producing well on Greenacre. Soon after, Big Oil sent a division order to John reflecting John's ownership interest as a 1/16th royalty interest in Greenacre. John promptly signed and returned the division order to Big Oil.

In August 2017, John showed Bobby the Big Oil division order. Bobby, relying on the division order, accepted a royalty deed from John conveying to Bobby "a non-participating royalty of 1/16th of all the oil, gas, and other minerals produced from Greenacre." Bobby did not research the Webb County Clerk's records regarding Greenacre.

Bobby promptly recorded his royalty deed in Webb County and sent a copy to Big Oil. Big Oil then sent Bobby a copy of the recorded April 2017 royalty deed from John to Margaret. This was Bobby's first notice of that deed.

- (1) If oil and gas production continues under the Lease, who is properly entitled to royalty payments and in what proportions? Explain fully.**
- (2) If the current Lease terminates, does Bobby have the right to negotiate a new lease? Explain fully.**
- (3) When the Lease terminates, who has the obligation to plug the well? Explain fully.**

**If hand-writing, answer in the section marked Question 5.
If laptop, answer in the screen marked Question 5.**

Question 5

Henry and Wendi are married in Texas. Two children, Bethany and Chad, were born during the marriage. A few days after Chad's third birthday, Wendi told Henry that Peter, her high school boyfriend, is Chad's real father. Peter, who resides in Oklahoma, had no knowledge that Chad had been conceived during an "encounter" with Wendi at their Texas high school reunion.

One week later, Henry confronted Peter. Furious that Henry contacted Peter, Wendi filed for divorce the next day and named both Chad and Bethany as children of the marriage. Henry timely filed an answer and counter-petition asserting only Bethany as a child of the marriage.

- (1) Is there a presumption of paternity as to whether Henry or Peter is Chad's legal father? Explain fully.**

- (2) If there is a presumption of paternity, what must be pleaded and proven to rebut the presumption? Explain fully.**

- (3) May Peter now assert his paternal rights to Chad? Explain fully.**

**If hand-writing, answer in the section marked Question 6.
If laptop, answer in the screen marked Question 6.**

Question 6

Hank owned all issued and outstanding stock in HHH, Inc. (HHH), a closely held corporation whose only asset was a restaurant doing business as “Hotdog Heaven.”

Hank married Whitney. At the time of the marriage, Hank managed Hotdog Heaven and was paid an appropriate salary. Hank and Whitney negotiated to purchase the land and building (collectively, the Land) previously leased for Hotdog Heaven’s operations. The Land was purchased by HHH, instead of Hank and Whitney individually, to allow for certain tax advantages. To effectuate the purchase, HHH obtained a loan from Bank, secured by a deed of trust on the Land. Bank also required personal guarantees from both Hank and Whitney for the promissory note for the loan (Note). Hank made representations to Whitney and Bank that the Land investment would be “their retirement.”

Hotdog Heaven’s business began losing money. Hank continued working as the manager, and Whitney began assisting with bookkeeping and clerical duties. Neither was compensated.

After several years, business improved. Hank hired an employee to act as the manager. Hank began using excess funds from Hotdog Heaven’s bank account to pay for his truck, the couple’s vehicle insurance, vacations, and personal credit card expenses. He also used HHH excess funds to make additional payments toward the Note above the amounts required for payment pursuant to the terms of the Note. The market value of the Land has increased significantly because of growth in the area.

The parties are now divorcing.

(1) What claims can Hank assert with regard to the following? Explain fully.

(a) HHH

(b) Hotdog Heaven

(c) Land

(2) What claims can Whitney assert with regard to the following? Explain fully.

(a) HHH

(b) Hotdog Heaven

(c) Land

This concludes the morning portion of the Texas Essay Questions.

Write the pledge on the back of this question book.

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