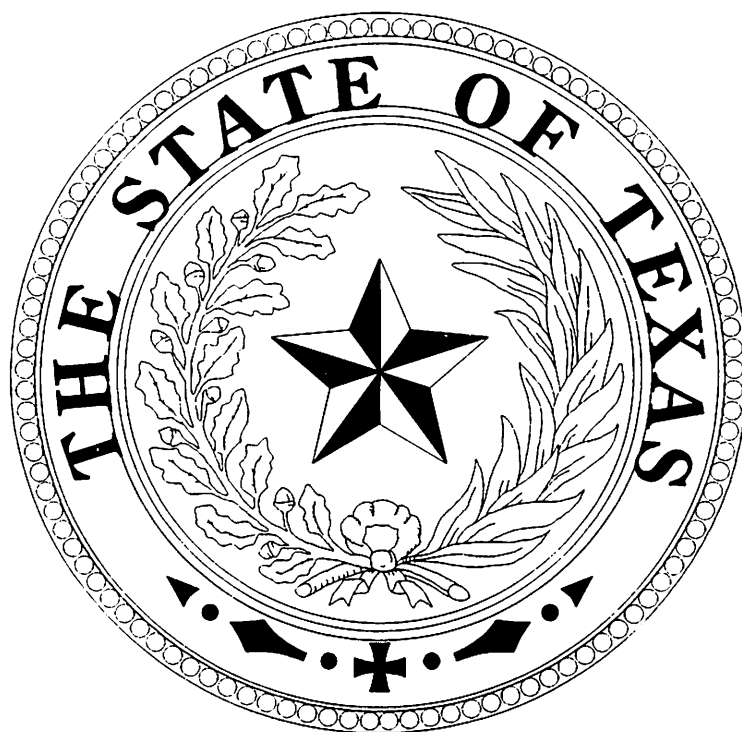


Thursday Morning  
February 28, 2013  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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**If WRITING, answer Question 1 in the GOLD answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

**QUESTION 1**

Bob, a single person, owned a 200-acre tract of land in Atascosa County, Texas. On July 1, 2010, Bob entered into a valid oil and gas lease with Oilco covering the entire 200-acre tract. The lease provided the following:

- Oilco would pay a royalty of one-third to Bob on any production;
- A term of five (5) years, commencing July 1, 2010, and continuing as long thereafter as oil, gas or other minerals were being produced in paying quantities;
- If drilling operations did not begin within one (1) year from the date of the lease, the lease would terminate unless Oilco paid \$1,500 per acre as a delay rental;
- A “dry hole” clause; and
- A “Pugh” clause.

In December of 2010, Bob conveyed a 1/10th nonparticipating royalty interest to Lisa. On July 1, 2011, Oilco paid Bob, but not Lisa, delay rentals. Beginning in May 2012, oil, gas or other minerals were produced in paying quantities from the 200-acre tract. Oilco subsequently made a claim against Bob and Lisa for their pro-rata share of production expenses.

- 1. Fully describe at least two (2) kinds of royalty interests.**
- 2. As the owner of a 1/10th nonparticipating royalty interest, was Lisa entitled to any delay rentals from Oilco? Explain fully.**
- 3. What is a “Pugh” clause? Explain fully.**
- 4. What is a “dry hole” clause? Explain fully.**
- 5. Are Bob and Lisa responsible for their pro-rata share of Oilco’s production expenses?**

If **WRITING**, answer Question 2 in the **GRAY** answer book.  
If using **LAPTOP**, be certain you answer in the **correct** screen.

## **QUESTION 2**

Ranger Inc. obtained a loan from Bank to purchase 500 acres of land located partially in Bexar County, Texas, and partially in Comal County, Texas (collectively, the “Property”). Ranger Inc. executed, and Bank properly recorded, a first lien deed of trust on the Property in both counties. The loan terms provided for monthly repayment of principal plus interest, along with other standard commercial loan terms.

Ranger Inc. subsequently defaulted on its loan to Bank and stopped making its monthly payments. Bank informed Ranger Inc. that it was accelerating the maturity of Ranger Inc.’s loan and opting to sell the Property under the power of sale conferred by the deed of trust. On December 23rd, Bank sent Ranger Inc., via certified mail, a “Notice of Trustee’s Sale” with the following information:

A public sale at auction of the Property will be held on Monday, January 10th, at 8:00 a.m. at the Bank’s home office in Travis County, Texas.

The Bank posted its “Notice of Trustee’s Sale” solely at (i) a fire station in Bexar County nearest the Property and (ii) the courthouse door of the Bexar County Courthouse. The Bexar County Commissioner’s Court had previously designated the south steps of the Bexar County Courthouse as the place where the trustee’s sales are to take place. The Comal County Commissioner’s Court had previously designated the south steps of the Comal County Courthouse as the place where the trustee’s sales are to take place.

On January 10th at 8:00 a.m., the Bank held a public sale of the Property at the Bank’s home office in Travis County, Texas and sold the Property to Jack for an amount that was \$500,000 less than what was owed to the Bank by Ranger Inc. The Trustee gave to Jack a “Trustee’s Deed” conveying the Property to Jack.

1. Was the “Notice of Trustee’s Sale” the Bank sent to Ranger Inc. valid? Explain fully.
2. Did the Bank properly post its “Notice of Trustee’s Sale”? Explain fully.
3. Would a lawsuit filed by Ranger Inc. to invalidate the sale to Jack likely be successful? Explain fully.
4. Does Jack take title to the Property with any express or implied warranties? Explain fully.

**If WRITING, answer Question 3 in the BLUE answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

### QUESTION 3

Wally borrowed a desk from his brother, George, to use in his business, Wally's Widgets (a sole proprietorship). The desk and other items were destroyed in a fire in July 2011. George demanded that Wally pay George \$1,000 for the destroyed desk. Wally doubted that the desk was worth \$1,000, but felt coerced by George; so, on August 1, 2011, Wally signed and delivered to George a \$1,000 promissory note, payable on or before July 31, 2012. The note was in proper form to be a negotiable instrument under Texas law.

On August 15, 2011, Wally borrowed \$10,000 from Bank to help him reopen his business after the fire. Wally signed a security agreement giving Bank a security interest in: (1) the inventory currently held or subsequently acquired by Wally's Widgets, and (2) any amounts Wally had on deposit in his only savings account at Bank. Bank did not file any documentation regarding its security interest.

The \$10,000 Wally borrowed from Bank was insufficient for Wally to reopen his business. Consequently, on September 3, 2011, Wally borrowed another \$5,000 from Bank, signing a security agreement giving Bank a security interest in all of the equipment owned or subsequently acquired by Wally's Widgets. Bank filed financing statements describing only the equipment in all required public offices, on September 4, 2011.

Finding that he still did not have sufficient capital to operate his business, Wally borrowed \$20,000 from Loan Company ("LoanCo"), on October 15, 2011. Wally signed a security agreement giving LoanCo a security interest in: (1) his only savings account at Bank, (2) the inventory currently held or subsequently acquired by Wally's Widgets, and (3) all equipment owned or subsequently acquired by Wally's Widgets. LoanCo filed financing statements in all required public offices, on October 30, 2011.

On October 19, 2011, Wally purchased a \$7,000 widget-making machine for use in his business, paying cash for the machine.

On December 11, 2011, George indorsed Wally's \$1,000 promissory note and gave it to Bank in settlement of a disputed \$1,500 loan from Bank to George. A week later, George told Bank's President: "Good luck collecting the note from Wally. I forced him to sign it, and the desk I let him borrow was worth about half the amount of the note. He'll never pay."

On July 31, 2012, Bank presented the \$1,000 note to Wally and demanded payment. Wally refused to pay the note. Wally also has defaulted on the \$5,000 and \$10,000 notes payable to Bank and on the \$20,000 note payable to LoanCo.

- 1. As between Bank and LoanCo, which has the superior interest in:  
(a) the savings account, (b) any inventory held by Wally's Widgets, and (c) the widget-making machine? Explain fully.**
- 2. If Bank sues Wally to collect the \$1,000 note, does Wally have any defense on which he can prevail? Explain fully.**

**If WRITING, answer Question 4 in the PINK answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

**QUESTION 4**

On January 3, Brandon and Stephen, both students at the local community college, met for the first time. Stephen told Brandon that he (Stephen) wanted to sell his ten-year-old pickup truck. When asked by Brandon about the pickup's condition, Stephen responded: "It's in really good shape. Both the engine and transmission were rebuilt two months ago, and I've driven it only about 500 miles since then. So, even though it has more than 100,000 miles on it, the pickup is in great mechanical condition and should run for another 50,000 miles without a problem."

Brandon then wrote the following terms on a piece of paper and handed it to Stephen: "Stephen agrees to sell, and Brandon agrees to buy, Stephen's pickup for the price of \$5,000. Stephen will deliver the pickup to Brandon's house on January 4 and Stephen will pay \$5,000 in cash in exchange for title to the pickup." Stephen agreed to the terms Brandon offered, and both parties signed and dated the piece of paper. Brandon did not reveal that he intended to use the pickup to make extra money helping people move.

On January 4, Stephen delivered the pickup to Brandon. Brandon told Stephen he was thinking about taking the pickup to a mechanic for inspection before finalizing the transaction. Stephen responded that Brandon should not "waste his money" on having a mechanic inspect the pickup because it was "exactly as I described it yesterday." Brandon inspected the pickup and drove it around the block. The engine looked clean, but Brandon could not tell if the engine or transmission actually had been rebuilt. Brandon decided to proceed with the transaction without having a mechanic inspect the pickup, and gave Stephen \$5,000 in cash.

On January 12, the pickup sputtered and died while Brandon was helping Xavier move an antique table. Brandon called a wrecker service to have the pickup towed to a mechanic's shop. While he was waiting on the wrecker to arrive, it rained heavily, causing the veneer on the table to warp. If the pickup had not died, there is no question that Brandon would have delivered the table to Xavier's house before the rain began.

After inspecting the pickup, the mechanic told Brandon the engine "seized" because it ran out of oil. He said the engine and transmission had never been rebuilt and that the engine had an oil leak that probably caused it to run out of oil every few hundred miles. He said both the engine and transmission needed to be rebuilt; otherwise, the pickup was worth only \$500 for its parts. The mechanic estimated it would cost \$3,800 to rebuild the engine and transmission. He charged Brandon \$250 for the cost of towing and inspecting the pickup.

Xavier made Brandon pay him \$2,000 for the table, which was ruined.

On January 14, Brandon hand-delivered a letter to Stephen informing Stephen that Brandon was revoking his acceptance of the pickup and that Stephen could recover the pickup at the mechanic's shop. The letter demanded return of the \$5,000 he paid Stephen, plus reimbursement for the amounts he paid to the mechanic (\$250) and Xavier (\$2,000).

**What rights and remedies, if any, are available to Brandon under the Texas Uniform Commercial Code? Explain fully.**

If **WRITING**, answer Question 5 in the **DARK GREEN** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

**QUESTION 5**

Roland, a Texas resident, died without a will two months ago, survived by his wife (Frances) and an adult child (Thomas) of the marriage. Roland also had one adult child (Andrew) from a previous marriage.

At the time of his death, Roland had no debts other than the mortgage lien on his homestead, and Roland owned the following community property assets:

- (a) A \$100,000 Retirement Account that designates Frances, as his beneficiary;
- (b) A \$25,000 Certificate of Deposit, held with Frances, as joint tenants with right of survivorship;
- (c) A Homestead valued at \$250,000, subject to a mortgage lien of \$50,000;
- (d) A Checking Account in the amount of \$10,000 held as joint tenants with Frances; and
- (e) Other Personal Property valued at \$5,000.

At the time of his death, Roland also owned a lake lot valued at \$50,000, which he had inherited from his mother after his marriage to Frances.

1. **Who is entitled to inherit from Roland? Explain fully.**
2. **To whom and in what proportions should the following assets be distributed:**
  - a. **Retirement Account? Explain fully.**
  - b. **Certificate of Deposit? Explain fully.**
  - c. **Homestead? Explain fully.**
  - d. **Checking Account? Explain fully.**
  - e. **Other Personal Property? Explain fully.**
  - f. **Lake lot? Explain fully.**
3. **What options (probate and non-probate) are available to transfer the assets of Roland's estate to the appropriate heir(s)? Discuss any advantages or disadvantages of each option. Explain fully.**

**If WRITING, answer Question 6 in the TAN answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

**QUESTION 6**

John and Elizabeth married in 1991 in Kansas. In 1992, while still living in Kansas, John executed a valid will that was self-proving by an affidavit that complied with Kansas law. In that will, he left all of his property to Elizabeth.

John and Elizabeth moved to Texas in 1993. They had no children of the marriage, and the will made no provision for children. In 1994, John, during a period of separation from Elizabeth, conceived a child, Buddy, with another woman, Mary. It was later determined by a court-ordered paternity test that John was Buddy's father. John paid child support until Buddy turned the age of 18. John made no provisions for Buddy or Mary in his will. John died of a heart attack in January 2013, survived only by Elizabeth and Buddy. Elizabeth filed John's 1992 will for probate.

Buddy, now 19 years of age, timely claims that he is entitled to a share of John's estate. Buddy also correctly points out that the self-proving affidavit that John executed in Kansas does not comply with the requirements in the Texas Probate Code for a self-proving affidavit and claims that it is not valid in Texas.

At the time of John's death, John had the following assets:

- (a) A Ranch located in Bosque County, Texas that he inherited from his father;
- (b) A 401(k) retirement plan naming Elizabeth as the beneficiary;
- (c) \$800,000 in cash assets that are characterized as community property; and
- (d) A Homestead valued at \$600,000 that was purchased after the marriage with community property funds.

1. **To what extent, if any, is Buddy entitled to a share of John's estate? Explain fully.**
2. **To whom and in what proportions should the following assets be distributed? Explain fully.**
  - (a) **The Ranch**
  - (b) **The 401(k)**
  - (c) **\$800,000 cash**
  - (d) **The Homestead**
3. **How should the court rule on the validity of the Kansas self-proving affidavit? Explain fully.**

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