

Thursday Afternoon
February 28, 2019
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

Copyright © 2019 Texas Board of Law Examiners

This material or any portion hereof may not be reprinted without the advance written permission of the Texas Board of Law Examiners.

**If hand-writing, answer in the section marked Question 7.
If laptop, answer in the screen marked Question 7.**

Question 7

Dan owned Blackacre, located in Henderson County, Texas. In September 2016, Dan leased Blackacre to Kim for the storage of equipment under a three-year written lease (Surface Lease). Surface Lease granted to Kim exclusive possession of Blackacre's surface. Dan waived any right to use the Blackacre surface for any purpose during the term of Surface Lease, including use for the exploration for and production of oil, gas, or other minerals. Surface Lease was promptly recorded in the Official Public Records of Henderson County, Texas.

Dan died in April 2017. In his will, Dan bequeathed to his sister Gwen a 1/8 royalty interest in Blackacre and all executive rights to execute oil and gas leases for Blackacre. Dan bequeathed to Ben, Gwen's son, all other interests in Blackacre not bequeathed to Gwen. Dan's will was promptly probated and Gwen and Ben each received their respective bequeaths.

Ben's birthday occurred soon after Dan's death. At Ben's birthday dinner, Gwen told Ben that she was gifting to him the executive rights in Blackacre she received from Dan's estate. At the time, Gwen intended to have her attorney prepare a gift deed documenting the gift to Ben so it could be recorded but she forgot to do so.

In June 2018, Ben signed an oil and gas lease (Mineral Lease) covering Blackacre with Big Oil Company (Big Oil). Ben told Big Oil that Gwen did not need to sign the Mineral Lease because Gwen only owned a royalty interest in Blackacre.

Big Oil wanted to purchase Gwen's royalty interest in Blackacre, so it mailed Gwen a check for \$1,000, along with a cover letter asking her to sign and return the "enclosed document." The document had no descriptive heading and it contained language in small print purporting to convey to Big Oil Gwen's royalty interest in the oil, gas, and other minerals on Blackacre. Gwen was aware of the Mineral Lease signed by Ben, so she assumed that the check was a royalty payment from Big Oil. Without reading the document, Gwen signed it, returned it to Big Oil, and promptly cashed the check. Gwen later read her copy of the document she had previously signed and discovered for the first time that it purported to convey her royalty interest to Big Oil.

Gwen does not wish to rescind the conveyance but instead, wants to sue Big Oil for damages.

Big Oil intends to begin drilling activities on Blackacre.

- (A) Can Gwen claim that the Mineral Lease was not effective? If so, on what basis? Explain fully.**
- (B) What rights, if any, can Kim assert to preclude Big Oil from conducting drilling activities on the surface of Blackacre? Explain fully.**
- (C) What prerequisites must Gwen satisfy before bringing suit against Big Oil? Will she likely prevail in the suit, and if so, what can she recover? Explain fully.**

**If hand-writing, answer in the section marked Question 8.
If laptop, answer in the screen marked Question 8.**

Question 8

Tom owned Greenacre, which was comprised of improved land with a house, in Williamson County, Texas. On February 1, 2014, Tom leased Greenacre to Mark under a written lease in which Mark agreed to pay \$2,000 per month in rent for a term of three years. The lease required Tom, as property owner, to pay for all roof repairs and for any other repairs costing more than \$500.

Soon afterwards, Tom conveyed by a valid deed a life estate in Greenacre to his sister Lisa, with the remainder over to his other siblings, Steve and John, as tenants in common. The deed also stated, “This conveyance includes all rights and obligations under my lease to Mark dated February 1, 2014, including the right to receive rent from Mark, and obligates the Grantees to assume the obligations of the landlord in said lease.”

In November 2015, Lisa hired Roofco to fix a leak in the roof of the Greenacre house and asked Mark to pay the \$400 cost for the repair. Mark refused. Also, Mark fell behind in the rent and did not pay rent to Lisa for December 2015.

On October 31, 2016, Lisa died. At the time of her death, the \$400 due Roofco remained unpaid, and \$19,000 in 2016 property taxes on Greenacre were due. The executor of Lisa’s estate wrote a letter to Steve and John asking them to pay Roofco and the \$19,000 property taxes, since they were now receiving the benefit of the repair and the use of the land (Greenacre). Steve and John refused.

Beginning in January 2017, although there was no express agreement between Steve and John, Steve undertook to manage Greenacre. At the end of the lease term in January 2017, Mark moved out and paid \$4,000 to Steve—\$2,000 for the past due December 2015 rent and \$2,000 for the January 2017 rent.

Over the next few months, Steve made the following expenditures:

Steve paid the \$1,000 premium for the property insurance on Greenacre.

The sink in the bathroom sprung a leak that would have cost \$600 to repair. Rather than repair the leak, and without John’s consent, Steve remodeled the bathroom at a cost of \$12,000, including the plumbing repair. The bathroom remodel increased the value of Greenacre by \$6,000.

Steve sent John a bill asking for reimbursement of \$6,500, covering one-half of the bathroom remodel, including the plumbing repair, and one-half of the property insurance premium.

- (A) Who is obligated to pay the \$400 due Roofco and the \$19,000 in 2016 property taxes? Explain fully.**
- (B) Who is entitled to the \$4,000 Steve received from Mark for the December 2015 and January 2017 rent? Explain fully.**
- (C) What part, if any, of the bill Steve sent John for reimbursement is John obligated to pay? Explain fully.**

**If hand-writing, answer in the section marked Question 9.
If laptop, answer in the screen marked Question 9.**

Question 9

On September 1, 2016, Jane enrolled in University. One week later, she withdrew and moved. University timely sent Jane a tuition refund check drawn on Community Bank for \$4,000 (Check 1). Check 1 was mailed to Jane at her old address even though she had given University her new one. On October 1, Jane told University she never received Check 1.

University made a proper stop payment order to Community Bank regarding Check 1 and then sent Jane a second refund check (Check 2) at her new address. Jane cashed Check 2 at Community Bank. Two weeks later, Check 1 arrived in Jane's mail. Jane immediately took Check 1 to Rapid Check Cashers (Rapid), where she indorsed it "Pay to the Order of Rapid" and received \$4,000 in cash. Rapid promptly presented Check 1 for payment at Community Bank, which refused to pay out to Rapid because of University's stop payment order. Rapid is threatening to sue University to collect the \$4,000.

Meanwhile, Jane deposited the funds she received from Rapid in her account at Local Bank. Jane wrote a \$1,000 check payable to her sisters Wilma and Sally (Check 3) and she gave the check to Wilma. Wilma signed her full name on the back of Check 3 and gave it to Sally, intending that Sally deposit the funds in Wilma and Sally's joint bank account. Sally signed her full name on the back of Check 3 and left it on her desk at home. A few days later, Sally went looking for Check 3 but could not find it. She told Jane about the missing check. Jane called Local Bank and told them to stop payment on Check 3. Unknown to Sally, her roommate Mary had taken Check 3 to Local Bank after Jane had called to stop payment and exchanged it for \$1,000 in cash. Mary kept the cash. Jane has learned that Check 3 cleared her account at Local Bank after she asked the bank to stop payment. Jane is threatening to sue Local Bank to recover the \$1,000 it paid to Mary. Local Bank has demanded that Mary return the \$1,000 to the bank.

Answer the following under the Texas UCC:

- (A) Which party should prevail in a suit by Rapid against University over Check 1? Explain fully.**
- (B) Is Local Bank liable to Wilma and Sally for cashing Check 3? Explain fully.**
- (C) Is Local Bank liable to Jane for failing to stop payment on Check 3? Explain fully.**
- (D) Can Local Bank recover from Mary the \$1,000 it paid to her? Explain fully.**

**If hand-writing, answer in the section marked Question 10.
If laptop, answer in the screen marked Question 10.**

Question 10

Retailer planned to sell custom thermos bottles to attendees at a music festival. Retailer sent Manufacturer an inquiry about purchasing 500 thermos bottles with the music festival logo. Manufacturer replied as follows:

Manufacturer quotes a price of \$15 per unit for 500 thermos bottles with logo.

When Retailer received this response, it sent Manufacturer a purchase order (PO) for 500 bottles with the festival logo at the quoted price, stating delivery would be needed two weeks before the festival. The back side of Retailer's PO included the following statement:

By accepting this order, Manufacturer expressly warrants that the goods provided are fit for the ordinary purposes for which they are used.

Manufacturer responded to Retailer's PO by sending its standard Order Acknowledgement Form stating the following:

WE WILL INVOICE AFTER GOODS ARE SHIPPED. BEFORE ACCEPTING GOODS, MAKE SURE THAT EACH ARTICLE IS IN GOOD CONDITION. MANUFACTURER'S ACCEPTANCE OF YOUR ORDER IS EXPRESSLY CONDITIONED ON YOUR AGREEMENT TO THESE TERMS. YOU AGREE THAT WE MAKE NO WARRANTY ABOUT THE MATERIAL, WORKMANSHIP, OR QUALITY OF THE GOODS YOU HAVE ORDERED.

Manufacturer shipped the thermos bottles and sent Retailer an invoice that did not contain any additional terms. Retailer paid Manufacturer's invoice. Retailer sent no further communication to Manufacturer before accepting delivery of the 500 thermos bottles. The bottles arrived exactly two weeks before the festival. Retailer intended to sell the bottles for \$30 each. Hours after accepting delivery, Retailer inspected the thermos bottles and determined that none of them kept hot liquids hot or cold liquids cold. Retailer immediately demanded a refund or replacement from Manufacturer. Manufacturer refused. With days to go before the festival, Retailer obtained from another source 500 thermos bottles with the festival logo at a price of \$30 per bottle. Retailer sold all of these at cost at the festival.

- (A) Is there a contract between Retailer and Manufacturer? If so, when was it formed and what are its essential terms based on the facts presented? Explain fully.**
- (B) What damages, if any, is Retailer entitled to recover from Manufacturer? Explain fully.**

**If hand-writing, answer in the section marked Question 11.
If laptop, answer in the screen marked Question 11.**

Question 11

Husband and Wife have been married for 11 years. Husband is 40 years old, a high school graduate, and employed earning \$50,000 a year with health insurance and an employer-funded retirement plan. Wife is 41 years old and did not graduate from high school. She is the managing conservator of two children, ages 16 and 14, from a previous marriage and has not been employed for the last 16 years. She has no job skills that would qualify her for employment except in minimum wage jobs. She receives \$1,000 per month in child support from her ex-husband.

Husband and Wife agreed at the time of their marriage that Wife would stay home, maintain the house, and care for the children. They have one child of their marriage, aged three.

Their property and debts consist of the following:

- their community property home worth \$150,000, with a \$100,000 mortgage balance and a mortgage payment of \$1,000 per month;
- two automobiles encumbered by outstanding loans, the balances of which are roughly equal to the values of the respective vehicles, and monthly car payments of \$400 per vehicle;
- household furnishings worth \$2,500;
- Husband's interest in his employer funded retirement plan worth \$150,000; and
- \$4,000 in credit card debt.

Six months ago, Husband began having an affair and moved out of the marital home to live with the other woman. Since Husband moved out, Wife has made no effort to get a job but has attended an adult education program aimed at obtaining her high school diploma. The parties have filed for divorce, and Wife is seeking spousal maintenance.

- (A) What is the maximum amount and duration of spousal maintenance that the Court may award? Explain fully.**
- (B) If you represent Wife, what relevant factors would you argue to receive and maximize a spousal maintenance award for Wife? Explain fully.**
- (C) If you represent Husband, what relevant factors would you argue to minimize or avoid a spousal maintenance award for Wife? Explain fully.**

**If hand-writing, answer in the section marked Question 12.
If laptop, answer in the screen marked Question 12.**

Question 12

Mother and Father have three children, Olivia, Scott, and Beth. Mother and Father divorced in March 2010. The child support order in their Texas divorce decree provides:

Father is ordered to pay Mother child support of \$1,350 per month beginning April 1, 2010 and continuing on the first day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

- (1) any child reaches the age of 18 years or graduates from high school, whichever occurs later;
- (2) any child marries;
- (3) any child dies;
- (4) any child enlists in the armed forces of the United States; or
- (5) any child's disabilities are otherwise removed for general purposes.

Thereafter, Father is to pay Mother child support of \$1,125 per month until the first month immediately following the date of the earliest occurrence of one of the events specified above for another child.

Thereafter, Father is to pay Mother child support of \$900 per month until the first month immediately following the date of the earliest occurrence of one of the events specified above for another child.

Father is ordered to maintain a life insurance policy naming Mother as the beneficiary in an amount sufficient for any remaining child support obligations at the time of Father's death.

In May 2015, Olivia graduated from high school early and began college. She turned 18 in August 2016.

In July 2016, Scott was in a car accident. His injuries left him disabled. He cannot attend school, so Mother quit her job to homeschool Scott in August 2016. He turned 18 in September 2017 and obtained his GED in April 2018. He continues to reside with Mother so she can assist with his care.

Beth turned 18 in January 2019, is attending high school, and is scheduled to graduate in May 2019. She attends the local junior college two days each week through a dual enrollment program.

- (A) When does Father's child support obligation cease for each child? Explain fully as to each child.**
- (B) Father dies in December 2018. What becomes of any remaining child support obligations? Explain fully.**

This concludes the Texas Bar Examination.

Write the Honor Pledge on the back of this question book.

Laptop Examinees: Follow the Laptop Instructions that were handed out to you at the beginning of this session.

Handwriting Examinees: If you finish *before* the 15-minute warning, write the Honor Pledge on the back of this question book, give your question book and answer book to your proctor, gather your belongings—including your Admission Ticket and your ID—and exit the Secure Area. If you finish *after* the 15-minute warning, you must remain seated until you are dismissed.

**TEXAS BAR EXAM
SECURITY POLICY STATEMENT AND HONOR PLEDGE**

Anything not listed in the General Instructions as a Required Item or Permitted Item is a Prohibited Item. **Cell phones are Prohibited Items. If you bring a cell phone or any other Prohibited Item into the Secure Area, you may be immediately disqualified from the exam.** We may confiscate Prohibited Items from you, and retain them as necessary for inspection. We will report violations to the Board, who could nullify your exam results, conduct a hearing into your character and fitness, and/or take other actions.

The following acts also violate the Security Policy: obtaining, seeking to obtain, providing, or seeking to provide access to exam questions before the start of the exam; copying or receiving any information from any examinee during any testing session; communicating with anyone other than Board staff during any testing session; writing after time is called; taking exam materials outside of the exam room; failing to follow written and oral instructions from the Board; and any other act that might compromise the security or integrity of the exam. Any such misconduct may result in a hearing before the Board, the outcome of which could include nullification of your exam score or a finding that you lack the present good moral character required for admission to the bar.

Write **the following pledge** in your usual handwriting on the lines below. Enter your Examinee Number. If you cannot honestly write the pledge, contact a proctor or other Board staff immediately.

I have read and understand the Texas Bar Exam Security Policy. I have not given or received aid on the exam, or otherwise violated the Security Policy. If I am aware of anyone else having done so, I have already reported this to the Board of Law Examiners staff.

Examinee # _____