

EXAM NUMBER _____

Mortgages LW8318
Professor R. Flint

FINAL EXAMINATION
Fall 2009

**Test Booklet
INSTRUCTIONS**

THERE ARE NINETEEN PAGES TO THIS EXAM

1. There are two sections to this examination. The first section is comprised of 30 short answer questions. Each of the questions is worth 3 points –a total of 90 points for Section I. The second section of the examination is comprised of 4 essay questions worth 25 points a piece for a total of 100 points for Section II. There are a total of 190 points on this examination. The time for completing the examination is three hours.
2. This examination is “closed book.”
3. Be sure to answer the specific questions that are asked. Information supplied relating to some unasked question will not increase your score and consumes your time needed to answer the asked questions.
4. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts. This material will not count in the number of lines that you are limited to.
5. Quality, not quantity, is desired. Think through and briefly outline your answers before you begin to write.
6. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to do so will result in an appropriately lower score.
7. Do not seek an interpretation of language in the questions from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial corrections in your answer.
8. All answers must be written in the appropriate spaces in this booklet. Only answers in this booklet will be graded. Do not exceed the designated space for each answer. Only one line of writing per printed line is allowed. Do not write outside of margins, on back, etc. Excess material will not be read.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefore.

EXAM NUMBER _____

UNLESS OTHERWISE NOTED APPLY TEXAS LAW IN ANSWERING ALL QUESTIONS

SECTION I

(each question is worth 3 points for a total of 90 points)

1. Briefly discuss the differences between Ranulf de Glanvill's (or Glanvil) and Sir Thomas Littleton's understanding of the term mort gage (or mortgage).

2. An absolute assignment of rents in a deed of trust creates a security interest in the rents.

3. In cases involving an assumption by a remote grantee, briefly explain the relevance of the doctrine of acceptance of that assumption by the mortgagee.

4. Briefly explain the legal status of a purchaser of land who is in all respects a bona fide purchaser for value without notice in the situation where the purchaser purchased the property from an individual who bought the property at a void foreclosure sale.

5. D purchases Blackacre borrowing the purchase money from A and A promptly records his valid first lien on Blackacre. B has a judgment lien on Blackacre that was filed after A's lien. C pays off A's debt with the agreements from D and A that C will become subrogated to A's lien. However, shortly before C files her documents perfecting her lien and reflecting the assignment of A's lien, A files a release of his lien. Briefly discuss the legal effect of the filing of the release upon C's lien priority.

6. Briefly explain the application of the doctrine of *lis pendens* to a purchaser of a real estate lien note that is secured by a deed of trust on the property that is the subject matter of the *lis pendens* notice. .

7. Briefly explain the partition rights, if any, of a cotenant who possesses an undivided interest in property that his cotenant claims as his homestead.

8. Briefly explain the differences upon the vendee, between a vendor successfully bringing a trespass to try title lawsuit and one where the vendor cancels the contract for sale or conducts a non-judicial foreclosure to obtain the land.

9. Briefly explain the applicability of the statute of frauds to a deed absolute that was in fact intended to be a mortgage.

10. Briefly explain how the Texas doctrine of substantial completion in construction contracts is satisfied by a partial lien provision in a real estate lien contract.

11. Briefly discuss the applicability of the statute of limitations provisions that impact a mortgagor in her attempt to set aside a void foreclosure sale. Would your answer be any different if the sale was merely voidable?

For questions 12-30 state whether you agree or disagree with each of the following statements. Briefly explain your answer. Make sure your explanation is complete. NOTE: Make sure your explanation is consistent with your answer.

12. A junior judgment creditor can bring a suit to redeem Blackacre following a non-judicial foreclosure on the property pursuant to a power of sale in a deed of trust when the junior judgment creditor was given no notice of the trustee's sale although her interest was properly recorded.

13. An original contractor's valid mechanics' lien contract and related note with the owners of homestead property always inures to the benefit of subcontractors working for the original contractor on the homestead property for trapping purposes.

14. A purchaser of real estate is on constructive notice of a vendor's lien reserved in an unrecorded real estate lien note when her grantor recorded deed is a deed absolute reciting unpaid purchase money.

15. The interest acquired by a vendee in a contract for deed (i.e., an executory contract for conveyance) is subject to execution by the vendee's creditors.

16. A trustee's sale under a deed of trust with a power of sale executed by a now deceased mortgagor occurring while an administration is pending on the deceased mortgagor's estate is voidable.

17. The doctrine of equality of mechanics' liens authorizes a single date of inception for all subcontractor's trapping notices under the same general contract.

18. *Quantum meruit* can support a foreclosure under a partial lien provision in a deed of trust when there is evidence of the costs to complete the contract.

19. In the case of foreclosure upon commercial real estate all notices dealing with the foreclosure of the property may be waived.

20. A collateral assignee of a real estate lien note can appoint a substitute trustee.

21. A valid foreclosure under a power of sale contained in a deed of trust by a third lien holder does not extinguish the mortgagor's equity of redemption.

22. If a conveyance of land is made by a deed that does not reserve a vendor's lien and recites: "one hundred dollars heretofore advanced to us by Frost National Bank for the purpose of purchasing the hereinafter described property which said one hundred dollars was used for purchasing said land", the vendor retains the superior title.

23. Briefly outline a presently valid legal theory that supports the settled law that where one furnishes money to another with which to purchase land under an oral agreement that the purchaser will execute a mortgage upon the property in the future to secure the money advanced, the agreement will be enforced.

24. There is no difference between a deed that is considered an executed contract and a deed that is considered to be an executory contract.

25. A personal property financier who perfected a lien on an elevator that was a fixture by filing a UCC -1 in Austin, Texas, can remove his elevator following a foreclosure by the real estate mortgagee.

26. A conveys Blackacre to B, and B does not record his deed. Later A conveys Blackacre to C. B has the burden of proof to establish that C was not a bona fide purchaser for value without notice.

27. A mortgagee who has purchased the property at a foreclosure sale that was void as to the mortgagor and who has taken possession may remain in possession until his debt is paid.

28. After a real estate lien note has become barred by the applicable statute of limitations, it can not be renewed and extended.

29. The doctrine of equitable subrogation will not support a cause of action by the mortgagee against the remote grantee who has assumed the underlying indebtedness in the broken chain situation.

30. The Texas Supreme Court's case *Linch v. Paris Lumber & Grain Elevator Co.* is still valid law in Texas.

SECTION III

Read each question or fact pattern and answer the question or questions asked. Please apply current Texas law in answering the questions.

(each question is worth 25 points for a total of 100 points)

1. In 1909 one Miller and wife conveyed four tracts of land and secured the payment of one note given therefor in a principal sum of \$1,000, by a deed of trust with power of sale in due form to Thomas D. Ross, trustee. Said deed of trust and the deed were timely recorded. The deed of trust executed by Miller and wife contained the following provision: "And it is further specially agreed by the parties hereunto that in any deed or deeds given by any Trustee or substitute duly appointed hereunder, any and all statements of facts or other recitals therein made as to the request to the trustee by the beneficiary to sell, the time, place, terms of sale, and property to be sold having been duly published, or as to any other act or thing having been duly done by any Trustee, or substitute,

shall be taken by any and all courts of law and equity as prima facie evidence that said statements or recitals do state facts, and are without further question to be accepted." The note mentioned, in due course, became the property of one Ernest Walker who was the owner and holder of such note at the date of the foreclosure sale mentioned hereinafter. In 1914, Miller and wife conveyed to Joe Smith the four tracts of land referred to in consideration, among other things, of six promissory notes, the first five being in the sum of \$1,000 each and the last being in the sum of \$900. These notes were secured by a vendor's lien upon the four tracts of land. The deed from Miller and wife was timely recorded and also contained reference to a reserved vendor's lien. The six lien notes, last mentioned, in due course became the property of J.C. Oakley and Mrs. Willie L. Flinn--who were holders in due course of said lien notes. On November 23, 1915, the four tracts of land mentioned were conveyed to R.E. Logan, subject to the encumbrances and liens hereinbefore mentioned. While the lands and liens were in the condition named, and while R.E. Logan was the owner and occupier of said lands, Thomas D. Ross, the trustee named in the deed of trust on May 2, 1916, sold the four tracts of land mentioned to Pattie & Horton Land Company, which, in the purchase, acted for R.E. Logan, and which, on the following day, to wit, May 3, 1916, without consideration, conveyed the same to Mrs. Abbie Logan, wife of R.E. Logan. Thereafter, on June 20, 1916, Abbie Logan, joined by her husband, conveyed the four tracts of land to R.C. Sweeney and wife, who, in turn, on July 22, 1916, conveyed the lands to Lloyd Bowman who has remained in peaceable possession of said property making significant improvements and paying all taxes.

This suit was instituted on July 19, 1920, by the said J.C. Oakley and Mrs. Willie Flinn, to recover upon the six lien notes owned by them, and hereinbefore described, alleging, among other things not necessary to mention, that the sale conducted by the trustee Thomas D. Ross had been fraudulently induced and secured by R.E. Logan, with the purpose to thus extinguish the vendor's lien which had been given to secure the notes declared upon, of all which it was alleged R.C. Sweeney and Lloyd Bowman had due notice.

The case was submitted to a jury upon special issues. The jury found that Ernest Walker did request Thomas D. Ross to sell thereunder in satisfaction of the note and indebtedness held by Walker. The jury found that the note held by Walker was not in default. The jury further found that neither Sweeney nor Bowman at the time of their acquisition of the property had any actual notice of the irregularity of the foreclosure sale. The trial court entered a judgment in favor of the plaintiff's Oakley and Flinn. The case was appealed to the court of appeals, which affirmed the trial court's judgment. The case is now in the Texas Supreme Court. Fully discuss how the court should decide the case.

3. The conclusions of law and fact found by the trial court are as follows: 'W. D. Middleton et al. [sometimes referred to as plaintiffs] vs. J. R. Patty [sometimes referred to as defendant], in the district court, etc. Conclusions of Fact found by the court in the above-styled cause: (1) That N. S. Middleton acquired the property described in the petition from R. D. Jones as shown by his deed, read in evidence, in 1867, during the existence of the marital relations between himself and his wife, who was the mother of the plaintiffs, and therefore said property was the community property of said N. S. Middleton and his said wife (although the deed showed only N.S. Middleton as grantee). (2) That N. S. Middleton's said wife died intestate in 1867, leaving the plaintiffs herein as her only children surviving her, and the property sued for, and some personal property, as the community estate of herself and N. S. Middleton, and leaving no community debt against said estate. (3) That N. S. Middleton, after the death of his said wife, sold the lots sued for back to R. D. Jones (from who he had acquired them) and the defendant holds through a deed from all the heirs of R. D. Jones which deed is sufficient to vest title in defendant, if not defeated by the claim of plaintiffs. (4) That R. D. Jones had notice of the fact that N. S. Middleton acquired this property during the life-time of his wife, and notice of her death, and that plaintiffs were her children and survived her. (5) That J. R. Patty had no actual notice that the said lots in question were bought by N. S. Middleton during his marriage with his said wife, or that the same was sold after the death of his said wife, or that plaintiffs were the children of said N. S. Middleton and his said wife. Conclusions of Law found by the court in the above-styles cause: (1) The court, under the facts, concludes that the plaintiffs are entitled to recover a one-half interest in said lots as their community interest in same inherited from their mother. (2) That the deed from N. S. Middleton to R.D. Jones only passed the interest of N. S. Middleton, which was one-half, and was not sufficient to pass the interest of plaintiffs to the other half of said lots. (3) The doctrine of innocent purchaser does not apply in this case, because the plaintiffs claim title by inheritance, and the same is not governed by the laws of registration. (4) That the statute fixes the community estate and vests absolutely one-half interest in the survivor and the other half in the children of the decedent, subject only to the payment of community debts, and, if there are no such debts, then the one-half interest passes to the children by virtue of the statute, and the survivor has no

4. The record discloses that in 1926, one Linton conveyed the real property in question to Norman H. Smith, subject to a prior outstanding lien in the sum of \$18,000, and retained a vendor's lien thereon to secure the payment of three additional notes in the total sum of \$8500, which notes were made payable to Trippett and Boggess, it being recited in the deed that the latter had advanced purchase money to the amount of said notes and that the vendor's lien was retained against the property in favor of Trippett and Boggess to secure the payment of said notes. In 1927, Trippett and Boggess assigned and transferred said notes, with all liens securing the same, together with all right, title and interest owned by them in the property, to Mrs. B. J. Robinson. During the same year, Norman H. Smith renewed the indebtedness by executing a new note to Mrs. Robinson in the sum of \$8500, due in five years, and securing the same by a deed of trust on the property. This deed of trust contained no express provision conferring on the holder of the indebtedness secured thereby the right to take possession of the property or to impound the rents therefrom in the event of default. In March 1933, Smith was adjudged a voluntary bankrupt and he surrendered possession of the building in question to the trustee in bankruptcy but claimed the building and the lot upon which it was situated as exempt to him as a business homestead. In the bankruptcy proceedings the stock of merchandise formerly belonging to Smith and situated in the building was sold by the trustee in bankruptcy to Robinson, and Robinson, with the consent of the trustee in bankruptcy, entered into possession of the building on April 20, 1933. Smith was employed by Robinson as a clerk in the store for about four weeks. On May 31, 1933, in the bankruptcy proceedings, the building was set aside to Smith as his business homestead, and on the same day Smith notified Robinson that if he remained in possession of the store building, he would be expected to pay rent thereon at the rate of \$200 per month. Smith testified that Robinson advised him that he would not pay rent and refused to give possession but declined to inform Smith by what authority he was withholding possession of the property.
