TEXAS PROPERTY

FALL 2019

PROFESSOR

ASMARA M. TEKLE

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THE PROFESSOR

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NOTES FROM THE PROFESSOR:

Blackboard Page: texsu.blackboard.edu (19 Fall – Texas Property Law – Section01)

Guiding Values: Our class will center around four values:

1. Inquiry
2. Collaboration
3. Integrity
4. Professionalism

Helpful Hints on Bar Essay Writing (Formerly on the website of the Texas Board of Law Examiners, 2012)

1. Read each question carefully and analyze it fully. Serious errors may result from failure to read or understand the facts or from failure to organize the answer. Do not copy the question or restate the facts except for emphasis or to make a particular application of law to the facts.

2. Write concisely and clearly. Confine your answer to a discussion of the particular issues raised by the question, but give a complete answer to those issues. Do not waste time by volunteering irrelevant information or by repeating points. If a direct question is asked, answer it directly. If you present arguments for different possible views, be certain you decide the issue. Use complete sentences in framing your answer. Do not use slang or abbreviations other than for names of parties (i.e., D for defendant; or H for husband).

3. Each answer should show an understanding of the facts, a recognition of the issue or issues involved, the principles of law applicable, and the reasoning employed to reach your conclusion. Questions are intended to be inquiries on fundamental points of law on each subject. Do not search for hidden meanings, "catches," or remote exceptions, since none are intended. Use your best judgment to determine the plain meaning of the question.

COURSE BOOKS & MATERIAL

(1) Select Texas cases, real property statutes and/or regulations, and real property forms as needed (Please download from Westlaw, Lexis/Nexis, Bloomberg, the Texas Legislature's and the Texas Railroad Commission's websites).

(2) Primer on the Texas Law of Oil & Gas (5th edition), Shade and Blackwell

(3) A Quick Primer on Mineral Rights, Chapter 2.2, Robert Theriot (Texas Bar CLE), *available at* http://www.texasbarcle.com/materials/special/2.2_theriot.pdf

Helpful: O'Connor's Texas Property Guide Plus 2018-19, Jackson *et al.*

COURSE DESCRIPTION, OBJECTIVES, & STUDENT LEARNING OUTCOMES

Course Description:

This course aims to prepare students substantively and practically for the two real property essays on the Texas bar exam.

Course Objectives:

Substantively: The tendency on the Texas real property bar essays is to have one oil and gas question and one non-oil and gas real property question (covering the Texas distinctions of many topics covered in 1L property). Substantively, therefore, we will cover both oil and gas AND non-oil and gas real property topics tested in the past 10 years (February 2009-July 2019). We will achieve this goal by studying applicable Texas real property statutes, regulations, cases, and real property forms.

Practically: Our practice focus will be two-fold: 1. Practicing critical reading of questions on the Texas bar real property essays and 2. Practicing bar essay writing under timed, test-taking conditions, being sure to CRAC the questions wide open. We will achieve this goal by doing in class as many ungraded practice questions as possible and using peer, whole-group, or professor's feedback to gain further understanding of our responses under timed, test-taking conditions.

Student Learning Outcomes:

Upon taking this course, attending class, and performing all assignments, students will be expected to:

1. master the CRAC form of answering bar essay questions
2. answer bar essay questions precisely, concisely, and comprehensively
3. understand Texas law of the most commonly tested subjects in Texas Property (surface and oil and gas/mineral estate)
4. critically read fact patterns and delineate relevant and irrelevant facts
5. apply relevant facts to Texas substantive law to yield an answer to the question posed.

GRADING

1. Professionalism: 10%

2. Quiz 1: 10%

3. Midterm: 40%

4. Final: 40%

All exams will be delivered online via the Examplify software. Therefore, prior to the first quiz, please familiarize yourself with it. On quiz or test days, please ensure that you bring your laptop with the assessment already downloaded on this laptop and a power cord. If you need to borrow a laptop, please contact Ms. Trina Leach at least one week before the assessment to make arrangements for a laptop.

ACCOMMODATIONS

If you require special accommodations, please fill out the necessary forms with the Dean's office. Your application and documentation will remain confidential. Your prompt attention will allow the law school to accommodate you, as soon as it has been made aware of your situation.

Please see:
http://www.tsulaw.edu/student_affairs/docs/2011-2012AccommodationsHandbook.pdf

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

PARTICIPATION:

Class Setup: In order to achieve our objectives, approximately 50% of the class will be devoted to substance, and 50% devoted to bar essay writing practice largely under timed test-taking conditions.

ATTENDANCE:

Per the Student Rules of Matriculation, students missing more than five (5) classes may have their grades reduced by up to two letter grades or be administratively withdrawn from the course. The roll is called at the start of every class period and attendance taken then. Students who are not present or who do not respond **when their names are called are absent**. The Student Rules and Regulations do **not** provide for excused absences under any circumstance(s).

PROFESSIONALISM:

Because law school is a professional program, students are expected to act professionally. Professionalism is 10% of your final grade. Acting professionally includes coming to class prepared and having read and thoroughly digested the reading assigned for homework and/or the written assignment. It also means avoiding disruptive conduct during class, such as talking, using cell phones, coming in late, **leaving the classroom during class**, or surfing the Internet. Please review "The Texas Lawyer's Creed: A Mandate for Professionalism" to understand the level of professionalism expected of lawyers in Texas, *available at* https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Texas_Lawyers_Creed.aspx

ACADEMIC CALENDAR

TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL OF LAW ACADEMIC CALENDAR 2019–2020

FALL SEMESTER 2019 (SEVENTY-ONE DAYS OF CLASSES)
Orientation Monday–Friday August 12–16, 2019
First Day of Class Monday August 19, 2019
Last Day to ADD/DROP Wednesday August 21, 2019
Labor Day (NO CLASSES) Monday September 2, 2019
Purge of all unpaid course selections Wednesday September 18, 2019
Mid Term Examinations Monday–Friday October 14–18, 2019
Last Day to Drop a Class Friday November 8, 2019
Last Day of Classes Tuesday November 26, 2019
First Year Professors' Grades due Tuesday November 26, 2019
Reading Period (NO CLASS) Wednesday November 27, 2019
Thanksgiving Holiday Thursday–Friday November 28–29, 2019
Reading Period (NO CLASS) Saturday–Sunday November 30–December 1, 2019
Final Examinations Monday–Friday December 2–December 13, 2019
Commencement Exercises Saturday December 14, 2019

Please note that the calendar events and /or dates are subject to change. Updated August 6, 2019

POLICIES & PROCEDURES

Please refer to the Thurgood Marshall School of Law's Student Rules and Regulations Handbook.

Make-up Classes: There may be times when make-up classes will be held when class may not be held at the regularly scheduled class hour. Times for these sessions will be posted on the Blackboard page, sent by e-mail, or announced in class.

Syllabus: This Syllabus is subject to change with or without notice and is not a contract.

READING ASSIGNMENTS

The specific reading for each week ordinarily will be announced in class; below is a rough outline, and it is subject to change.

Week 1 (08/19): Homestead (Ch. 41 Texas Property Code ("TPC"))

Bar Questions:

1. *July 2018* –Conveyance, marriage and homestead + which liens imposed on homestead
2. *July 2017* – What is homestead property?
3. *February 2017* –characteristics of a rural and urban homestead
4. *February 2016* – What type of homestead has been created? + Which liens may be imposed on a residential homestead?
5. *February 2015* – May a lienholder foreclose on a homestead when only one spouse signed the deed of trust?
6. *February 2014* – What is required to claim a homestead exemption, and what are the acreage limits? + On which parcel (referring to multiple parcels) may a party claim a homestead exemption? (41.002)
7. *July 2012* – May a creditor enforce a lien against a homestead for a line of credit taken for purposes unrelated to the homestead? (41.006) + Must a party specify whether a claimed homestead exemption is urban or rural?
8. *February 2009* – Specification of whether a claimed homestead is urban or rural

Week 2 (08/26): Non-judicial Foreclosure, including Trustee Sale and Notice of, and Buyer's Remedies (Ch. 51 TPC) + Residential Deed of Trust Form (State Bar of Texas)

Bar Questions:

1. *February 2015* – May a lienholder foreclose on two separate parcels, located in two different counties, in a single process? + After foreclosure, will property remain subject to the terms of an oil and gas lease? (51.009)
2. *July 2014* – How much time must lender give to buyer to cure default before accelerating loan payments? (51.002 (b) + Is the trustee required to provide a Seller's Disclosure on property sold at a foreclosure sale? (51.009) + May the real property be sold in a country other than the county in which it is located?
3. *July 2011*
4. *July 2009* – Treatment of liens under a race-notice recording statute, the rules related to recording, and the effects of a judgment lien.

Bar Questions (Trustee Sale and Notice of):

1. *July 2019* - Requirements of Non-judicial foreclosure
2. *July 2018*
3. *July 2014* - Where can/must notice of sale be posted?
4. *February 2013* - Did the bank properly post its notice? + Was the notice of the trustee sale valid? + Does a public auction buyer take title to the real property with any express or implied warranties?
5. *July 2009* - What steps must a creditor take to foreclose a judgment lien? On a homestead?

Bar Question (Buyer's Remedies):

1. *February 2013* – Will a lawsuit to invalidate the trustee sale to a third party prevail?

Week 3 (09/02): Mechanic's & Materialman's Lien (Ch. 53 TPC)

Bar Questions:

1. *July 2018*
2. *July 2015*
3. *July 2010* – The requirements of establishing a mechanic's lien

Week 4 (09/09: Conveyancing and Deeds of the Surface Estate + Recording Act + Warranty Deed Form (State Bar of Texas) + **Quiz #1**

Bar Questions (Conveyancing):

1. *February 2012*
2. *July 2011*
3. *February 2010*

Bar Questions (Deeds, Including Trustees' Deeds):

1. *February 2014* – Highest quality deed
2. *July 2012* – recording requirements + what makes a deed valid + what makes a deed recordable

Bar Question (Recording Act):

1. *July 2019*
2. *July 2009*

Week 5 (09/16): Conveyancing and Deeds of the Surface Estate + Recording Act + Warranty Deed Form (State Bar of Texas)

Bar Questions (Conveyancing):

1. *February 2012*
2. *July 2011*
3. *February 2010*

Bar Questions (Deeds, Including Trustees' Deeds):

1. *February 2014* – Highest quality deed
2. *July 2012* – recording requirements + what makes a

deed valid + what makes a deed recordable

Bar Question (Recording Act): 1. *July 2019*
2. *July 2009*

Week 6 (09/23): Landlord & Tenant/Leaseholds (Ch. 91, 92, and 93 TRP)

Bar Questions:
1. *July 2017*- Residential leasehold (smoke alarms, rekeying locks, LL's duty to repair or remedy)
2. *July 2016* – Commercial leasehold
3. *July 2013* – When may a LL rightfully withhold a security deposit? + How much time and under what conditions does the LL have to return T's security deposit? + When does the LL have the right to change the locks?
4. *February 2012* – Is a T entitled to a portion of a condemnation award? + What items is L required to repair or provide? + What makes a residential lease valid/must it be notarized and recorded? + Buyer's ability to terminate an existing leasehold and evicting T
5. *February 2009*

Week 7 (10/07): Landlord & Tenant/Leaseholds (Ch. 91, 92, and 93 TRP)

Bar Questions
1. *July 2017*- Residential leasehold (smoke alarms, rekeying locks, LL's duty to repair or remedy)
2. *July 2016* – Commercial leasehold
3. *July 2013* – When may a LL rightfully withhold a security deposit? + How much time and under what conditions does the LL have to return T's security deposit? + When does the LL have the right to change the locks?
4. *February 2012* – Is a T entitled to a portion of a condemnation award? + What items is L required to repair or provide? + What makes a residential lease valid/must it be notarized and recorded? + Buyer's ability to terminate an existing leasehold and evicting T
5. *February 2009*

Week 8 (10/14): Misc. RP Topics (Concurrent Ownership – Rights and Responsibilities of Co-Tenants, Accountings, and Conveyance of Leaseholds and Easements) + Successive O'ship

Bar Questions:
1. *February 2019*
2. *February 2011*

Week 9 (10/21): Midterm + Begin oil and gas TX real property topics. Text is Primer on the Texas Law of Oil & Gas (5th Edition).

1. Introduction, pp. 1-8
2. Ownership of Oil and Gas, pp. 11-20 (Rule of Capture and common law limitations on, ownership interests in oil and gas, the bundle of sticks relative to the mineral estate (or the rights under the mineral estate), the real property interests created in the oil and gas lease).
3. Clauses in the Oil and Gas Lease, pp. 25-50 (Lease as both contract and conveyance, Granting Clause, Primary Term, Secondary Term, Dry Hole Clause, Pugh Clause, What is Production?, Delay Rental, Oil Royalty Clause, Gas Royalty Clause, Shut-in Royalty, Implied Covenants and the Reasonably Prudent Operator standard), Force Majeure, Pooling Clause

Bar Questions:
1. *July 2019* – pooling clause + accommodation doctrine
2. *July 2018* – balancing interests of mineral and surface estates + accommodation doctrine
3. *July 2017* – tenets of the mineral estate
4. *July 2016* – Does lease terminate for non-payment of royalty?
5. *February 2016* – Does a lessor forfeit other remedies by accepting delay rentals? + Is the lessor entitled to delay rentals when the lease contains a Dry Hole Clause, a Shut-In Royalty Clause, and an Operations Clause? + When is the lease's Primary Term? + When is the lease's Secondary Term?
6. *July 2013* – Lease terms
7. *February 2013* – What is a Dry Hole clause? + Who is responsible for production expenses? + What is a Pugh Clause?
8. *July 2012*
9. *February 2012* – When is Lessor entitled to delay rentals?
10. *July 2011* – Pooling Clause
11. *February 2011* – royalty and shut-in
12. *July 2010* – Force Majeure; delay rental payment

4. Division Order, pp. 61-63 + Texas Statutory Oil and Related Liquid Hydrocarbons Division Order Form + Chapter 91, Subchapter J, Texas Natural Resources Code

Bar Questions:
1. *July 2016*
2. *February 2009*

Week 10 (10/28): The Oil and Gas Lease: Clauses, pp. 25-50 + A.A.P.L Form Oil & Gas Lease (Older) + Newer TX Oil and Gas Lease Form (The Oil and Gas Lease as both Contract and Conveyance, Granting Clause, Primary Term, Secondary Term, Dry Hole Clause, Pugh Clause (p. 138), What is Production?, Delay Rental, Oil Royalty Clause, Gas Royalty Clause, Shut-in Royalty, Implied Covenants and the Reasonably Prudent Operator standard), Force Majeure, Pooling Clause

Bar Questions:
1. *July 2019* – pooling clause + accommodation doctrine
2. *July 2018* – balancing interests of mineral and surface estates + accommodation doctrine
3. *July 2017* – tenets of the mineral estate
4. *July 2016* – Does lease terminate for non-payment of royalty?
5. *February 2016* – Does a lessor forfeit other remedies by accepting delay rentals? + Is the lessor entitled to delay rentals when the lease contains a Dry Hole Clause, a Shut-In Royalty Clause, and an Operations Clause? + When is the lease's Primary Term? + When is the lease's Secondary Term?
6. *July 2013* – Lease terms
7. *February 2013* – What is a Dry Hole clause? + Who is responsible for production expenses? + What is a Pugh Clause?
8. *July 2012*
9. *February 2012* – When is Lessor entitled to delay rentals?
10. *July 2011* – Pooling Clause
11. *February 2011* – royalty and shut-in
12. *July 2010* – Force Majeure; delay rental payment

Division Order, pp. 61-63 + Texas Statutory Oil and Related Liquid Hydrocarbons Division Order Form + Chapter 91, Subchapter J, Texas Natural Resources Code

Bar Questions:
1. *July 2016*
2. *February 2009*

Week 11 (11/4): Title and Conveyances of the Mineral Estate, pp. 67-85; pp. 91-96; pp. 97-98 + Warranty Deed Form (*reserving* oil, gas, and minerals) + Mineral Deed Form (Texas – *granting* oil, gas, and minerals) + Conveyance of Terminable Nonparticipating Royalty Interest (NPRI) Form + Royalty Reservation Clauses Form (Minerals v. Royalty, the Meaning of Minerals, Concurrent Ownership, Successive Ownership, the Executive Right and duties to Non-Executive Interests, the *Duhig* Rule)

Bar Questions:
1. *February 2019* – conveyance of executive right+ accommodation doctrine + suit requirements purchase of a real property interest
2. *July 2017* – conveyance of mineral v. royalty

3. *February 2017* – what is a mineral, what is surface + economic benefits of the lease

Week 12 (11/11): Title and Conveyances of the Mineral Estate, pp. 67-85; pp. 91-96; pp. 97-98 + Warranty Deed Form (*reserving* oil, gas, and minerals) + Mineral Deed Form (Texas – *granting* oil, gas, and minerals) + Conveyance of Terminable Nonparticipating Royalty Interest (NPRI) Form + Royalty Reservation Clauses Form (Minerals v. Royalty, the Meaning of Minerals, Concurrent Ownership, Successive Ownership, the Executive Right and duties to Non-Executive Interests, the *Duhig* Rule)

Bar Questions: 1. *February 2019* – conveyance of executive right + accommodation doctrine + suit requirements purchase of a real property interest
2. *July 2017* – conveyance of mineral v. royalty
3. *February 2017* – what is a mineral, what is surface + economic benefits of the lease

Week 13 (11/18): Trespass and Adverse Possession of the Mineral Estate, pp. 105-107; pp. 116-118

Bar Questions: 1. *July 2012* – When does a surface owner have a trespass claim against a mineral lessee? + When may a surface owner challenge a mineral lease?

Last Class Day (11/25): Conservation, Pooling, and Unitization, pp. 121-122; 127-29 + Texas Railroad Commission Well-plugging regulation + A Quick Primer on Mineral Rights, Chapter 2.2, Robert Theriot (Texas Bar CLE), *available at* http://www.texasbarcle.com/materials/special/2.2_theriot.pdf

Bar Questions: 1. *July 2016* – well plugging
2. *February 2009*