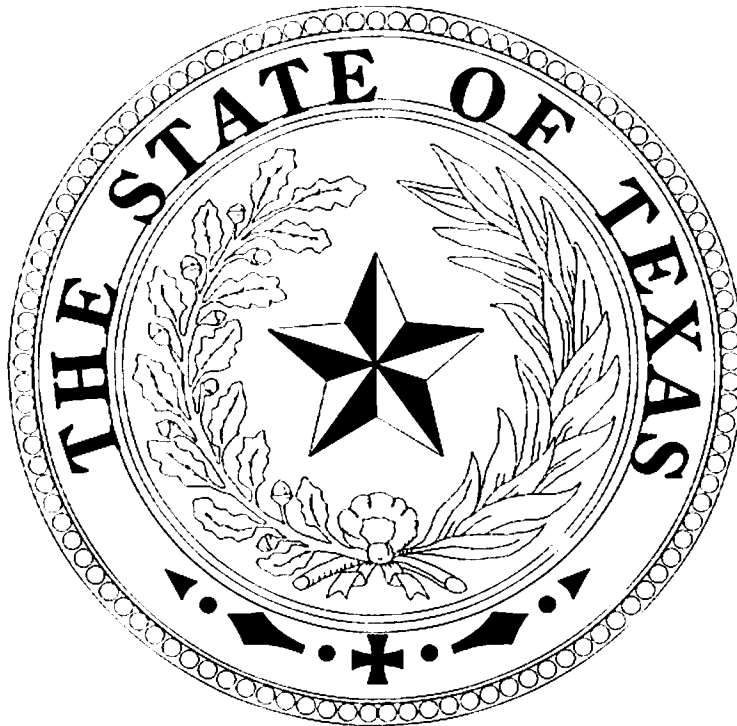


Thursday Morning  
February 26, 2015  
Essay Questions 1 - 6



## 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**

John and Diane were divorced in 2009. At the time of the divorce, their community property included a dilapidated vacation home that had not been used in years and 500 shares of stock in a small start-up company that created and handled an instant messaging application (the “App”). The 2009 divorce decree awarded the shares to John and provided that:

It is ordered and decreed that John shall sell the App stock on or before March 1, 2012, and shall deliver to Diane fifty percent (50%) of the proceeds from the sale of such stock within ten (10) days of the receipt of said proceeds.

Both spouses forgot about the unused vacation home and failed to include it in their inventories and appraisals. Consequently, the vacation home was not divided in the divorce decree. Shortly after the divorce became final, John discovered the oversight and notified Diane. They orally agreed to sell the vacation home and split the proceeds.

On June 1, 2014, John sold the App shares to a social media company for \$20 billion and received the proceeds from the sale on the same date. When John refused to deliver Diane’s share of the proceeds to her 10 days later, she filed suit on July 10, 2014, to enforce the decree. Inasmuch as the vacation home had still not been sold, Diane also requested that the Court: (1) revise the 2009 divorce decree to include and divide the vacation home, or (2) in the alternative, make a division of the vacation home outside of the 2009 divorce decree.

- 1. Under the Family Code, has Diane timely brought her suit to enforce the provisions of the 2009 divorce decree related to the App shares? Explain fully.**
- 2. How should the Court rule on each of the alternative requests in Diane’s lawsuit? Explain fully.**

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

**QUESTION 2**

Irene cohabited in an unmarried relationship with Willie for several years before discovering that he was seeing another woman. Upon learning of Willie's infidelity, Irene moved out. Sometime later, Willie got drunk and went to Irene's residence hoping to rekindle their relationship. When Irene rejected his advances, Willie sexually assaulted her. Irene did not report the assault to law enforcement authorities.

Two months later, Irene discovered that she was pregnant with Willie's child. Before the child, Joe, was born, Willie and Irene reconciled and began living together again. On Joe's third birthday, Willie and Irene had a heated argument after which Willie took Joe to Willie's mother's house. The following morning, Willie's mother found Joe alone in the room and a handwritten note from Willie stating, "Take good care of Joe." Willie was never heard from again.

Joe was returned to his mother that day. One year later, Irene filed a petition to terminate Willie's parental rights. In her petition, Irene alleged as grounds for the termination that Joe was conceived as a result of the sexual assault.

- 1. Does the sexual assault constitute a valid ground to terminate Willie's parental rights to Joe? Explain fully.**
- 2. On what other grounds, if any, might Irene prevail in her petition to terminate Willie's parental rights to Joe? 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**

Molly, the owner of the Cuero Ranch's mineral estate, entered into an oil and gas lease with Major Oil Company as the lessee. The lease granted all the oil and gas under the Cuero Ranch to Major Oil Company for "10 years and as long thereafter as oil and gas is produced" in return for the usual lease benefits (1/8th royalty, bonus payments, delay rental payments). At the end of the primary term, Major Oil Company has failed to produce oil and gas in paying quantities and has paid Molly no delay rentals. Major Oil Company then offers to make a delay rental payment to Molly if she will extend the lease.

Molly refuses to extend the oil and gas lease to Major Oil Company but instead offers to sell the Cuero Ranch's mineral estate to Major Oil Company for \$1,000,000.

1. **During the term of the lease with Molly, what interest does Major Oil Company own? Explain fully.**
2. **During the term of the lease with Major Oil Company, what interest and rights in the Cuero Ranch mineral estate does Molly retain? Explain fully.**
3. **Does Molly have a duty to extend the primary lease term based on Major Oil Company's offer to make a delay rental payment? Explain fully.**
4. **What does Molly own if she sells the Cuero Ranch mineral estate to Major Oil Company? 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**

Jack inherited two tracts of land in non-contiguous Texas counties: a 10-acre tract wholly within Bexar County (the “Bexar Tract”) and a 300-acre tract wholly within Karnes County (the “Karnes Tract”). Jack and his wife, Mary, reside in the family home on the Bexar Tract, which is within the city limits of San Antonio. The home is served by water, electric, sewer, and high speed internet, along with fire, police, and private security protection.

After Jack inherited the Karnes Tract, he signed an oil and gas lease with Big Oil, Inc. (“Big Oil”). The lease provides that it will continue for “so long as oil, gas, and other minerals are produced thereon.” The lease is recorded in the Official Public Records of Real Property of Karnes County, Texas. Big Oil has drilled an oil well on the Karnes Tract that is currently producing in paying quantities and promises to produce into the future.

A golf driving range/entertainment center and residential community developed by Shale LifeStyle, Inc. (“SLI”) occupies the land next to the Karnes Tract. While hitting buckets of golf balls at the SLI driving range one evening, Jack met SLI’s president and agreed to purchase half of SLI’s stock. Jack signed a promissory note for the purchase of the SLI stock. Jack secured the promissory note by delivering deeds of trust to SLI on the Bexar Tract and the Karnes Tract. Both deeds of trust were properly recorded. Jack did not tell Mary about the SLI stock purchase and Mary did not sign the deeds of trust.

Jack later defaulted in paying the promissory note to SLI. SLI wants to conduct a single non-judicial foreclosure sale of both properties and, if it is the highest bidder, purchase the properties at the foreclosure sale.

- 1. Does SLI have a valid lien on the Bexar Tract? Explain fully.**
- 2. Aside from the question of whether SLI has a valid lien on the Bexar Tract, can SLI foreclose on both the Bexar Tract and the Karnes Tract in a single non-judicial foreclosure sale? Explain fully.**
- 3. Will the Karnes Tract remain subject to Big Oil’s oil and gas lease after a properly noticed and conducted non-judicial foreclosure sale? 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**

Mechanical Seals Inc. (“MSI”) manufactures industrial gaskets. Sprocket Inc. manufactures gearboxes, including gearboxes used by Irrigation Inc. in its agricultural sprinkler systems.

In March 2008, Sprocket’s president met with MSI’s agent to determine if MSI could design and manufacture gaskets to be used in Sprocket’s gearboxes. MSI’s agent represented to Sprocket’s president that MSI was fully capable of designing and manufacturing high-quality gaskets that would allow Sprocket’s gearboxes to function in an agricultural irrigation system. Based on this representation, Sprocket’s president verbally agreed to have MSI design and manufacture the gaskets it was seeking.

On May 31, 2008, MSI sent a written quotation to provide 10,000 gaskets to Sprocket for \$90,000. Included among the terms and conditions stated on the face of the quotation was the following paragraph, in bold print:

**Warranty.** All of the gaskets sold hereby are subject to the following warranty: MSI WARRANTS FOR A PERIOD OF ONE YEAR FROM THE DATE OF DELIVERY THAT THE GASKETS ARE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP. THIS LIMITED WARRANTY IS YOUR EXCLUSIVE WARRANTY FROM MSI AND DESCRIBES THE EXCLUSIVE REMEDY AVAILABLE TO YOU. THE PRODUCT IS NOT SOLD WITH ANY IMPLIED WARRANTIES, NOR ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

On July 1, 2008, Sprocket’s president orally placed an order with MSI for 10,000 gaskets. MSI delivered the gaskets to Sprocket in multiple shipments throughout 2009. The final shipment of gaskets was received by Sprocket on December 1, 2009. Sprocket installed the gaskets in gearboxes that were sold to Irrigation and incorporated into Irrigation’s sprinkler systems. On February 28, 2010, Irrigation complained to Sprocket that one of its customers had reported that her irrigation system’s gearbox was leaking oil. Over the next two years, almost all of the gearboxes containing gaskets manufactured by MSI began to leak oil. At Irrigation’s request, Sprocket repaired all of the leaking gearboxes.

On January 31, 2014, Sprocket filed a lawsuit against MSI, stating claims *under the Texas Uniform Commercial Code* for: (1) breach of contract; and (2) breach of express warranty. MSI responded that: (1) all of Sprocket’s claims are barred by limitations; and (2) Sprocket’s breach of warranty claim is negated by the “Warranty” paragraph printed on the face of the written quotation MSI sent Sprocket on May 31, 2008.

- 1. Does Sprocket have a viable breach of express warranty or breach of contract claim against MSI under the Texas Uniform Commercial Code? Explain fully.**
- 2. Which, if any, of Sprocket’s claims are barred by limitations? 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**

Mark, in his capacity as an employee of Retailer, took the following actions:

- On June 1, he purchased 100 widgets from Supplier. Mark gave Supplier a \$500 check (check no. 123) drawn on Retailer's checking account at First Bank. The check had Retailer's name and address preprinted on the front. The check was signed "Mark." The signature on the check was made by a machine.
- On June 1, he purchased for \$20,000 a vehicle from Truckshop, a company from which he had previously purchased vehicles for Retailer. Mark signed and delivered two promissory notes to Truckshop. The first note stated, "On August 31, I promise to pay \$4,000 to the order of Truckshop." The second note stated, "On December 31, I promise to pay \$16,000 to the order of Truckshop." Neither promissory note referenced Retailer. Mark signed the promissory notes "Mark, Agent."
- On June 2, he gave Electric Company a \$200 check (check no. 124) drawn on Retailer's checking account at First Bank.
- On June 3, he gave Landlord a \$300 check (check no. 125) drawn on Retailer's checking account at First Bank.

All three checks arrived at First Bank for payment on June 7. On that day, Retailer had only \$600 in its account. First Bank paid the \$200 check to Electric Company and the \$300 check to Landlord, but refused to pay the \$500 check to Supplier because Retailer's checking account had insufficient funds.

On November 1, Truckshop negotiated the \$16,000 note to Lender, who is a holder in due course of that note. The two notes are now past due and neither Retailer nor Mark has paid anything on them.

Supplier has sued both Mark and Retailer on the dishonored \$500 check.

Truckshop has sued both Mark and Retailer on the \$4,000 note.

Lender has sued Mark on the \$16,000 note.

- 1. Is either Retailer or Mark liable to: (a) Supplier on the \$500 check, or (b) Truckshop on the \$4,000 note? Explain fully.**
- 2. Is Mark liable to Lender on the \$16,000 note? Explain fully.**
- 3. Did First Bank wrongfully dishonor Retailer's \$500 check to Supplier? Explain fully.**

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