

Thursday Afternoon  
July 31, 2014  
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

Wally, a widower, owned Goldacre located in Wise County, Texas. In December 2012, Wally and John entered into a three-year written lease (the "Surface Lease") under which Goldacre was leased to John. In the Surface Lease, Wally granted to John exclusive possession of the surface of Goldacre. Wally waived any right to use the surface for any purpose during the term of the Surface Lease, including any right to explore and/or produce oil, gas or other minerals. The Surface Lease was promptly recorded with the Wise County Clerk.

In January 2013, Wally died. Wally bequeathed to his sister, Mary, a royalty interest and all executive rights to execute oil and gas leases for Goldacre. Wally bequeathed to Paula, Mary's daughter, all other interests in Goldacre not bequeathed to Mary.

On Paula's birthday soon after Wally's death, Mary told Paula that she was giving Paula the executive rights in Goldacre that Mary had received from Wally. At the time, Mary intended to have her lawyer prepare a document that could be recorded to provide evidence of the gift, but she forgot to do so.

In October 2013, Paula signed an oil and gas lease (the "Mineral Lease") covering Goldacre with Dallas Oil Company ("DOC"). Paula told DOC that the Mineral Lease did not need Mary's signature on the document because Mary only owned a royalty interest in Goldacre.

Paula gave Mary a copy of the Mineral Lease. Mary, being a former landman, felt the terms of the Mineral Lease were unfavorable to the royalty owners.

1. Can Mary claim that the Mineral Lease was not effective, and, if so, on what basis? Explain fully.
2. What rights, if any, can John assert to preclude DOC from conducting drilling activities on the surface of Goldacre? 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

In May 2010, ABC Bank ("Bank") made a thirty-year home loan to Sarah, secured by a first lien deed of trust on Sarah's home in Travis County, Texas. The Bank deed of trust included all Texas standard foreclosure provisions that complied with Texas law. Sarah later fell ill and was unable to work. She failed to pay Bank the required monthly installments of principal and interest for six months.

Bank properly accelerated the maturity date of the loan. Subsequently, on April 30, 2012, Bank sent Sarah a written "Notice of Non-Judicial Foreclosure Sale" (the "Notice"). The Notice stated that the non-judicial foreclosure sale would be conducted at "any time and place after May 15, 2012", and offered Sarah the right to cure the principal and interest defaults prior to Bank's conducting the foreclosure sale.

Bank's deed of trust designated a trustee ("Trustee") to conduct a non-judicial foreclosure sale. Trustee posted the Notice with the county clerk in Travis County and at the local fire station, the places of posting notices of non-judicial foreclosure sale designated by the Travis County Commissioners Court. The Travis County Commissioners Court designated the south steps of the Travis County Courthouse as the place to conduct all non-judicial foreclosure sales in Travis County, Texas. On June 15, 2012, Trustee, acting on Bank's behalf, conducted the foreclosure sale on Sarah's home at the Bank's office in Dallas County, Texas, and the Bank was the successful bidder. A month after the non-judicial foreclosure sale, Bank sold Sarah's former home to a third-party buyer ("Buyer").

1. Was this a valid non-judicial foreclosure sale? Explain fully.
2. When Bank subsequently sold Sarah's former home to Buyer, was Bank required to complete and give Buyer a Seller's Disclosure of Property Condition? 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

Sally and Harry, residents of Dallas, Texas, dated for a number of years but maintained separate lives. They ultimately married in January 2003. Sally was the author of several self-help books and made a great deal of money from book sales and lecture fees. Harry was a successful real estate developer in Dallas and earned a six-figure income.

Five days before the wedding, Sally and Harry were celebrating their upcoming nuptials at a local Dallas bar, when Harry presented Sally with a premarital agreement prepared by his attorney. Sally signed the premarital agreement, which, among other things, contained the following provisions:

- (a) All income earned by either spouse during the marriage would remain their separate property; and
- (b) If either spouse were to be unfaithful during the marriage, the separate property (other than income earned) that was acquired during the marriage by the unfaithful spouse would be classified as community property in the event of a divorce.

When the economy soured in 2008, Harry's real estate development business suffered, and his income declined substantially. He abandoned the business to stay home and take care of the couple's vast estate and their four dogs.

In May 2013, when Harry discovered that Sally had engaged in a sexual affair with her literary agent, he filed for divorce.

At trial, Sally challenged the enforceability of the premarital agreement and proved that she signed the premarital agreement when she was extremely intoxicated and that, prior to signing it, she was never provided any information about the amount of Harry's income or assets. Harry introduced evidence that Sally's average monthly income is \$25,000 per month and petitioned the court to award him spousal maintenance in the amount of \$5,000 per month. Sally challenged Harry's claim for spousal maintenance.

1. Is the premarital agreement enforceable under Texas Law? Explain fully.
2. Will Sally's challenge to Harry's claim for spousal maintenance be successful either in whole or in part? 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**

Don and Betty married in San Antonio in 2001 and lived in Texas during their marriage. Soon after the marriage, Don began working for a software company, and Betty took care of the couple's two children at home. In 2004, Don's mother died and left Don a 200-acre ranch in the Texas Hill Country. In 2006, the couple bought an empty lot on the coast in Rockport, Texas, where they intended to eventually build a home and retire. Betty was unable to attend the closing in Rockport, and so the deed to the Rockport lot was taken in Don's name alone.

Betty filed for divorce in 2013. At the time the petition for divorce was filed, Don and Betty owned the following:

- The Hill Country ranch;
- The Rockport lot;
- Don's retirement account from the software company; and
- A joint checking account.

Shortly after Betty filed the divorce petition, Don sold the Rockport lot to Roger for fair market value. Don did not tell Roger that he and Betty were divorcing.

At trial, Betty requested that the Court declare the sale of the Rockport lot to Roger void, and that the Rockport lot, the Hill Country ranch, retirement account, and joint checking account be divided equally as community property. Further, she requested that, in the event the Court declined to void the sale of the Rockport lot, she be awarded a division of property that compensates her for one-half of the Rockport proceeds.

1. How should the Court rule on the validity of the sale of the Rockport lot to Roger?

Explain fully.

2. How should the Court divide the following property:

- The Rockport lot or the proceeds therefrom?
- The Hill Country ranch?
- Don's retirement account?
- The joint 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

On April 1, Leathers, a Texas company that sells new and used motorcycle apparel, borrowed \$50,000 from First Bank. To secure its obligation to repay the loan, Leathers signed an agreement granting First Bank a security interest in "all Leathers's inventory, whether now owned or hereafter acquired." On April 5, First Bank filed a financing statement with the Texas Secretary of State, listing itself as the creditor, Leathers as the debtor, and "inventory" as the collateral.

Leathers thereafter entered into the following transactions:

- On April 10, Leathers sold a new leather motorcycle jacket (the "jacket") to Jane. The sale was made as a regular retail sale. Jane was unaware of the financial relationship between Leathers and First Bank.
- On April 15, Leathers traded a pair of used motorcycle boots to Kip, in exchange for a used computer (the "computer"). Leathers then began using the computer in its business.
- On April 30, Leathers bought 50 new motorcycle helmets (the "helmets") on credit from Seller. Leathers agreed to pay Seller in full within 15 days. The written sales agreement, signed by Leathers, stated that Seller retained title to the helmets until Leathers had paid Seller. Seller did not file a financing statement with any governmental authority. As of this date, none of the helmets have been sold by Leathers.

Leathers has failed to pay rent to Landlord for several months. On May 28, Landlord obtained a judgment against Leathers and also a judgment lien against all of Leathers's business inventory.

Leathers has defaulted on its repayment obligation to First Bank and has not paid the amount it owes to Seller. First Bank claims a security interest in all apparel (including the helmets) currently in Leathers's store, the jacket bought by Jane, and the computer. Seller claims an interest in the helmets. Landlord seeks to enforce its judgment lien against all of Leathers's business inventory.

1. As between First Bank and Jane, which has a superior claim to the jacket? Explain fully.
2. As between First Bank and Landlord, which has a superior claim to the computer? Explain fully.
3. As among First Bank, Seller, and Landlord, which has a superior claim to the helmets? 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

William owns and operates a wholesale produce business. Katy owns and operates a small grocery store in which she sells only organic goods in environmentally friendly packages. William met with Katy at her grocery store and showed her a dozen brown-shelled eggs in a recyclable cardboard container. The outside of the container stated that it contained "extra-large, farm fresh eggs produced by free-range chickens." William and Katy entered into a contract by which William agreed to sell to Katy 250 dozen of the eggs for \$500.

On the day specified for delivery, William delivered the eggs to Katy in wooden crates. Because the crates were nailed shut, Katy did not inspect the eggs. Katy signed but did not read the delivery receipt William provided to her, which stated that the eggs were accepted by Katy "as is." Katy wrote William a \$500 check drawn on her account at Secure Bank in payment for the eggs.

When Katy opened the crates later that day, she discovered that the eggs were white, not uniformly sized, and packaged in styrofoam cartons. The cartons were imprinted with the logo of a company that Katy knew produced eggs from caged chickens. Many of the eggs were broken, and others were not fresh. Katy did not believe she could sell the eggs to her customers. The financial loss Katy suffered by purchasing, but not reselling, the eggs caused Katy's financially fragile business to fail, and Katy filed a bankruptcy petition.

After William learned of Katy's bankruptcy filing he indorsed the back of the \$500 check and gave it to Tim in satisfaction of a longstanding debt. Tim altered the check so that it appeared to be written to William for \$2,500, indorsed the back of the check, and gave it to Carl to purchase Carl's old convertible. Carl deposited the check into his interest-bearing checking account at Local Bank.

Local Bank presented the check to Secure Bank, which refused to pay the check because Katy did not have sufficient funds in her account to cover the check. In the meantime, Carl had written a number of checks on his account to pay his monthly bills. After Local Bank debited his account for \$2,500, Carl no longer had sufficient funds to cover all of the checks he had written. Local Bank charged him a fee for each dishonored check, and many of Carl's creditors also charged him a fee for writing them a "hot check." Carl ultimately paid \$350 in fees and penalties related to having written "hot checks."

1. Does Katy have a cause of action under the Uniform Commercial Code for breach of warranty against William in regard to providing non-conforming eggs and, if so, is Katy likely to prevail on any such cause of action? Explain fully.
2. What non-judicial actions could Katy have taken under the Uniform Commercial Code when she discovered that the eggs were non-conforming? Explain fully.
3. Does Carl have a cause of action under the Uniform Commercial Code for breach of warranty against Katy, William, or Tim in regard to the \$500 check Katy wrote to pay William and, if so, what are his damages? 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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