

July 2000

QUESTION 9

Abe owned in fee simple 10 acres of land adjoining the municipal airport in the City of Austin, Texas. He owned no other land. In 1993, Abe wrote on a blank piece of paper only the following words:

I hereby convey to Bob the southernmost two acres of the 10 acres I own adjacent to the municipal airport in Austin, Texas; provided, however, that I reserve for my own benefit and for the benefit of Clay, who owns the adjoining tract on the south, a 20-foot-wide right of way easement along the southern boundary of the two acres conveyed hereby.

/s/ (Abe's signature)

Abe delivered the paper to Bob, who paid no consideration.

Bob promptly took the paper to the Travis County Clerk for recordation and tendered a check in the amount of the usual fee for recording a deed. The Clerk refused to record the document.

Bob made no further attempt to record the paper. Bob did nothing on the southernmost two acres described in the paper other than mow the grass twice. Occasionally, Clay would travel along the 20-foot strip mentioned in Bob's paper to get to and from his adjoining property, but he did nothing to formalize the right of way easement.

Abe never used the 20-foot strip after 1993.

In 1994, Abe sold his land to the City of Austin for a considerable sum of money and duly executed and delivered a quitclaim deed to the City. In the deed, which had been prepared by the City, Abe conveyed "all my right, title, and interest" in the 10-acre tract, which was accurately described by metes and bounds in the quitclaim deed.

The City did not know about the paper Abe had delivered to Bob in 1993. The City paved the property and has exclusively used and claimed ownership of the entire 10 acres for public airport parking lot purposes since its acquisition in 1994.

In June 2000, Abe, Bob, and Clay filed suit against the City claiming various interests in part of the 10 acres and seeking an injunction and damages against the City.

- 1. Was the 1993 paper signed by Abe effective as a deed to the two southernmost acres of the 10-acre parcel? Explain fully.**
- 2. Did the Travis County Clerk properly refuse to record the paper Bob presented for recordation? Explain fully.**
- 3. Assuming the 1993 paper was valid as a deed, what rights, if any, do Abe, Bob, Clay, and the City of Austin have in the 10-acre parcel or any part of it? Explain fully.**
- 4. What cross-claims or alternative pleas should the City of Austin assert in order to remain in possession of the entire 10-acre parcel during the pendency of the lawsuit? Explain fully.**

Question 9 - Real Property

On Question 9 the responses of many examinees did not adequately identify the material requirements to make a document qualify as a valid legally recordable deed in Texas and the material differences in the legal effect of quitclaim deeds and other deeds under the facts presented.

July 2000

QUESTION 10

Father owned title to a 200-acre parcel of land in Texas, subject to a life estate in favor of Grandmother, who lives on the 200 acres. The land is worth about \$500 per acre.

Father conveyed fee simple title in the 200 acres to Son and Daughter by deed subject to Grandmother's life estate. In the deed, Father expressly reserved: (i) a one-tenth interest in all oil and gas in and under and that may be produced from the land; and (ii) an option for himself and his heirs and assigns to repurchase for \$2000, "50 acres out of the 200 acres" conveyed, exercisable at any time in the future.

Son and Grandmother negotiated and executed an oil and gas lease on the 200 acres with Oil Co. The lease, among other provisions, provided for a 20% landowner royalty from proceeds of oil or gas production from the land without deduction for any drilling, completion, producing, or marketing expenses. Father and Daughter refused to sign the lease.

No oil, gas, or other minerals had ever before been produced from the 20 acres. Oil Co. drilled and completed a well that began producing 5,000 barrels of oil each month. Father then gave notice to Son and Daughter that he was exercising his option to repurchase 50 acres of the land and tendered \$2000 in cash. Son and Daughter rejected the tender and refused to convey any land back to Father.

Oil Co. presented a division order providing for payment of Father and Daughter's share of oil proceeds after deduction of their share of marketing expenses. Daughter promptly sent a letter to Oil Co. ratifying the lease and signed the division order. Father refused to ratify the lease or to sign the division order.

- 1. If Father sues to enforce his option to repurchase 50 acres of the 200 acres, will he be likely to prevail? Explain fully.**
- 2. Can Father or Daughter successfully challenge Oil Co.'s right to continue to produce oil from the land on the ground that Father or Daughter did not sign the lease? Explain fully.**
- 3. Assume that the oil and gas lease is valid and that Father's option to repurchase is invalid. What rights, if any, do Grandmother, Father, and Daughter each have to the oil that is being produced by Oil Co. or the royalties due thereon, and, what obligations, if any, do such parties have concerning payment of drilling, completion, producing and marketing expenses? Explain fully.**

Question 10 - Real Property

On Question 10 some common problem areas for the examinees appeared to be the section regarding the rights of the parties to the oil produced. Many of the difficulties arose regarding life tenants and non-signing interest owner's rights in the minerals produced or the royalty due thereon. Responses also confused the rights attributable to mineral interests and royalty interests as well as liability of the various parties for costs of drilling, producing, and marketing the oil or gas produced under the facts presented.

February 2001

QUESTION 11

In 1989, Elizabeth signed and acknowledged an instrument intending to convey 100 acres of land she owned in Texas to her daughters, Ashley and Nicole. The instrument Elizabeth executed had blank spaces for the names of the grantees and for description of the land. She handed the instrument to Ashley and told Ashley to insert her name and Nicole's in the blank space for the names and to attach a proper description of the land. No consideration changed hands. Ashley did as instructed and recorded the instrument.

Ashley and Nicole have not agreed between themselves regarding the use or possession of the land. In fact, Nicole has never visited the land.

Each January 1 since 1990, Ashley has made an oral arrangement with Dan leasing the entire 100 acres to Dan on a year-to-year basis, with monthly lease payments. Ashley has used some of the lease money to fence the entire property, drill a water well, build an above the ground water storage tank, and pay the ad valorem taxes. She has kept the balance of the lease money by way of compensation for her services. She has done all this without consulting or obtaining the approval of Nicole. Nicole has never objected but now demands her "share" of the lease money.

Over the period of his exclusive occupancy, Dan has maintained the fences and grazed cattle on the entire property. He also placed a small movable barn on the property. The barn sits on a concrete pad Dan built and is secured to the pad with cables running at angles to concrete anchors Dan sunk in the ground.

On February 1, 2001, a buyer offered a very good price for good title to the 100 acres and its improvements, including the barn and concrete pad Dan built. The buyer insists, however, that she must have possession by June 1, 2001. Dan says he will not vacate the land until December 31, 2001 and that, in any event, he will tear up the concrete pad and take the barn with him.

- 1. Did the instrument given to Ashley by Elizabeth and recorded by Ashley convey good title in the 100 acres to Ashley and Nicole? Explain fully.**
- 2. As between themselves, what are the rights and obligations of Ashley and Nicole as to the use of the land and in the lease payments? Explain fully.**
- 3. What rights, if any, does Dan have to occupy the land until December 31, 2001 and to remove the barn and concrete pad? Explain fully.**

Question 11 - Real Property

There were a number of papers that did not take advantage of the opportunity to fully demonstrate an understanding of what it takes to make a deed valid; i.e., in writing, signed by grantor, name of grantee, adequate description, consideration not required. Another problem was that many did not demonstrate a clear understanding of the rights and obligations of tenants and landlords when dealing with fixtures or improvements to the land.

February 2001

QUESTION 12

Courtney owned Blackacre, a 200 acre farm in Travis County, Texas. Blackacre was subject to: (1) a valid reservation in a prior recorded deed of an undivided $\frac{1}{4}$ interest in all oil, gas, and other minerals in favor of Jenny; and (2) a valid 50-foot-wide easement for a railroad right of way, on which a track was built by Railco.

In 1989, Courtney executed a general warranty deed granting, conveying, and warranting Blackacre to Kim. The deed reserved and retained in Courtney an undivided $\frac{3}{4}$ interest in all oil, gas, and other minerals in or under Blackacre.

In 1997, Railco removed the railroad track and ceased using the railroad right of way.

In 1998, Courtney and Kim leased "all oil, gas, and other minerals in or under Blackacre" to Oilco under an oil and gas lease. The lease gave the owners of the mineral interests a "20% royalty on all oil, gas, and other minerals produced and sold from Blackacre." The lease did not disclaim or excuse any implied covenants, and it was silent on whether Oilco could use water and gravel found on Blackacre. Neither Jenny nor Railco signed or ratified the lease.

- 1. What are Oilco's implied covenants, if any, to Kim and Courtney? Explain fully.**
- 2. Does Railco own any mineral rights under the railroad right of way either before or after it removed the tracks? Explain fully.**
- 3. Is Oilco obligated to pay Jenny and Courtney a share of production or royalty for any oil and gas produced and sold from a well on Blackacre and, if so, in what proportions? Explain fully.**
- 4. To what extent, if any, is Oilco entitled to use water and gravel found on Blackacre for its oil and gas operations? Explain fully.**

Question 12 - Real Property

A number of examinees failed to demonstrate an understanding of the difference between implied covenants and express covenants as they generally relate to oil and gas leases. Also, a number did not respond to the implications of a warranty deed conveying mineral interests that exceeded the amount actually owned by the grantor. A number of examinees misread or otherwise confused the facts as to the mineral ownership resulting in erroneous answers as to mineral ownership rights. Some examinees omitted the ownership from their analysis.

July 2001

QUESTION 9

Al, a married man, purchased Whiteacre from Cam. Whiteacre is a 10-acre unimproved tract of land in Texas. Al used community property funds to buy the land, but the recorded deed conveyed title to Whiteacre to Al in his name alone. That deed also reserved “all oil, gas, and other mineral rights” to Cam. Although Al and his wife live in a small town about 30 miles from Whiteacre, each has expressed an intention to make Whiteacre their future residence.

Al entered into a written contract to sell Whiteacre to Ben, subject to the reservation of “oil, gas, and other mineral rights.” The contract is silent on the character, nature, and extent of the title to be conveyed to Ben. It is Ben’s intention, once he takes possession, to mine gravel and limestone, which lie between 15 and 30 feet below the surface of Whiteacre.

In order to facilitate the mining, it would be necessary for Ben to construct a retaining wall on Whiteacre along the boundary between Whiteacre and Neighbor’s land to prevent surface water from flowing naturally across Neighbor’s land onto Whiteacre. The effect of the retaining wall would be, during times of rain, to impound water and cause it to back up and damage Neighbor’s land.

In constructing the wall, Ben would also have to cut through the roots that extend onto Whiteacre from a large pecan tree on Neighbor’s land, possibly killing the tree.

- 1. Does Al have the right to sell Whiteacre to Ben without Al’s wife’s joinder, and, if so, what is the character, nature, and extent of the title Al is obligated to convey under the contract with Ben? Explain fully.**
- 2. If Ben acquires Whiteacre, puts up the retaining wall as intended, and cuts the pecan tree roots, will he be exposed to damage claims from Neighbor? Explain fully.**
- 3. If Ben acquires Whiteacre, will he have the right to mine gravel and limestone on Whiteacre, and, if so, would Ben’s mining activities be subject to any restrictions relating to rights that Cam and Neighbor have? Explain fully.**

Question 9 – Real Property

Many of the examinees who had difficulty on this question did not adequately apply Texas community property law to real property. They did not discuss "sole management property," the effect of taking the community property solely in the name of one of the spouses, or the effect of intent to live on the property in the future. Similarly, many of the less successful answers did not adequately discuss landowner obligations as to an adjoining landowner, and the obligations as to the natural flow of surface water.

July 2001

QUESTION 10

In 1987, Kim, Jennie, and Dan inherited in equal undivided shares from their parents a fenced 100-acre farm in Texas. Their parents had purchased the farm in 1986 from Neighbor, who is the owner of the adjoining land.

From and since the death of her parents, Kim is the only one of the three siblings who has lived on the farm. Kim has continued to plow the fields, raise and harvest the crops, and maintain the buildings, roads, and fences. She has borne all the expenses of operating the farm, paid all property taxes timely, and kept for herself all the income from the sale of crops. Kim has not asked Jennie or Dan for any contribution to the expenses, nor have Jennie and Dan asked for a share of the farm income.

In 1998, Kim and Driller entered into and recorded an oil and gas lease granting to Driller the oil and gas rights on the entire 100 acres for 5 years. Driller paid in advance all delay rentals necessary to keep the lease in force for its full 5-year term. The lease provided for payment of a 24% royalty on all oil and gas produced on the 100 acres. So far, there has never been any drilling or oil or gas produced on the 100 acres.

From the time the parents acquired the farm in 1986, Kim, her siblings, and their parents regularly used a road located on Neighbor's adjoining land to get to and from the 100 acres. The road was in use and existence before Neighbor severed the 100 acres and sold the 100 acres to Kim's parents. Neighbor has used the road a few times during the past 15 years and has never objected to the use by Kim and members of her family. About five years ago, Kim wrote Neighbor a letter asking him to share in the expenses to improve the road, but Neighbor never responded. Kim then, at her own expense, graded and graveled the road. Recently Neighbor has threatened to close the road.

The only other way to get to and from the 100 acres requires crossing a creek that is subject to occasional flooding and is considerably less convenient.

- 1. What would Kim have to prove in order to establish that, by the time she entered into the lease with Driller, she had become the sole owner of the oil, gas, and mineral rights on the 100 acres, and, under the facts given above, could she successfully prove that she was the sole owner? Explain fully.**
- 2. Assuming Kim is not able to prove what is required in Question 1, above, what options do Jennie and Dan have with regard to the lease, and what rights do they have to the royalties and/or the oil and gas under each of those options? Explain fully.**
- 3. Under what theories might Kim and her siblings assert a claim to an easement over the road across Neighbor's land, and would they be likely to succeed under any of those theories? Explain fully.**

Question 10 – Real Property

A number of examinees evidenced some confusion as to the rights of cotenants who ratify oil and gas leases and as to the rights to production by non-signing cotenants. Also, a number of the answers on the road issue did not address any of the several claims for easements that should reasonably be considered.

February 2002

QUESTION 1

Ashley owned a five-acre parcel and a larger adjacent tract of land in McLennan County, Texas. She executed and delivered to Elizabeth an undated gift deed conveying to Elizabeth fee simple title to six acres. The deed included and described the five-acre parcel by metes and bounds and, further, provided that Elizabeth had the right within a year to select the sixth acre from an adjoining part of the larger legally described adjacent tract.

The deed contained the following additional provisions: (a) the conveyance was subject to all rights and obligations for the remaining three months of an oral one-year lease of the five-acre parcel to Kim, who was grazing cattle on the five acres pursuant to the lease and paying the rent monthly; (b) Ashley reserved for herself and her heirs an option to repurchase the six acres at \$50 per acre if at any time in the future Elizabeth or her heirs desired to sell the land; and (c) Ashley reserved in favor of Scott, an adjoining landowner, a specifically described 10-foot-wide strip across the five acres as an easement for a future water pipeline.

Elizabeth did what was required to select and identify the sixth acre.

To what extent, if any, is each of the following valid and enforceable:

- 1. The deed to Elizabeth? Explain fully.**
- 2. The oral lease to Kim? Explain fully.**
- 3. The reservation of the option in Ashley and her heirs to repurchase the six acres? Explain fully.**
- 4. The reservation of the water pipeline easement? Explain fully.**

Question 1 – Real Property

The answers of many examinees did not demonstrate a good understanding of the requirements for validity of deeds under the facts and the effect of descriptions of the land other than by full and complete metes and bounds descriptions. Also, a significant number of the answers did not adequately recognize and discuss the validity of oral leases. On the other hand, many examinees demonstrated a good understanding of one, if not both, of the issues raised as to the validity of the reservation of a right of first refusal in a deed.

February 2002

QUESTION 2

Nicole owned fee simple title in the surface and minerals under a 100-acre tract of land in Travis County, Texas. In 1995, for a cash bonus, she executed an oil and gas lease to Daniel Oil Company (DOC) “for five years and so long thereafter as oil and gas is produced from the 100 acres of land.” The lease provided for a 1/6 royalty to be paid to Nicole on all oil or gas produced from the land.

In 1996, DOC entered the land and began its drilling operations. In the course of setting up some equipment, a DOC employee negligently destroyed a pecan tree on the land.

In 1997, Nicole executed and delivered to Jennifer a valid warranty deed conveying the 100-acre tract to her. The deed provided that it was “subject to the oil and gas lease to DOC” and that Nicole “reserves an undivided 1/12 interest in all oil, gas, and other minerals.”

After the deed was delivered to Jennifer, but before it was recorded, Jennifer’s son deleted from the deed the language by which Nicole “reserves an undivided 1/12 interest in all oil, gas, and other minerals.” He did this without anyone’s knowledge or consent, and his intention was to make it appear that there had been no such reservation of rights.

After the deed to Jennifer was recorded, DOC began producing oil from a well drilled on the land.

- 1. What interests, if any, do Nicole, Jennifer, and DOC have in the surface of the 100-acre tract and in any oil and gas produced by DOC? Explain fully.**
- 2. What effect, if any, does the alteration of the deed have on the rights of Nicole and Jennifer? Explain fully.**
- 3. Is DOC liable for the damage to the pecan tree, and, if so, who is entitled to collect the damages? Explain fully.**

Question 2 – Real Property

Many of the examinees had difficulty in accurately handling and stating the fractional interests in the minerals of the grantor and grantee in a deed of property that is already subject to an oil and gas lease. A large number of the examinees did not indicate an understanding of the determinable fee interest conveyed to lessee in an oil and gas lease and the possibility of reverter and right to royalty retained by the lessor. In a number of cases, examinees did not fully answer the question asked.

July 2002

QUESTION 9

Son executed and delivered to Father a gift deed to two adjoining tracts of land, Blackacre and Whiteacre, located in Montgomery County, Texas. In the gift deed, Son reserved all mineral interests in both tracts.

Father then sold Blackacre to Alan, conveying it by a warranty deed that stated that the conveyance was subject to Son's reservation of the mineral interests in the gift deed. Son then conveyed his mineral interest in Blackacre to Alan by a valid mineral deed.

The Son-to-Father gift deed, the Father-to-Alan warranty deed, and the Son-to-Alan mineral deed (collectively referred to below as the "earlier deeds") all correctly described the properties and were properly acknowledged and timely recorded in the Montgomery County Clerk's Office.

Dora, believing that Father owned both Blackacre and Whiteacre, told Father she wanted to buy both tracts. Without telling Dora about the earlier deeds, Father sold Blackacre and Whiteacre to Dora, conveying both tracts by warranty deed. This deed contained a proper description of the tracts but did not include any mineral reservation or mention of the mineral reservation in the Son-to-Father gift deed. Dora timely recorded the properly acknowledged deed from Father but did not search the county records for prior deeds.

Dora moved onto Blackacre and Whiteacre. She fenced both tracts, constructed parking facilities straddling both tracts, and built an office building for her trucking business on part of Blackacre. The area she fenced in also included a stretch of about 25 feet of a dedicated county road that dead-ended at Blackacre. Dora regularly parked trucks both on the area she had paved and on the 25-foot strip of the county road that was inside her fence.

For the next seven years, Dora continuously ran her trucking business from that location and timely paid taxes on Blackacre and Whiteacre. Alan took no action to remove Dora from the tracts.

Dora has offered Blackacre and Whiteacre, including the entire fenced-in area, for sale. A potential buyer has discovered the earlier deeds and the fenced-in strip of the dedicated road and wants to know who has what ownership interests in the properties.

- 1. What interests, if any, do Alan and Dora have in Blackacre? Discuss fully.**
- 2. What interests, if any, do Son and Dora have in Whiteacre? Discuss fully.**
- 3. What interest, if any, does Dora have in the fenced-in strip of the county road? Discuss fully.**

Question 9 – Real Property

Many examinees did not discuss all of the pertinent issues. As to the first part of the question, examinees often focused on the adverse possession issues to the exclusion of the recording/notice issues, or vice versa. Some examinees failed to offer any further discussion as to whether the applicable period for adverse possession had run.

Regarding part 2, less successful answers often exhibited a failure to recognize that Dora was properly conveyed the surface interest in Whiteacre by the deed received from Father. Some examinees erroneously asserted that Dora, as a subsequent purchaser of Whiteacre, trumped Son's reservation of the mineral interests since she did not have "actual knowledge" of his prior reservation.

July 2002

QUESTION 10

Hal inherited two tracts of land in Texas from his parents: a 20-acre tract in Harris County and a 300-acre tract in Waller County. Hal and his wife, Wanda, reside in the family home on the Harris County property, which is within the city limits of Tomball. The City of Tomball provides fire and police protection and water, electricity, and sewer service to Hal and Wanda's home.

After he inherited the Waller County tract, Hal signed an oil and gas lease with Oil Co. The lease provides that it continues from its inception date "so long thereafter as oil, gas, and other minerals are produced thereon." The lease is recorded in the Waller County Clerk's real property records. Oil Co. has completed an oil well that is currently producing and promises to produce into the future.

Glenn's Golf, Inc. ("GGI") subsequently developed a golf course and residential community adjacent to Hal's Waller County property. At the golf course, Hal purchased half of the shares in GGI and executed a promissory note for the purchase price. Hal signed and delivered to GGI deeds of trust on the Harris County and Waller County properties to secure the promissory note. Both deeds of trust were properly recorded. Hal did not tell Wanda about the transaction, and Wanda did not sign the deeds of trust.

Hal has defaulted in paying the note. GGI wants to conduct a non-judicial foreclosure on both properties and to purchase the properties at the foreclosure sale. GGI also wants to oust Oil Co. so GGI can develop the Waller County tract as part of the golf course community.

- 1. To what extent, if any, does GGI have a valid lien on the Harris County property? Explain fully.**
- 2. Will the Waller County property remain subject to Oil Co.'s lease after a properly conducted non-judicial foreclosure, and, if so, to whom will the royalties be payable? Explain fully.**

Question 10 – Real Property

Among the less successful answers there seemed to be confusion as to the distinctions between rural and urban homesteads, the size of urban and rural homesteads, the spouse's homestead rights and the designation of homestead. Some examinees demonstrated a misunderstanding of "home equity" loans. Others had problems with the priorities between an oil and gas lease and deed of trust lien (e.g. first in time, first in right.) Some concluded that a lien always trumps a lease. There was also confusion as to having only one homestead. Some examinees seemed to believe a homestead could be declared simultaneously on both the urban tract and the rural tract.

Lastly there was confusion as to the effect of foreclosure. Some examinees thought the foreclosure only affected the surface. Others believed that the foreclosure would capture royalties, but only until debt was repaid. Some thought foreclosure involved a temporary seizure of the property.

February 2003

QUESTION 3

Lynn owned 40 acres of land in Polk County, Texas. Lynn orally agreed to lease the west half of the property including the farmhouse for nine months to Teresa for \$1000 per month. A well located near the farmhouse provided its water supply. Lynn, as landlord, agreed to maintain this well. Teresa resided in the farmhouse and paid the rent as agreed.

Two months after Teresa moved into the farmhouse, Lynn drilled another water well on the east half of his property. Lynn used the new well to pump large quantities of water that he bottled and sold to the public.

Almost immediately after Lynn began using the new well, the old well serving the property leased by Teresa and a well located on adjoining property owned by Nona went dry. Both wells dried up as a result of Lynn's pumping from the new well. Nona's property was otherwise unaffected by Lynn's well. Teresa has no other immediate source of drinking water. Lynn's land is not included in any ground water conservation district or in any coastal subsidence district.

By certified mail, return receipt requested, Teresa notified Lynn of the problem with the farmhouse well and demanded that Lynn fix the problem. Lynn refused.

- 1. Does Lynn have an enforceable duty to maintain the water well that supplies the farmhouse during the term of Teresa's nine-month oral lease? Explain fully.**
- 2. What remedies are available to Teresa if Lynn continues to refuse to repair the well? Explain fully.**
- 3. What are Lynn's obligations to Nona, if any, for having caused Nona's well to run dry? Explain fully.**

Question 3 – Real Property

A number of examinees misapplied the Statute of Frauds and concluded that the Statute of Frauds invalidated the nine-month lease. Many did not demonstrate an understanding of the stated facts (e.g. “Lynn, as landlord, agreed to maintain this well.”). Some concluded that the landlord basically owed no duty to the tenant by virtue of statute, contract, or otherwise. Many examinees seemed to misunderstand the rule of capture. Some believed the rule of capture only applied to oil and not to groundwater. Many believed that the rule of capture could be trumped by a neighboring domestic use (e.g. domestic use is favored over commercial use).

February 2003

QUESTION 4

Oliver owns Greenacre, a 75-acre tract of unimproved land in Fort Bend County, Texas. Greenacre is not located in a city or town and is not Oliver's homestead.

Oliver signed an oil and gas lease with ABC Oil Co. ("ABC") covering Greenacre and recorded it in the Fort Bend County Clerk's office. The lease provided that production would cause the lease to continue in effect following the expiration of the primary term "so long thereafter as oil, gas and other minerals are produced." The lease also provided for a one-eighth royalty to Oliver. ABC drilled a producing well and paid the royalty as it became due under the lease.

Oliver wanted to give all of his mineral interest in Greenacre to his son, Scott. Oliver executed a valid gift deed that conveyed to Scott "a royalty interest consisting of one-eighth (1/8) of all (100%) of the oil, gas and other minerals that may be produced or saved from Greenacre." Scott filed the deed in the Fort Bend County Clerk's office. Oliver mailed a copy of the recorded deed to ABC, and ABC began to make payments to Scott.

In September 2001, Oliver contracted with Mike, a general contractor, to construct a barn on Greenacre. Mike completed work on the barn on November 30, 2001. Oliver was short of cash and only paid half of the amount that Mike expected upon completion. After unsuccessfully seeking full payment, Mike decided in January 2002 to assert a lien on Greenacre.

Mike filed an affidavit on April 30, 2002, in which he stated the names and addresses for Oliver and himself, the amount of the claim, a description of the work he had done, and a legal description of Greenacre. Mike did not send a copy of the affidavit to Oliver.

- 1. What rights did Scott acquire by the gift deed, and what rights does Oliver still own in the minerals? Explain fully.**
- 2. Did Mike properly perfect the lien? Explain fully.**
- 3. Assuming Mike could perfect his lien, what must he do to foreclose on that lien, and when must he take such action? Explain fully.**

Question 4 – Real Property

Many examinees only addressed what rights Scott acquired by the gift deed, and failed to adequately address what rights Oliver continued to own. Many asserted that Scott's royalty could only be one-eighth of Oliver's interest; therefore, Scott's interest was sometimes shown as being one-eighth of one-eighth. A number of examinees answered the second part of the question as though it were a secured creditor issue (Article 9 of the UCC), instead of as a mechanic's lien question. Few examinees appeared to be familiar with the timing aspects of a mechanic's lien under the Property Code, and discussion of lien matters was often very general. Most examinees offered some discussion regarding foreclosure processes, but some failed to address the necessity for judicial action.

July 2003

QUESTION 1

Linda owns two adjoining tracts, Redacre and Blackacre in Galveston County, Texas. Blackacre is improved with a building and a small parking lot that abuts a narrow access road. Redacre abuts a major thoroughfare.

Linda had previously used the building on Blackacre as a pottery studio and had installed a kiln that was attached as a fixture to the building.

In January 2002, Linda leased Blackacre, including use of the kiln, to Tom. She also granted Tom an easement across Redacre. The written easement states that it is “for purposes of ingress and egress to and from Blackacre.”

The written five-year lease between Linda and Tom stated that Tom would pay a modest fixed monthly rental plus a percentage of the gross sales income from any merchandise sold at Blackacre by Tom. The lease was silent on what type of business Tom would operate and whether he would operate the business continuously. The lease was also silent concerning subleases or assignments by Tom, and concerning whether any violation of the lease would cause the lease to terminate.

Initially, Tom used Blackacre as a pottery manufacturing facility and as a retail store for pottery sales. The pottery store generated a high sales volume, but Tom decided to stop manufacturing pottery.

In October 2002, Tom replaced the pottery store with an antique store open only on the weekends. Tom has kept current on the rent payments, but Linda is receiving reduced payments for her share of sales income because the antique store produces less sales income than the pottery store did.

Without Linda’s consent, Tom entered into an oral agreement with Susan to sublease the pottery manufacturing area, including the kiln, for a term of six months. Susan uses the area to teach lessons in making pottery and uses the kiln for firing the students’ pottery. Parking on Blackacre is not adequate for both Susan’s and Tom’s businesses, so Tom has directed customers to park on the easement area.

Linda objects to Susan’s use of the building; to the reduced amount of the payments for her share of sales income; and to Tom’s use of the easement area for parking. In December 2002, Linda entered the building after the businesses were closed for the day and removed the kiln.

- 1. Does Linda have the right to oust Susan from Blackacre? Explain fully.**
- 2. Is the change in Tom’s business and the resulting reduction in rent a ground upon which Linda could oust Tom from Blackacre? Explain fully.**
- 3. Does Linda have the right to prevent use of the easement area for parking and, if so, how can she enforce that right? Explain fully.**
- 4. What remedies, if any, does Tom have as a result of Linda’s removal of the kiln? Explain fully.**

Question 1 – Real Property.

As to part 1, some examinees did not indicate that the Texas Property Code requires landlord consent for subleases. Some examinees also recognized that an oral lease of less than one year was involved, but did not recognize any rights of the landlord's based on the lack of landlord consent.

Concerning part 2, most examinees recognized that Tom was within the terms of the lease, even though his change of use reduced the rent amount due. Many examinees did not fully address the fact that the lease was silent as to permitted uses.

Regarding part 3, most examinees who did poorly failed to recognize that the use of the easement was limited to ingress and egress, or asserted that the granting of the easement gave Tom and his customers unlimited use of the easement. As to part 4, some examinees limited their answers to determining whether the kiln was a fixture and did not address remedies available since the kiln was an express part of the lease.

July 2003

QUESTION 2

Dennis and his wife, Sue, owned fee simple title to and resided on a 200-acre ranch located in Jefferson County, Texas. Oil Co. approached them with a proposition to lease the mineral rights of the ranch. Dennis declined, but Sue wanted to do it. Without Dennis' consent, in May 2002, Sue alone signed an oil and gas lease leasing all mineral rights of the ranch to Oil Co.

Dennis and Sue also owned fee simple title to Blackacre, a 100-acre tract of land in Orange County, Texas. In June 2002, they both signed, acknowledged and recorded in the Orange County Clerk's Office a grazing lease of the south half of Blackacre to Tara for one year. The lease gave Tara uninterrupted and exclusive use of the surface of the south half of Blackacre for the grazing of livestock, including the exclusive rights of ingress and egress. The lease included a waiver by Dennis and Sue of their rights to go upon the surface of the south half of Blackacre to explore for, drill, produce, transport or mine the oil, gas and other minerals. In July 2002, Dennis and Sue executed an oil and gas lease of all of Blackacre to Oil Co. for two years.

Dennis and Sue had an opportunity to buy a prize bull they had their eyes on for a long time, but they needed the cash. In March 2003, Ned, their neighbor, knowing he had them over a barrel, agreed to advance them \$50,000 but only if they would deed the Jefferson County ranch to him. The ranch was valued at \$300,000 and had a fair rental value of \$2,500 per month. Ned was not related to Dennis or Sue.

Dennis and Sue executed and properly recorded a warranty deed conveying the Jefferson County Ranch to Ned. At the same time, the parties entered into a written lease under which Dennis and Sue would continue to reside on the ranch and pay rent of \$4,000 per month to Ned. Ned orally agreed that he would reconvey the ranch to Dennis and Sue at such time as their rent payments, together with any future lump sum payment, equaled \$60,000.

- 1. What rights, if any, did Oil Co. have on July 1, 2002 to conduct drilling operations on the Jefferson County ranch property? Explain fully.**
- 2. What rights, if any, does Oil Co. have to conduct drilling operations on Blackacre? Explain fully.**
- 3. What rights, if any, do Dennis and Sue have in relation to Ned in the Jefferson County ranch property? Explain fully.**

Question 2 – Real Property.

Part 1: Some examinees failed to recognize that the Jefferson County Ranch is a marital homestead. Some misunderstood the effect of one spouse acting alone with respect to the marital homestead.

Part 2: Some examinees failed to recognize that the surface of Blackacre had been divided into two halves (north half and south half) by Tara's lease. Some examinees failed to recognize or give any weight to the lessors' waiver of rights on the south half. Some asserted that the dominant rights of the mineral estate could not be waived. Some did not recognize the significance of recording the surface lease before execution of the mineral lease. A remarkable number of examinees confused the waiver of drilling rights on the south half with a reservation of drilling rights on the south half.

Part 3: Some examinees misunderstood the applicability of the Statute of Frauds. Some failed to recognize that the Jefferson County Ranch is a homestead or the effect of certain purported sales of homestead property leased back to the seller.

QUESTION 3

Greenacre is a tract of land located in Panola County, Texas. Rex owned a one-eighth nonparticipating royalty interest, and Sara owned the surface and all other mineral interests in Greenacre.

In January 1998, Sara sold Greenacre to Ben for \$50,000, subject to Rex's royalty interest. In payment, Ben gave Sara a promissory note secured by a deed of trust, which contained a power of sale. The single-payment note was due in full on July 1, 1998. The deed of trust was properly recorded in the Panola County Real Property Records. Ben failed to pay the note when it became due on July 1, 1998 and has not paid anything since then.

Ben was interested in acquiring Rex's royalty interest in Greenacre. In May 2001, Ben prepared a form of deed that contained in its small print words conveying Rex's royalty interest and mailed it to Rex along with a check for \$1,000. In the accompanying letter, Ben wrote only the following: "If this check is acceptable, please sign the enclosed document before a notary and return it to me." Rex did not understand the royalty deed and thought it was a division order. After signing and acknowledging the royalty deed, Rex mailed it back to Ben and cashed the check. In March 2002, Rex learned that the \$1,000 payment was not the result of production of oil and gas on Greenacre, but was a payment for the sale of the royalty interest.

Also in March 2002, Sara instructed Ted, the trustee under the deed of trust, to begin foreclosure proceedings against Ben. On April 3, 2002, after Ben failed to respond to a letter that demanded payment, Ted sent a letter to Ben by certified mail that included a Notice of Foreclosure Sale. Ted also posted a copy of the letter in the area designated for such notices at the Panola County Courthouse. The letter stated that the foreclosure sale would take place at the Panola County Courthouse on May 7, 2002, the first Tuesday in May, but did not state the time of the sale. Ted did not file the Notice with the county clerk.

On April 30, 2002, Ben filed a petition for bankruptcy under Chapter 13 of the Bankruptcy Code. Ted cancelled the foreclosure sale. Ben did not take further action in the bankruptcy case, so the Court dismissed the bankruptcy case on August 30, 2002.

Rex believes the amount he received from Ben for the royalty interest was unfair and in September 2002 decided to sue Ben.

- 1. If Ted had proceeded with the sale on May 7, 2002 (prior to the dismissal of the bankruptcy), on what bases under federal and state law could Ben have caused the foreclosure sale to be set aside? Explain fully.**
- 2. Could Sara (through Ted) have resumed her efforts to conduct a foreclosure sale against Ben after August 30, 2002, and, if so, what time limits would she have faced? Explain fully.**
- 3. What time limits, if any, would Rex face for bringing suit against Ben, would Rex be likely to prevail in a timely suit against Ben, and, if so, what could he recover? Explain fully.**

Question 3 – Real Property.

As to Subpart 1, some examinees did not seem to recognize that real property foreclosures are governed by the Texas Property Code and not the Uniform Commercial Code. In addition, some examinees did not demonstrate an understanding that the automatic stay created by the debtor's bankruptcy filing would also "stay" any foreclosure proceedings.

In answering subpart 2, most examinees successfully addressed Sara's ability to move forward with the foreclosure after the bankruptcy case was dismissed, including the necessity for Sara to "reinitiate" the notice and posting requirements under the Property Code. Some examinees did not address the potential statute of limitations issues involved and the tolling of the same while the bankruptcy was pending.

Less successful answers to subpart 3 did not include an analysis of possible remedies available regarding the non-enforceability of the conveyance, including specific provisions of the Texas Property Code applicable to this fact situation.

February 2004

QUESTION 4

George Lee acquired a two-acre lot and a five-acre lot, in Harris County, Texas as grantee under a 1991 deed. Exhibit A, a single sheet of paper that was attached to the deed, contained the legal descriptions of the two lots. George kept the deed in the bottom drawer of a desk that he and his co-worker, Brenda, shared at the clinic where they worked.

George recently received an inquiry from Ed, who expressed interest in buying the two lots. Ed explained that he did not yet have the money to buy the lots but that he was expecting soon to receive a distribution from his deceased uncle's estate. He was not sure how much money he would receive or when he would receive it.

George signed and sent the following letter to Ed:

Dear Ed,
When you have the money, I will sell you one of the two lots that I own in Harris County, Texas at a mutually agreeable price. If you still want to buy, sign this letter and return it to me.

/s/ George Lee

Ed signed and returned the letter to George.

During a conversation one day, Brenda told George that she was planning to form a nonprofit corporation to be called Pet's Rest, Inc. and that, when she did, she would need a parcel of land to use as a pet cemetery. George told Brenda he would be happy to donate the smaller of the two lots to Pet's Rest, Inc., and he drafted and signed the following document:

GIFT DEED

Know all men by these presents, that I, George Lee, for and in consideration of my intent to make a charitable contribution, have granted, given and conveyed, and by these presents do grant, give and convey unto Pet's Rest, Inc. the land described in Exhibit A attached to this Deed. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said Pet's Rest, Inc., its successors and assigns.

And I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend the said premises unto the said Pet's Rest, Inc., its successors and assigns, against the claim of every person whomsoever lawfully claiming or to claim the same or any part thereof.

/s/ George Lee

George did not attach Exhibit A to the Gift Deed. George then put the Gift Deed in the bottom drawer of the shared desk.

One day while she was looking for something in the desk, Brenda found the 1991 deed and the Gift Deed. Without George's knowledge or consent, Brenda removed Exhibit A from the 1991 deed and attached it to the Gift Deed, believing it effectively conveyed the property to Pet's Rest, Inc., which she intended to incorporate in the future. She then put the Gift Deed in her bank safe deposit box.

- 1. Is the letter signed by George and Ed a binding contract requiring George to sell one of the two lots to Ed when Ed obtains the money? Explain fully.**
- 2. Is the Gift Deed in Brenda's possession effective to convey title to the two lots to Pet's Rest, Inc.? Explain fully.**

Question 4 – Real Property.

The following deficiencies were noted among the less successful answers:

Many examinees did not seem to recognize the material elements of a real estate contract (e.g. property description, price, time for performance), although most examinees focused on one element or two. Some examinees did not appear to recognize the difference between a contract and a deed.

Many examinees did not distinguish between Pet's Rest, Inc. and Brenda. Many less successful answers did not recognize a problem with the lack of an Exhibit A to the gift deed. Some examinees failed to distinguish Exhibit A to the 1991 deed from Exhibit A that was referenced in but not attached to the gift deed. Other examinees did not seem to recognize the significance of the fact that Brenda had not yet incorporated Pet's Rest, Inc. Some concluded that delivery had occurred through the shared desk even though the gift deed was incomplete.

July 2004

QUESTION 9

Gloria owns fee simple title to Blackacre, a farm located in Walker County, Texas. Her fee simple is subject to Ken's 1/16th royalty interest in oil and gas produced.

In January 2002, Gloria and Ken signed an oil and gas lease with ABC Oil Co. ABC properly recorded the lease. The lease provided that ABC would pay a royalty of 1/8th of the oil produced from Blackacre. The lease was silent concerning the obligation of any party to plug wells when production ended.

In March 2002, Ken sold part of his royalty interest to Gloria and delivered a royalty deed that described the ABC lease and conveyed to Gloria "1/32nd of all oil, gas, and other minerals produced from Blackacre under the ABC lease, said conveyance being limited to the duration of the ABC lease and having no effect if the lease terminates for any reason." Gloria properly recorded the royalty deed in Walker County and sent a copy to ABC.

In April 2002, ABC drilled a producing well. Thereafter, ABC sent a division order to Ken. This division order reflected an ownership interest of a 1/16th royalty by Ken.

In September 2002, Ken showed Terry the division order. Terry, relying on the division order, accepted in satisfaction of a debt owed by Ken a warranty deed from Ken conveying to Terry "a royalty of 1/16th of all the oil, gas and other minerals produced from Blackacre." The warranty deed made no reference to the ABC lease, and Terry did not check the Walker County Clerk's records.

Terry properly recorded the warranty deed in Walker County and sent a copy to ABC. ABC then sent Terry a copy of the March 2002 royalty deed from Ken to Gloria. This was the first notice Terry had of that deed.

- 1. If oil production continues under the current ABC lease, who is entitled to royalty payments and in what proportions? Explain fully.**
- 2. If the current ABC lease terminates and is replaced with a new lease providing for a 1/8th royalty, who is entitled to the royalty payments under the new lease and in what proportions? Explain fully.**
- 3. If the current ABC lease terminates, does Terry have any right to negotiate a new lease or any obligation to plug the well? Explain fully.**

Question 9 - Real Property

Part I

Some examinees focused on the division order and apparently believed that its provisions "trumped" all other issues related to this part of the question. Therefore such answers often failed to address the effects of Ken's "over conveyance" or the priority of the respective claims of Gloria and Terry. Some poor answers failed to provide any explanation of the basis for shares attributed to the parties in the answer.

Part II

Most examinees recognized that Terry and Gloria would receive the royalties from a new lease; however, some answers failed to note that any interest that reverted to Ken from his prior conveyance to Gloria would "flow" to Terry.

A few examinees asserted that all of Gloria's interests ceased upon the termination of the ABC lease and such answers then erroneously focused exclusively on determining a division of the royalties between Ken and Terry.

Part III

Most examinees had a good understanding of executive rights in the mineral estate. Some examinees incorrectly asserted that anyone holding a royalty interest had full powers and obligations regarding the mineral estate. Some examinees answered correctly on only one of the two aspects included in the question, leasing and plugging the well, with no answer or an incorrect answer on part of the third question.

July 2004

QUESTION 10

Lots 1, 2, and 3 are contiguous improved parcels of land located in the city limits of Pasadena, Harris County, Texas. The aggregate size of the lots is less than 10 acres.

Son owned Lot 1, which was improved with a small commercial office building. He conveyed fee simple in Lot 1 to Mother with a warranty deed providing in part:

Son does grant, sell, and convey Lot 1 to Mother as long as Lot 1 is used by Mother as an office for the practice of law. If Mother ceases to use Lot 1 as a law office, Lot 1 shall automatically revert to and be owned by Son without the necessity of any further action on the part of Son.

Mother has at all times used Lot 1 as her law office and continues to do so.

Company owned Lot 2, which was improved with a single family home. Son purchased Lot 2 from Company and delivered a promissory note to Company in payment for Lot 2. The warranty deed conveying fee simple from Company to Son described the promissory note as the consideration and contained the following provision:

Company and Son agree that Company retains a vendor's lien and superior title in Lot 2 to secure the obligations of Son until the promissory note is fully paid, at which time this warranty deed shall become absolute.

Son resides in the home on Lot 2. The City of Pasadena provides police, gas, sewer, and water services to the property.

Mother owned Lot 3, which is improved with a small commercial building. Lot 3 lies to the east of and adjoins Lot 2. By warranty deed, Mother conveyed to Son the following estate in Lot 3:

An estate with full possession, benefit, and use for the life of Son, with the remainder over at the death of Son retained and reserved by Mother.

Son, an accountant, is the sole occupant of the building on Lot 3, and he operates his accounting business there.

All three of the deeds mentioned above were validly executed and delivered and properly recorded in the Official Public Records of Real Property in Harris County.

After the deeds were recorded, Bank obtained a judgment against Son on past due credit card debt and recorded an abstract of judgment with the Harris County Clerk. Son has also defaulted on the promissory note held by Company.

- 1. If Bank sues to foreclose the judgment lien created by its abstract of judgment, against what interests of Son in each of Lots 1, 2, and 3, if any, can Bank enforce its lien? Explain fully.**
- 2. What rights and remedies does the vendor's lien retained by Company in Lot 2 give Company upon Son's default, and how can Company enforce its rights? Explain fully.**

Question 10 - Real Property

A number of examinees who had difficulty with this question did not seem to recognize any homestead law issues. Many also appeared to confuse Bank with Company and vice versa.

As to the Bank and Lot 1, many did not seem to recognize Son's possibility of reverter as a property interest. Many of the less successful answers failed to recognize Lot 2 as Son's homestead. Some did not seem familiar with the definitions of urban and rural homesteads. Some examinees believed that a judgment lien is enforceable against a homestead. As to the Bank and Lot 3, some examinees did not seem to recognize that Son held a life estate, and some seemed to hold the view that business use necessarily disqualified Lot 3 from homestead protection.

Regarding Company and Lot 2, some examinees took the position that Bank's judgment lien is superior to Company's vendor's lien. Some incorrectly concluded that Son's use of Lot 2 as homestead overcame Company's vendor's lien.

QUESTION 3

Ella owned two five-acre parcels of land in El Paso County, Texas: Blackacre, improved with a home, and Redacre, a fenced pasture with a stable. Ella rented both parcels to Pam, who resided on Blackacre and kept horses on Redacre. Under an oral arrangement with Ella, Pam paid a total of \$900 rent per month (\$500 on Blackacre and \$400 on Redacre).

Ella died in 1990 and left Blackacre and Redacre to her brothers, Gus and Leo, in equal shares as tenants in common. Leo, who lived at some distance, asked Gus, who lived locally, to handle all responsibilities related to the management of Blackacre and Redacre.

Until then, Pam had paid the rent she had agreed to with a single monthly check of \$900. At Gus's request, Pam began paying with two checks, sending a \$400 check for the rent on Redacre to Leo and a \$500 check for the rent on Blackacre to Gus. Gus and Leo had agreed that Gus would receive the larger check from the rents to compensate him for his services in managing the parcels.

In 1993, Gus told Pam that, because of her long and loyal friendship with Ella, he was giving her Blackacre free and clear and she could stop paying him rent. Although Gus put nothing in writing, Pam assumed that Leo and Gus had agreed between themselves to divide Ella's estate so that Leo kept Redacre and Gus kept Blackacre and was therefore free to give it to her. Pam wrote Gus a letter dated January 2, 1993, saying, "Thank you for your generous act of giving me Blackacre as a gift. You've been a very good landlord, but I'm happy no longer to be paying rent and to be a homeowner instead."

Thereafter, although Pam made no improvements on Blackacre, she lived in the house on Blackacre and paid all ad valorem tax bills on Blackacre for the next 12 years. She also continuously kept her horses on Redacre and paid the rent on Redacre to Leo.

By January 2005, the stable on Redacre was in poor repair. Pam asked Leo to pay for the cost of repairing it, and Leo refused. Pam said she would not pay the rent until Leo fixed the stable. Leo told her that, if she did not pay the rent, he would kick her off Redacre and increase the rent on Blackacre. Pam told him that he could not kick her off Blackacre because Gus had given Blackacre to her 12 years ago and she now owned it. That was the first notice Leo had of Gus's gift to Pam.

- 1. Was Gus's gift to Pam effective to transfer any interest in Blackacre to Pam? Explain fully.**
- 2. Can Pam successfully claim any interest in Blackacre on a basis other than Gus's gift to Pam? Explain fully.**
- 3. If Leo wishes to regain possession of Redacre from the tenant Pam by judicial process and recover his attorney's fees, what initial steps must Leo take before filing suit, what type of action should he file, and what court would have jurisdiction over his suit? Explain fully.**

Question 3 - Real Property

A number of examinees did not recognize that Part 1 addressed the Statute of Frauds. Those examinees often focused on the tenancy in common between Gus and Leo and possible partition of Blackacre and Redacre. There also was confusion over application of the Statute of Frauds to a gift.

Some examinees did not seem to understand that Part 2 involved adverse possession. Some focused on estoppel theories to support Pam's acquisition of all or a portion of Blackacre. Among those who recognized that adverse possession applied, there was some confusion as to whether Pam adversely possessed all, a portion, or none of Blackacre. Examinees did not identify any distinction between Pam's adverse possession as to Gus or Leo. As to Gus, examinees often failed to recognize the significance of Pam's letter. As to Leo, examinees often did not recognize that he had no notice as to the dealings between Gus and Pam and, thus, no notice as to Pam's adverse claim.

As to part 3, a sizable number of examinees did not recognize the significance of the landlord-tenant relationship between Leo and Pam. These examinees often focused on issues of "ownership" instead of "possession." They often suggested that Leo pursue a trespass to try title suit. Among those who recognized the landlord-tenant relationship, there was also confusion about terminating Pam's leasehold interest as opposed to evicting Pam from the leasehold interest. Among less successful answers there was general misunderstanding as to jurisdiction, with many answering that district courts have jurisdiction over real property instead of recognizing that justice courts have jurisdiction over eviction suits.

QUESTION 4

Bill acquired fee simple title to Greenacre, a tract of land in Brazos County, Texas. Greenacre had never been mined for oil, gas or other minerals.

On June 1, 2003, Bill signed an oil and gas lease with Ace Oil Co. (“Ace”) as lessee. The lease provided, among other things, that: (i) Ace would pay Bill a nominal bonus payment and a specified royalty for any minerals produced from the property; (ii) if Ace did not commence drilling operations within a year after the date of the lease, the lease would terminate unless Ace paid, within the first year, a specified sum as a delay rental; (iii) unless production occurred within two years after the date of the lease, the lease would expire at the end of two years; and (iv) in the event of any conveyance of Greenacre by Bill, Bill would send Ace a copy of the recorded deed.

On January 1, 2004, Bill deeded Greenacre “to Laura for life, then to Laura’s son, Ron.” In the deed, Bill did not retain any interest in the minerals or the Ace lease. Bill mailed a copy of the recorded deed to Ace.

Anticipating a delay in drilling operations, Ace decided to pay the required delay rental. On February 15, 2004, Ace’s bookkeeper erroneously mailed the check to Ron, the remainderman. Ron immediately sent the check back with a letter saying that the check should go to Laura. Because of an oversight, Ron’s letter and the check were ignored until January 2, 2005, when Ace sent the check to Laura. At the time the check was mailed, no drilling operations or production had occurred on Greenacre.

On January 5, 2005, Laura received the check from Ace. On the same day, she also received an offer from Giant Oil Co. (“Giant”) to lease the oil and gas rights to Greenacre. The lease proposed by Giant provides for a royalty, a delay rental payment, and a bonus that are all greater than those provided in the Ace lease. Laura has not yet accepted the tardy check for the delay rental payment sent to her by Ace, and she has not responded to Giant’s offer.

What rights, if any, does Laura have to retain for herself the delay rentals, royalties, and bonus payment under the following circumstances:

- 1. She accepts the delay rental payment from Ace (acting with Ron’s consent), and Ace drills a producing well during the remaining term of the lease? Explain fully.**
- 2. She rejects Ace’s late tender of the delay rentals, she and Ron sign a new lease with Giant, and Giant drills a producing well during the term of the lease? Explain fully.**

Question 4 - Real Property

A significant number of less successful answers did not discuss the applicability of the "Open Mines Doctrine" to the fact situation or the affect it would have on Laura's situation regarding an existing lease versus entering into a new lease. As to part 1, some examinees did not recognize that Laura's acceptance of the delay rental could "ratify" the Ace lease, even though the payment was late. Others erroneously thought Bill had retained various interests, including mineral interests, in the property by conveying it in the manner that he did. Regarding part 2, some examinees asserted that Laura's rights and interests as a life tenant would be the same under either the Ace or Giant lease, regardless of any other facts. Some examinees did not address the necessity for any payments to Ron under a new lease arising from the duty of Laura as a life tenant not to "waste" the corpus during her life estate.

July 2005

QUESTION 5

In 1929, the State of Texas sold the surface of Redacre, a parcel of public free school land, to Larry. Redacre is a 100-acre peninsula that projects northward into the south end of Kirby Lake in Taylor County, Texas. In 1929, Redacre was classified as mineral land, and the State had at that time retained a statutory mineral reservation under the Relinquishment Act.

In 1951, Larry built a fishing cabin at the north tip of Redacre and a gravel road for access to the cabin from the public road along the lakeshore at the south end of Redacre. The gravel road was in a low-lying area of Redacre and would flood two or three days a year during heavy rains.

In 1990, Larry and Oil Co. entered into an oil and gas lease covering the south half of Redacre. The lease, which provided for a 1/16th royalty to Larry and a 1/16th royalty to the State, was properly executed and filed and met all the requirements of the Relinquishment Act. Oil Co. drilled a producing oil well and began paying the agreed-upon royalty to Larry and the State.

Larry died in 2002. In his valid will, he bequeathed Redacre to Nancy and Sylvia as tenants in common. Nancy and Sylvia entered into a valid partition agreement vesting ownership of the north half of Redacre in Nancy and the south half in Sylvia.

The partition agreement was silent concerning rights to the gravel road, but, for several months after the partition, Sylvia allowed Nancy to use the road freely for access to the cabin. Nancy wanted to build a new road on higher ground to avoid the periodic flooding, but Sylvia refused to grant permission. A few months later, Sylvia put a lock on the gate at the entrance from the public road and refused to give Nancy a key. After that, Nancy could reach the cabin only by boat.

Oil Co. continued to produce oil on the south half of Redacre and to pay the 1/16th royalty to Sylvia. In 2003, Sylvia sold her 1/16th royalty rights to Andy by a written and duly recorded assignment. She furnished a copy of the assignment to Oil Co.

In 2004, Nancy entered into a written and duly recorded agreement with Andy purporting to sell to Andy a fee interest in oil, gas, and minerals under the north half of Redacre.

- 1. What rights, if any, does Nancy have to (a) continue using the gravel road and (b) build a new road? Explain fully.**
- 2. Are the 1990 lease between Larry and Oil Co. and the 2003 assignment between Sylvia and Andy valid and effective? Explain fully.**
- 3. Was the 2004 agreement between Nancy and Andy effective to transfer a fee interest in oil, gas, and minerals to Andy? Explain fully.**

Question 5 – Real Property

Part I: Some examinees seem to have relied on the fact that Nancy had access to her tract over the lake and therefore answered that no easement over Sylvia's tract could be asserted or used. In addition, some examinees did not recognize that Nancy did not have an unlimited right to relocate the access easement over Sylvia's tract.

Part II: Examinees who had difficulty on this section generally were not familiar with the Relinquishment Act and the unique situation it created. Such examinees were not aware that the Act allowed the surface owner to in essence act as the State's "agent" regarding the mineral estate in connection with oil and gas leases. Therefore, such examinees often asserted that the Oil Co. lease with Larry was invalid and of no effect, or was initially invalid and had been ratified by the State's subsequent acceptance of royalties.

Part III: Most examinees recognized that Nancy had no mineral interest in the north half of Redacre. However, examinees who did not recognize this had difficulty analyzing what Nancy could or could not do with the mineral interest.

July 2005

QUESTION 6

Freda owned Greenacre, a 10-acre parcel in Dimmit County, Texas. Greenacre was improved with a house that Freda had rented to Tom since May 2004 under a written lease with a term ending in December 2005.

On September 15, 2004, Freda contracted with Bob to build a garage adjacent to the house. In preparation for the construction, Bob delivered a load of lumber and deposited it alongside the house.

At about the same time, Freda asked Diego for a \$10,000 loan, which she intended to use to pay for the construction of the garage. Before agreeing to make the loan, Diego inspected Greenacre and noticed the lumber that Bob had delivered and part of the framing for the foundation. To show Diego that she would have regular rental income from Tom with which to repay the loan, Freda provided Diego with a copy of her written lease with Tom.

Diego made the loan. On October 15, 2004, Freda executed a note and a properly signed and acknowledged Deed of Trust granting Diego a lien on Greenacre to secure payment of the loan. The Deed of Trust was properly filed of record with the Dimmit County Clerk in October 2004.

In November 2004, Bob completed the garage except for the door, and Freda hired Greg to furnish and install the garage door and the electric garage door opener. Greg completed the installation on November 15, 2004.

In the meantime, Freda had incurred some extraordinary medical bills. She used the \$10,000 Diego had loaned her and the rental income from Tom to pay those bills. As a result, she was unable to pay Bob and Greg or make the payments due on the loan from Diego.

On December 1, 2004, Bob and Greg timely and properly filed with the Dimmit County Clerk affidavits claiming mechanic's liens and immediately properly served copies of the affidavits upon Freda by certified mail.

Believing that Diego would agree, and without consulting him, Freda decided that, instead of making the monthly payments to Diego as required by the note, she would convey to Diego a two-acre unimproved tract worth \$12,000 out of Greenacre.

On January 5, 2005, Freda properly executed, filed, and recorded a "Deed in Lieu of Foreclosure" conveying the two acres to Diego and sent it to him with a letter stating, "I can't pay you the money I owe you, so I have conveyed these two acres to you in full satisfaction of the \$10,000 you loaned me." She did not inform Diego that Bob and Greg were unpaid or that they had filed mechanic's lien claims. Diego received the Deed in Lieu but did not communicate further with Freda about it.

On January 10, 2005, Bob and Greg each filed suit against Freda to foreclose their respective mechanic's liens. In his petition, Greg also asserted that he was entitled to remove and regain possession of the garage door and the door opener that he had furnished. At the same time, Diego provided notice to Freda of his intention to initiate non-judicial foreclosure of the lien granted to him in the Deed of Trust from Freda.

- 1. What is the effect, if any, of the Deed in Lieu that Freda sent to Diego to satisfy her debt to Diego upon Diego's right to foreclose on his lien under the October 2004 Deed of Trust? Explain fully.**
- 2. If Diego properly completes the non-judicial foreclosure before any judgments are entered in the suits filed by Bob and Greg, what will be the effect, if any, upon the rights of Bob, Greg and Tom? Explain fully.**

Question 6 – Real Property

Part 1. Some examinees confused delivery with acceptance, assuming that delivery was equivalent to acceptance. Some examinees failed to grasp that Diego's prompt notice of intent to foreclose amounted to rejection of the deed in lieu of foreclosure.

Part 2. Some examinees failed to distinguish any priority difference between Bob and Greg. Some examinees failed to distinguish priority differences between Diego, Bob, and Greg. Some examinees failed to recognize the relation back (of Bob's lien and Greg's lien) to September 2004 and November 2004, respectively, and instead focused on the date the mechanic's and materialman's liens were filed or the date Bob and Greg filed suit. Some examinees incorrectly stated that all fixtures could not be considered removables (items that a court may allow an unpaid contractor to remove.) Some examinees answered that mechanic's and materialman's liens prevail in all circumstances.

Part 2. Tom. Some examinees did not follow the calendar and assumed that Tom's lease had expired at the time of foreclosure and Tom was a holdover tenant. December 2005 comes after January 2005. Some examinees incorrectly answered that all leases terminate upon foreclosure.

QUESTION 9

Mary sold Blackacre, a 70-acre parcel in Tarrant County, Texas, to Steve. In the warranty deed by which she conveyed Blackacre, Mary reserved “all oil, gas, and other minerals on, under, and that may be produced from Blackacre.”

Steve, intending to subdivide and develop Blackacre into an office and warehouse complex, applied to the Railroad Commission of Texas (the “Commission”) to have Blackacre designated as a qualified subdivision. He submitted a plat showing the lots in the subdivision and designating a specific two-acre operations area (the Ops Area”) for mineral operations. Mary received proper notice of Steve’s application, and, without objection from Mary, the Commission approved it.

Steve built the main road at the entrance to the development and a decorative fountain alongside the road. On Lot 1, which was adjacent to the Ops Area, he built a warehouse. Accidentally, the fence separating Lot 1 from the Ops Area was built six feet inside the Ops Area boundary.

Mary and ABC Oil Co. (“ABC”) entered into and duly recorded an oil and gas lease on Blackacre. The lease contained no provisions regarding ABC’s restoration obligations. ABC immediately began exploration activities, using the main road for access.

At about the same time, Steve leased the warehouse to Tammy for the storage of building materials used in her business. The written lease was for a one-year term.

Before long, the normal day-to-day use of the main road by ABC’s heavy trucks damaged the main road, making access by other tenants difficult. Also, one of ABC’s truck drivers, while working, negligently collided with the decorative fountain and damaged it severely.

To provide more room to carry on the exploration activities within the Ops Area, ABC dismantled the fence that separated Lot 1 from the Ops Area and stacked the dismantled fencing materials alongside the warehouse.

Upset that the fence removal and the damage to the fountain and main road was making the development unsightly and undesirable, Tammy stopped paying rent to Steve after the third month of her lease and threatened to abandon the warehouse. Steve changed all the locks on the warehouse doors, refused to give Tammy a key, and told Tammy that he would keep the building materials unless she paid the unpaid rent.

- 1. What liability, if any, does ABC have to Steve for damage to the road, removal of the fence, and damage to the fountain? Explain fully.**
- 2. Was Steve within his rights to change the locks and deny access? Explain fully.**
- 3. What judicial procedure, if any, might Steve use to pursue a claim against the building materials to obtain payment of the rent, and on what legal theory should he base this claim against the building materials? Explain fully.**

Question 9 – Real Property

In the less successful answers to this question examinees demonstrated the most difficulty with the following issues:

Part 1.

- The effect of the Railroad Commission's approval of the subdivision plat.
- Whether the dominant estate owner is liable for the reasonable and necessary non-negligent use of the surface estate.

Part 2

- Whether Steve had a right to change the locks and deny access.
- Whether Tammy was constructively evicted (even though the complained-of actions did not materially deprive Tammy of use of her property and Steve or his agents did not cause the complained-of actions).

Part 3.

- Whether a landlord may seek a distress warrant or forcible detainer action in a justice of the peace court.
- Whether Steve had a statutory lien in the building materials.

QUESTION 10

Sid owned Blueacre, a 50-acre tract of land in Bell County, Texas, on which he raised chickens. Karl, a citizen and resident of Canada, owned Redacre, the adjoining 20-acre tract.

On September 1, 2001, Sid orally agreed to rent a building on Redacre as a chicken house for \$500 per month, payable on the first of each month, for a term of three months ending on November 30, 2001. Sid gave Karl a \$500 security deposit and paid the September and October rent.

Sid failed to pay the November rent. On November 30, 2001, Karl learned that, in addition to using the building Sid had rented, Sid was letting his chickens run free on Redacre. Karl wrote Sid a letter demanding that Sid remove all the chickens and vacate the property. Karl refused to return Sid's security deposit and, as of January 31, 2002, had not returned the security deposit or given Sid any written accounting to explain his retention of the security deposit.

On January 31, 2002, Sid sold Blueacre to Amy for \$30,000. Sid's warranty deed to Amy included restrictive covenants that prohibited any sale of Blueacre to a Canadian citizen and prohibited the use of Blueacre as a hog farm. At the time of the sale to Amy, Sid had still not removed his chickens from Redacre. Sid told Amy that he might have some "squatter's rights" to Redacre and, for \$50, Sid quitclaimed to Amy all of his "right, title and interest in Redacre." Amy recorded the properly executed Deed and the Quitclaim with the Bell County Clerk.

Beginning on January 31, 2002 and for the next three years and eight months, through September 30, 2005, Amy used both Redacre and Blueacre for grazing goats and paid all ad valorem taxes on both tracts.

On a visit to Redacre on September 30, 2005, Karl saw that Amy was using Redacre and told her to remove her goats. Karl offered to buy Blueacre from Amy, explaining that he intended to operate a hog farm on both Redacre and Blueacre. Amy was interested in selling. However, she was unsure whether she could sell Blueacre to Karl.

- 1. On January 31, 2002, what were the obligations, if any, of Karl to Sid regarding the security deposit? Explain fully.**
- 2. As of September 30, 2005, what rights, if any, did Amy have in Redacre? Explain fully.**
- 3. Did the restrictive covenants in the warranty deed from Sid to Amy prevent Amy from making a valid conveyance of Blueacre to Karl? Explain fully.**

Question 10 – Real Property

In the lower range of answers, the issues or problems that seemed to cause examinees the most difficulty on this question included the following:

Part 1

- The purpose, use, and proper handling of security deposits.
- The Statute of Frauds and its application.

Part 2

- Whether Sid had any title to convey by his quitclaim deed.
- Failing to recognize any distinction between Amy's \$50 payment for the purchase of Redacre and her \$30,000 payment for Blueacre.

Part 3.

- An incorrect belief that the use restriction would prohibit Amy's sale to Karl.
- Arguing that the use restriction was unenforceable because of lack of privity.

July 2006

QUESTION 11

Chris owned two adjoining lots in Brazoria County, Texas: Lot 1 on the north and Lot 2 on the south. Chris also owned Greenacre, a 50-acre tract just outside of town.

Chris lived in a small house (his legal homestead) on the northern lot, Lot 1. The southern lot, Lot 2 had a large house on it.

When Chris first acquired Lots 1 and 2, he had commissioned a survey. The surveyor inadvertently switched the lot numbers so that the survey erroneously described the southern lot as Lot 1 and the northern lot as Lot 2.

In April 2004, Chris sold the southern lot (Lot 2) for \$80,000 to Pat. Because of the surveying error, the property description in the warranty deed by which he conveyed the property to Pat erroneously described the property as "Lot 1." Pat duly recorded the deed and moved into the large house on what was actually Lot 2.

In May 2004, Chris borrowed \$10,000 from Sue to buy a boat and delivered to Sue his promissory note due and payable in November 2005. To secure the payment of the note, Chris properly signed and acknowledged a deed of trust granting Sue a lien on Greenacre. Sue neglected to record this deed of trust.

In February 2005, Chris sold Greenacre for \$25,000 to Larry, who was not aware of Sue's deed of trust. Chris conveyed Greenacre to Larry by a properly executed and acknowledged warranty deed, which properly described Greenacre. Larry duly recorded the deed in Brazoria County.

In March 2005, when Sue learned of the sale of Greenacre, she complained to Chris. Rather than dispute Sue's right to demand immediate payment of the note, which was not yet due, Chris agreed to give her a new deed of trust on his homestead on Lot 1. Again, because of the surveying error, the property description that Chris attached to the new deed of trust erroneously described the property as Lot 2. Sue duly recorded the new deed of trust in Brazoria County.

Later, Pat discovered that his home was actually located on Lot 2, not Lot 1 as described in the deed he had received from Chris. Pat now seeks to confirm his interest in Lot 2.

Chris failed to pay Sue when the note matured, and Sue now seeks to foreclose on the new deed of trust Chris had given her.

- 1. What are the respective rights and remedies of Pat, Chris, and Sue in Lots 1 and 2? Explain fully.**
- 2. What are the respective rights of Larry and Sue in Greenacre? Explain fully.**

Question 11 – Real Property

Part 1. A healthy number of examinees concluded that equitable reformation was unavailable once Chris conveyed a deed to Pat and a deed of trust to Sue. These examinees often argued that the doctrine of merger prohibited reformation of the erroneous deeds. A number of examinees did not seem to recognize that Chris's homestead rights in the northern lot (Lot 1) would impact Sue. There was some confusion between reformation and rescission. Many examinees discussed warranty issues and adverse possession. Some examinees did not demonstrate knowledge of the difference between a deed (title instrument) and a deed of trust (security instrument).

Part 2. Among the examinees who had difficulty with this part, the most common error was not recognizing that Sue's failure to record would affect her rights in Greenacre.

Among the less successful answers, some examinees perhaps did not read carefully or, in any case, did not seem to realize that the question involved three tracts (Lot 1, Lot 2, and Greenacre). Some thought that Lots 1 and 2 came from a subdivision of Greenacre.

July 2006

QUESTION 12

In 2005, Scott conveyed Blackacre, a 50-acre tract of land in Liberty County, Texas, to Ken. In the warranty deed to Ken, Scott reserved “one-half of the royalty under any mineral lease now or hereafter covering Blackacre.” The warranty deed to Ken was properly recorded in the Liberty County real property records.

Ken later executed a mineral warranty deed to Mindy that stated that Ken conveyed “all oil, gas and other minerals on, under and that may be produced from Blackacre, except that Ken reserves one-fourth of the royalty under any mineral lease now or hereafter covering Blackacre as a reservation for Ken and Ken’s heirs, successors and assigns forever.” The mineral warranty deed did not mention Scott’s prior reservation. Mindy properly recorded this deed in the Liberty County real property records. Ken retained all surface rights to Blackacre.

Mindy entered into a contract that allowed Concrete Co. to excavate and remove sand from Blackacre. Ken objected when Concrete Co. started to dig a sand pit on Blackacre.

In a lease entered into between Oil Co. and Mindy, Oil Co. agreed to pay “a one-fifth royalty from production on Blackacre.” Oil Co. drilled a producing oil well on Blackacre and made the first royalty payment by dividing the one-fifth royalty as follows: (i) one-half of the one-fifth to Scott, (ii) one-fourth of the one-fifth to Ken, and (iii) one-fourth of the one-fifth to Mindy.

Initially, Scott, Ken and Mindy signed a division order that accepted Oil Co.’s division of the first royalty payment. After the first payment, Mindy sent a letter to Oil Co. revoking her consent to the division order, demanding that Oil Co. recalculate the first payment and remit to her the amount Oil Co. had paid Ken, and directing Oil Co. to make all future royalty payments “in accordance with the legal rights of the parties under the recorded conveyances.” Ken told Mindy that, if his share were reduced, he would sue to invalidate the lease to Oil Co. on the grounds that he had never signed it and that Mindy was not empowered to be the sole lessor signatory.

- 1. How should Oil Co. divide future royalty payments? Explain fully.**
- 2. What claims, if any, do Mindy and Ken have against one another? Explain fully.**

Question 12 – Real Property

(1) Most examinees recognized Scott's one-half interest. However, many examinees did not seem to recognize that Ken conveyed a greater interest than he owned and did not correctly apply the Duhig Doctrine. In addition, the poorer answers incorrectly argued that notice and recording statutes divested Mindy of her share. Less successful examinees also did not address the effect of Mindy's revocation on the division order, or they argued that a division order is irrevocable. Most examinees recognized that the incorrect payment could not be recovered from Oil Co.

(2) Many of the unsuccessful examinees did not address the incorrect royalty payment. The poorer answers incorrectly argued that Ken could successfully halt Oil Co.'s activities. Also, many of the examinees did not address the breach of warranty deed. Most of the examinees recognized that sand belonged to the surface estate and provided detailed explanations of law relating to this topic.