



THE TEXAS

BANK LAWYER

# Writer's Packet

Revised Aug. 31, 2016



THE TEXAS  
BANK LAWYER



THE AMERICAN  
BANK LAWYER

## **Texas Bank Lawyer and American Bank Lawyer Editors for 2016-2017**

### **Student Editors**

3L Editor: Katherine Mendiola

2L Editor: Julia Wisenberg

### **Editorial Board**

Jordan Fowler

Nadine Ona

Emily Shanks

Kristyn Urban

### **Faculty Editor**

Professor John Kraemer

## **Introduction to Texas Bank Lawyer**

*The Texas Bank Lawyer* is a monthly newsletter written and edited by Texas Tech law students and read by over 1,100 attorneys nationwide. *The Texas Bank Lawyer* is published as a cooperative effort of the Texas Association of Bank Counsel (TABC) and the Texas Tech University School of Law. The TABC was founded in 1976 with the purpose of creating an association in which knowledge and information about legal problems unique to banks could be shared. *The Texas Bank Lawyer* contributes greatly by providing summaries of recent cases and regulatory matters of interest to bank lawyers, articles on new legislation or developing legal areas, and occasional editorial comments on banking and commercial matters.

### **Objectives**

(1) *The Texas Bank Lawyer* organization at Texas Tech University School of Law has at least three objectives. First is publication of *The Texas Bank Lawyer*, a newsletter sent each month to members of the Texas Association of Bank Counsel (TABC) to apprise them of the latest developments in banking and commercial law. *The Texas Bank Lawyer* is available only to Texas attorneys who are members of the TABC, but its sister publication, *The American Bank Lawyer*, is available to attorneys outside Texas who are not eligible to join the TABC.

(2) The second objective is to enhance the education of students who work on the TBL. The TBL affords students an opportunity to learn more about law, especially about banking, bankruptcy, consumer law and commercial law, through participation in writing and publishing *The Texas Bank Lawyer*. By writing summaries of recent cases, students are exposed to current developments taking place in fields of law affecting financial institutions and other credit grantors. By listening to discussions of cases at the weekly meetings and browsing case topics, students learn how textbook law is applied in the "real world." In addition, students are able to enhance their writing and analytical skills by writing case summaries and receiving valuable feedback from TBL editors.

(3) Finally, TBL participation serves to develop lasting relationships among students, faculty, and practicing attorneys with an interest in transactional law. Veteran TBL students and the Faculty Editor stand ready to assist new members. The weekly meetings encourage the exchange of information and assistance and afford members a chance to get to know one another on a personal level. Several law firms in Texas are particularly interested in interviewing students who have participated in the TBL.

## Membership: “10 & 10”

In order to be considered a member of *The Texas Bank Lawyer*, a student must complete minimal requirements for membership. These minimum participation requirements must be met *before* full TBL membership can be included on a resume and reported to prospective employers.

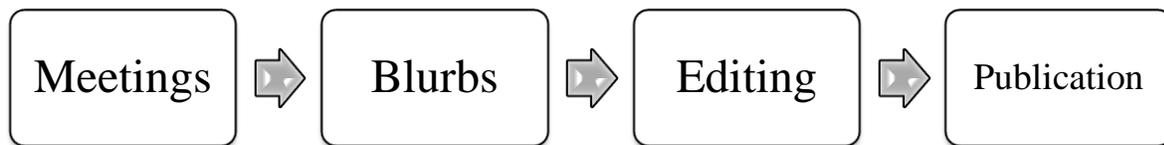
During the course of a publication year (June 1 – May 31 annually) a student must:

1. Attend 10 weekly meetings (the meetings last from 10-15 minutes at most); and
2. Write and submit 10 blurbs (TBL lingo for case summaries—blurbs—usually range in length from 2 to 4 paragraphs).

You can check your progress online at: [www.krahmer.net](http://www.krahmer.net).

## The Publication Process

The purposes of the organization are achieved by means that focus on the publication process, which consists of several phases. The end product of our efforts is a monthly newsletter containing brief summaries (“blurbs”) of recent opinions generally pertaining to transactional law.



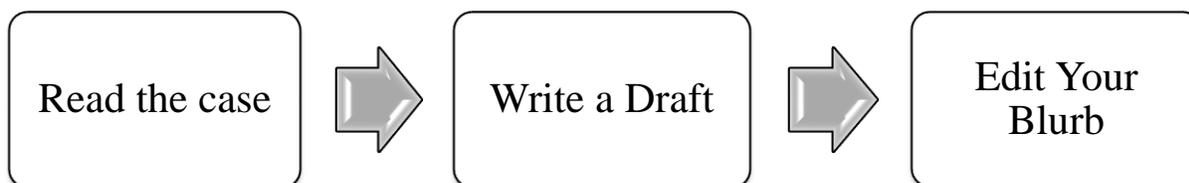
Meetings: During the meeting, the Faculty Editor provides a selection of relevant cases. Members volunteer to write a blurb on one or more cases. Members make their selection by signing their name on a checkout slip attached to the case they have chosen and returning the slip to the Faculty Editor. Cases must not leave the meeting room without being signed out!

Writing Assignments: The writing assignments accepted at the close of each meeting are due back within one week. Writing assistance for newer students is available from the Editors. Simply email, call, or leave a note in an editor's box.

Editing and Publication: All blurbs are reviewed and edited by a member of the Editorial Board. The Student Editors then read all blurbs for final editing and submission to the Faculty Editor for his approval. Longer articles are occasionally accepted for publication and may be submitted by either students or attorneys. A student may also write on their own independent topic discussing a pertinent issue of commercial/banking law or discussing a circuit split – however these topics must be approved by the Faculty Editor.

## How to Write a Blurb

A blurb is a short case summary that explains the relevant facts of a certain case, the court's holding, the court's rationale, and the application of law to the facts of the case.



### I. Reading the Case

- A. The description note attached to the top left corner of the case provides a brief explanation/overview of the case.
- B. Read the case carefully. You are looking for how the case applies to banks and how the law's application to the facts affects banks or creditors.

Please feel free to highlight or mark up the cases. In fact, your notes on the case are helpful to the editors because they are then able to quickly identify the parts of the case that you thought were important.

- C. Re-read the case! Before you start to write, you should know the following about the case:
  - 1. What were the major issues that affect banks or creditors?
  - 2. What were the essential facts that supported those issues?
  - 3. What did the court rule on each important issue and why?

**WARNING:** Some cases will have fact summaries and headnotes. While these features are nice to have, you must still read the entire case. Do not rely on the headnotes or copy them in to your blurb.

**WARNING:** The court may discuss different procedural issues in the case, but unless the PROCEDURE specifically affects BANKS OR CREDITORS, the procedure is probably not relevant. Since many of the opinions come from appellate courts, the standard of review will be discussed. The standard of review is really not relevant to "banking law."

Also, the history of the case is generally not relevant. Ask yourself, *Does the trial court's decision really matter any more if the appellate court reversed it?*

## II. Writing the Blurb

### Each blurb has four main components:

1. **The title & the deciding court**
  - a. This information conveys to the reader the main point of the case and which court that decided the case.
2. **The first paragraph summarizes the relevant facts and issues of the case**
  - a. In a brief, one paragraph summary you are telling the reader the relevant facts of the case.
3. **Correct citation to the case**
  - a. The citation must be in the flying header format (discussed below) and must be correct so that the reader can look up the entire case for further reading.
4. **The second paragraph summarizes the court's analysis and disposition of the issues.**

### A. The Title

- Example: “Cross-Dresser May (or May Not) be Protected by Equal Credit Opportunity Act |[1ST CIR]”
- The title should reflect the main idea of the blurb. Cute or catchy titles are always appreciated!
- Capitalize the first letter of each word in the title. You do not need to capitalize minor words such as the articles "the" or "a."
- The title should be flush left.

### B. The Title + The Court

- After the title of the blurb, identify the court that issued the opinion. Use the two letter postal abbreviation (provided on a page 12), followed by the abbreviation of the court that issued the opinion. The abbreviation should be in brackets, within bars.
- Examples: |[TX]|, |[TX APP]|, |[5TH CIR]|, |[SD NY]|, |[BKR ND NY]|
  - Explanation of elements: |[TX APP]|

	Vertical Bar (same key as the "\" or backslash key).
[	Open bracket
TX	This is the two letter state postal abbreviation found below. Note that it is written in ALL CAPS.
APP	If the court is not the highest court in the state, you must identify the level of the court.
]	Close bracket
	Vertical Bar key (see above)

The reason for the brackets and vertical bars is so that once the final edits are formatted and submitted, the court citation will be correctly formatted through the word processing software.

- If it is a Texas or 5th Circuit case, the title is preceded by an asterisk (\*).
- If case is from Bankruptcy Appellate Panel, the court abbreviation is BAP, followed by circuit court. E.g., |[BAP 8TH CIR]|

### C. The First Paragraph

- Put one blank line between the title and the first paragraph.
- The Relevant Facts
  - The first paragraph should contain the facts of the case. Only the relevant facts should be included, but make sure to include enough facts for the reader to understand the issues and court's reasoning for its decision.
- The Main Issues
  - Include the claims brought in the suit in the first paragraph. Do not explicitly state the issues again if it is clear from your discussion of the facts what they are.
- The Parties
  - When identifying the parties to the suit, refer to them by their capacity in the suit rather than by their names. Use terms such as "the debtor," "the creditor," "the maker," "the drawer," "the drawee," "the payee," "the surety," "the indorser," "the guarantor," "the bank," "the S&L," *etc.*
  - Avoid plaintiff, defendant, appellant, appellee, or the parties' names. If the terms for the parties to the lawsuit are not obvious, ask a student editor or the faculty editor.

### D. The Second Paragraph

- Put one blank line between the first and second paragraph.
- The Flying Header
  - The citation ("flying header") (see page 11 for an example of a flying header)
  - Follow Bluebook citation rules, including T6 Abbreviations.
  - The first line of the second paragraph usually is, "In ANYBODY v. SOMEBODY, 123 S.W.3d 456 (Tex. 1992)". This is called the flying header style. Notice that the parties are entirely capitalized and the "v." is in lower case.
  - Sometimes cases are either not published or are recent cases downloaded from Westlaw or Lexis. In this case, please include both the Westlaw and the Lexis citation, if possible. Westlaw and Lexis cites should include the following items in order:
    - Abbreviated version of the parties listed in ALL CAPS (e.g., BROWN v. JONES).
    - The reporter in which the case will be published (e.g., \_\_\_ F.3d \_\_\_). Westlaw will usually tell you in which reporter the case will be published.
    - FIRST: Westlaw Cite (e.g., 2014 WL 231554)
    - SECOND: Lexis Cite (e.g., 2014 U.S. App. Lexis 2198)
    - Court and complete date (e.g. 1st Cir., May 22, 2014)
    - One of the following statements: (Opinion not yet released for publication) *or* (unpublished opinion), depending on designation in the case.
    - Thus, a cite for a recent case should look like this:  
INN FOODS v. EXCLESIOR, \_\_\_ F.3d \_\_\_, 2014 WL 231554, 2014 U.S. App. Lexis 2198 (1st Cir., May 22, 2014) (Opinion not yet released for publication)

- If case is from Bankruptcy Appellate Panel, the court abbreviation is B.A.P., followed by circuit court. E.g., (B.A.P. 8th Cir. 2013) (see Bluebook pg. 217 on Bankruptcy Courts)
- Always check the citation information online! Sometimes the information is updated between the time your case is printed and when you write the blurb.
- The dispositive issues decided by the court
  - Explain the holding of the case, important reasoning used by the court, and any relevant law relied upon by the judge.

#### **E. Signature line**

- At the bottom of the blurb, skip a line after the second paragraph and type: [BLB][blurb number] SPACE [By] SPACE [your name] SPACE [your email - optional].
  - Example: BLB499 By Mark Jones mark.jones@ttu.edu
  -

#### **F. Style (entire blurb)**

- Use past tense throughout the blurb, except where necessary (*i.e.*, present tense may be necessary to indicate current law).
- Only one space between sentences.
- Do not use the § symbol, use "sec." or "secs." instead. Do not use the % symbol, use "percent."
- Times New Roman, size 12, flush left, 1" margins.

### **III. Editing Your Blurb**

- A. Please read and edit your blurb carefully before submitting it to the Editors.
- B. Utilize the information in this packet and the writer's checklist stapled to the front of your blurb.
- C. Proofread the blurb carefully for grammar, spelling, and overall style and readability. Also make sure to review the legal arguments are full and correctly stated.

## IV. Saving and Submitting the Blurb

### A. Saving your blurb

- When saving the blurb in Microsoft Word, use the following title format:  
[BLB][blurb number]
  - Example: BLB499

### B. Submitting your blurb

- Email your blurb to [tbl.law@ttu.edu](mailto:tbl.law@ttu.edu)
  - Attach your blurb electronically to the email as a Word document (see instructions above)
  - The subject line of the email should be your blurb number
    - Example: “BLB499” or “BLB499; BLB500” if you have multiple blurbs to submit
- Paperclip a hard copy of your blurb to the original case; turn in to the submissions box on the TBL counter in the faculty suite on the 3<sup>rd</sup> floor or turn in at the next TBL meeting.

## **Frequent questions/concerns:**

I can't understand this case, and I don't know what to do. I'll just throw it away and pray that Professor Krahmer will forgive me!

**Answer: Please do not do this. If you can't handle a blurb and don't want to get help from an editor, please turn it back in so it can be reassigned.**

I got my first edited blurb back, and it is covered in corrections. I don't even recognize the edited product as something I wrote! I obviously am not good enough to write for *The Texas Bank Lawyer*.

**Answer: Writing your first blurb is a learning process. It takes a few tries before you can get the "feel" for what needs to be in the blurb and what doesn't. Don't worry! All new writers go through this process. Please keep writing!**

Tip: Following the writer's packet step-by-step and following basic grammar rules will help you to write a good first blurb. Also, please don't be afraid to contact Professor Krahmer or any of the editors for help. You can email the editors at [tbl.law@ttu.edu](mailto:tbl.law@ttu.edu) or at their personal school emails. You can also leave a note in their inbox or speak to them at a weekly meeting. We want to make writing for TBL one of your favorite Tech Law experiences!

## Sample Blurb

Title that reflects the main idea of the case + a citation to the deciding court

Cross-Dresser May (or May Not) Be Protected by Equal Credit Opportunity Act [[1ST CIR]]

In this first paragraph, describe the relevant facts so that the reader can understand the issues before the court.

A male customer dressed in feminine clothing requested a loan application from a bank. A bank employee asked the customer for some identification. The customer showed his state-issued identification card, welfare card, and his check-cashing card. In the identification he produced for the bank employee, he was dressed in what would be considered more traditional male clothing. The bank employee told him he needed to go home and change clothes into something more like what he was wearing in the identification before the employee would give him an application. The customer sued the bank for violating the Equal Credit Opportunity Act (ECOA) and various state laws.

Flying Header. Always in ALL CAPS (except the "v.")  
Watch out for  
1. Unpublished opinions  
2. Opinions not yet published

In ROSA v. PARK WEST BANK & TRUST CO., 214 F.3d 213 (1st Cir. 2000), the court held the bank was not liable under ECOA, but found that the bank could have had several different reasons for telling the customer to change clothes. Some of these reasons could have been in violation of ECOA and some would not. The court gave several examples of reasons that would have been acceptable and several that would not be acceptable. The court found that the district court was correct in stating that sexual orientation is not protected under ECOA and that if the employee refused to give the customer a loan application because she thought that male cross-dressers were homosexual she would have been within the law. However, a violation of ECOA could have occurred if a male customer had been refused a loan application because he was wearing "female" clothing and a female customer wearing "male" clothing would have received an application. The court reasoned this would have been sex discrimination because a female who dressed like a male was treated differently than a male who was dressed like a female. The court held that dismissal was not appropriate and remanded the case for further proceedings.

Briefly explain the court's reasoning in this second paragraph

Type Blurb Number, (BLB214) By [your name & email]

BLB214 By Mark Jones mark.jones@ttu.edu

## Postal Abbreviations

Alabama (AL)	Montana (MT)
Alaska (AK)	Nebraska (NB)
Arizona (AZ)	Nevada (NV)
Arkansas (AR)	New Hampshire (NH)
California (CA)	New Jersey (NJ)
Colorado (CO)	New Mexico (NM)
Connecticut (CT)	New York (NY)
Delaware (DE)	North Carolina (NC)
District of Columbia (DC)	North Dakota (ND)
Florida (FL)	Ohio (OH)
Georgia (GA)	Oklahoma (OK)
Hawaii (HI)	Oregon (OR)
Idaho (ID)	Pennsylvania (PA)
Illinois (IL)	Rhode Island (RI)
Indiana (IN)	South Carolina (SC)
Iowa (IA)	South Dakota (SD)
Kansas (KS)	Tennessee (TN)
Kentucky (KY)	Texas (TX)
Louisiana (LA)	Utah (UT)
Maine (ME)	Vermont (VT)
Maryland (MD)	Virginia (VA)
Massachusetts (MA)	Washington (WA)
Michigan (MI)	West Virginia (WV)
Minnesota (MN)	Wisconsin (WI)
Mississippi (MS)	Wyoming (WY)
Missouri (MO)	

## TBL Glossary

The following is a short list of some terms you may find in the cases you are summarizing. A "Dictionary of Banking Terms" is on reserve at the front desk in the library for your use as well. Of course, please feel free to seek help from an editor or Professor Kraemer, as well.

- **D'oench Duhme Doctrine**
  - D'oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942). The Doench, Duhme doctrine states that one who has lent himself to a scheme or arrangement that is likely to mislead banking regulatory authorities may not use such an agreement to escape liability. The Doench, Duhme decision involved a complicated "secret agreement" designed to deceive banking authorities. A note had been signed with the understanding that it would not be called for payment. The doctrine has been extended considerably by the courts and by federal statute since the 1942 decision. The doctrine now applies even when the borrower does not intend to deceive banking authorities. Similarly, the underlying transaction need not be fraudulent for Doench, Duhme to defeat the borrower's claims. An unwritten, unrecorded agreement between a bank and a borrower is invalid.
- **Endorse or Indorse**
  - When used in connection with a Uniform Commercial Code case, the proper spelling is "indorse" rather than "endorse." When used in connection with an insurance issue or the like, the proper spelling is "endorse." The same spelling conventions apply to "indorsement," "indorser" and "endorsement," "endorser."
- **Fair Debt Collection Practices Act (FDCPA)**
  - The FDCPA at the Federal level protects consumer debtors from third party debt collectors and requires special notices from all collectors. At the state level, debtors are protected by various state laws from harassing and unreasonable collection practices. In Texas, the relevant statute is the Texas Debt Collection Practices Act (TDCPA).
- **Federal Deposit Insurance Corporation (FDIC)**
  - The FDIC is an independent agency within the executive branch of the Government. It insures, up to the statutory limitation, deposits in qualified banks and savings associations.
- **Federal Savings and Loan Insurance Corporation (FSLIC)**
  - A now defunct independent agency that used to insure savings and loan institutions. The FSLIC was abolished by FIRREA, and the FDIC retained most of FSLIC's liabilities.
- **FIRREA**
  - The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 gave receivers of failed savings and loan institutions wide ranging powers to consolidate and liquidate those institutions.
- **Guaranty or, sometimes, Guarantee**
  - A promise by a secondary party (the guarantor) to pay a debt owed by another person.

- **Letter of Credit**
  - An engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A letter of credit may be either revocable or irrevocable. Letters of credit are intended generally to facilitate purchase and sale of goods by providing assurance to the seller of prompt payment upon compliance with specified conditions or presentation of stipulated documents without the sellers having to rely on the solvency and good faith of the buyer.
- **Resolution Trust Corporation (RTC)**
  - A federal agency that succeeded the former Federal Savings and Loan Insurance Corporation (FSLIC) as conservator or receiver of federal savings and loan associations that became insolvent while insured by the FSLIC. One of the agency's functions was to dispose of assets of insolvent S & L's. With the abolition of the FSLIC in 1989, such associations are now insured by the FDIC.
- **Uniform Commercial Code (UCC)**
  - One of the Uniform Laws drafted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute governing commercial transactions (including sales and leasing of goods, transfer of funds, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions). The UCC has been adopted in whole or in substantial part by all states.