

Question #1 – Selected Answer

1. Ace Oil did not obtain a valid oil and gas lease as to Greenacre and Whiteacre, because Brad did not sign the lease. Under Texas law, a husband and wife must both sign any instrument transferring any interest in land qualifying as their homestead, under the Homestead Joinder Rule. An oil and gas lease, which grants a fee simple determinable to the mineral estate, is therefore required to be signed by both spouses if the land leased constitutes a homestead. Texas homestead law provides that a couple may claim up to 200 acres for a rural homestead, and that the lots need not be contiguous if a rural homestead. Because both Greenacre and Whiteacre were outside city limits or any extraterritorial jurisdiction of any town, they would likely qualify as rural properties, and the fact that they were a few miles apart does not defeat the homestead claim because the lots need not be contiguous. They farmed both properties, and homestead law permits a homestead to be used for both residential and business purposes. Accordingly, because the lots qualified as their homestead, the failure to obtain Brad's signature makes the lease void under the Homestead Joinder Rule.
2. Toby was probably justified in terminating the Denton Property Lease. Landlords of residential leases have statutory duties to repair where the repairs are necessary to make the resident habitable. Here, from November 6 through November 15, when Toby finally terminated his lease and moved out, the residence did not have any water flowing into the home. The absence of water flow for a period of eight days is the type of defect that must be repaired under the Texas Property Code. And although Toby gave notice of the problem one day after the lightning strike, Cora did not begin repairs for over three weeks. The facts do not even indicate that she acknowledged the problem or promised to repair. The fact that the damage was created by an act of God does not excuse the failure to act. Thus, Toby was within his rights to terminate the lease and vacate the property. He is also entitled to recover damages in the amount of paid rent, prorated for the period during November that he lived in the residence (and perhaps subtracting the period during which he had no water access, or a portion thereof), and his security deposit. However, he would not be entitled to recover for the first week of November or the \$500 damages claimed, absent a showing of specific foreseeable damages resulting from the failure to repair. Thus, he should probably be awarded approximately \$600 in a rent refund, and the \$700 security deposit.
3. Cora will not prevail in asserting that the lien is invalid. Although the Homestead Joinder Rule might potentially apply to leases or mortgages signed after they moved in to the Denton Property (if they surrender their homestead claims to Greenacre and Whiteacre), here it was not their homestead when Cora signed the deed of trust lien. A homestead is subject to valid secured interests in the property, so First Bank's lien is enforceable and it may foreclose on the property.

END OF EXAM

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1. No. Greenacre and Whiteacre, together, were Brad and Cora's homestead, therefore, both were required to sign in order for Ace Oil to obtain a valid oil and gas lease.

Rural, non-contiguous property may be a homestead where in combination, it is 200 acres or less, and the couple (or individual) lives on the property and, most importantly, intends for it to be their homestead. The properties in question are rural because they are not within the city limits or extraterritorial jurisdiction of any city (and the facts do not indicate that they are served by city services like fire, police, and garbage).

Here, the facts indicate that upon purchasing Greenacre, Brad and Cora immediately moved into the home on Greenacre. The facts do not indicate any other potential homestead property owned by the couple (other than Whiteacre, to be discussed below), nor do the facts indicate any intent to move from Greenacre or to treat any other property as their homestead, at least at the time the lease was signed. Greenacre was only 100 acres, well within the 200 acre maximum size limit for rural homesteads. Therefore, Greenacre was the couple's homestead.

Whiteacre was also part of the couple's rural homestead. When rural property is not contiguous, as here, the couple may still include non-contiguous property as part of its rural homestead by actions indicating an intent to do so. Additionally, the non-contiguous land must not be too distant, and here, the land was only a few miles apart. Because Brad and Cora farmed Whiteacre (and Greenacre) as their primary source of income, they have taken action to indicate that Whiteacre is part of their rural homestead. Additionally, even though Whiteacre is Cora's separate property (received by inheritance, even though during marriage), one spouse's separate property can be the couple's homestead if it otherwise qualifies as a homestead. Because Whiteacre is only 50 acres, it can be added to Greenacre's 100 acres and the total homestead size will still be under the maximum limit of 200 acres. Thus, Whiteacre is part of the couple's homestead.

Because Greenacre and Whiteacre, together, were the couple's homestead, Texas law requires "joinder" – both of them must sign the lease. However, only Cora signed, so the Ace Oil lease is not valid.

2. Yes, Toby properly terminated the lease with Cora.

In a lease, the lessor makes a covenant of quiet enjoyment, which covenants that the lessee will have the property free from interference from the lessor and those controlled by the lessor. However, an act of God (the lightning) is not a breach of the covenant because Cora did not control God.

Additionally, the lessee typically has the duty to make repairs arising from ordinary wear and tear, unless the lease provides otherwise. An act of God, though, does not meet the "ordinary wear and tear" requirement, so Cora had a duty to repair the damaged water line. Toby had a duty to give prompt notice of the damage, and the notice Toby gave here, one day after the damage, was prompt. Toby must also give a reasonable time for the landlord to repair, and a week is arguably a reasonable time. Therefore, Toby properly terminated the lease.

Toby will not be able to recover damages because his remedy is to terminate the lease and to seek a pro rata return of rent that is overpaid. He will be unable to recover

rent at a pro rata rate based on the number of days from the first day of the rental period (assuming he paid on time) to the day he terminated the lease and moved out. Because he left the home "in excellent condition" and bears no responsibility for the lightning strike, he should be able to recover the security deposit.

3. No. Cora will not prevail because the lien arose before the couple made the Denton home their homestead and is not one of the approved types of encumbrances.

The Denton home was Cora's separate property because it was inherited from her parents, and property received by inheritance is separate property. Therefore, Cora could encumber the property without Brad's joinder. At the time of encumbrance, the Denton property was not the couple's homestead and did not become their homestead until they moved to the house with the intent to remain and to use it as their homestead. No facts indicate that they intended to abandon Greenacre/Whiteacre as their homestead and to treat the Denton house as their homestead (you can only have one homestead). Even assuming the Denton property did become their homestead, it did not do so until they moved to it sometime in late 2008, two years after the lien arose.

Additionally, homestead law limits the type of encumbrances that can be enforced on homestead property. These include purchase money mortgages, home equity loans and the like. A lien to pay gaming debts is not among the types of encumbrances allowed. Even if the Denton house did become their homestead, this lien will be invalid as to the Denton house. Therefore, Cora's argument fails because the lien properly attached to her separate property prior to the couple's treating the property as their homestead, and should the property have become their and/or because the lien is not one of the approved encumbrances allowed on homestead property.

END OF EXAM

## Question #1 – Selected Answer

1. Ace Oil did not obtain a valid lease for oil and gas for Greenacre & Whiteacre. To lease, sale, or mortgage the homestead both spouses must sign the deed, lease, or mortgage. Under these facts Greenacre and Whiteacre were the spouses homestead. To qualify as a homestead, we must first determine if the property would be a rural or urban homestead. Here, because Greenacre & Whiteacre were not within city limits or jurisdiction or any town, they would qualify as a rural homestead. A rural homestead can consist of 200 acres for a family, and there is no requirement that the property be contiguous. The only requirement is that that property 1) be intended as the homestead and 2) be utilized as such. Here, Brad & Cora live on Greenacre and farm both Greenacre and Whiteacre as their primary source of income. Together Greenacre and Whiteacre 160 acres, therefore the properties together qualify as a homestead. It does not matter that Whiteacre is Cora's separate property (it was inherited). Spouses separate property can qualify as a homestead. Therefore, the property qualifies as a homestead.

The next issue is whether one spouse, Cora, can sign a mineral lease on the property without the consent of her spouse. A mineral lease gives the lessee fee simple determinable, and the lessor retains possibility of reverter. Thus, the lease cannot be granted without Brad's signature. As a result Ace's lease is not valid.

2. Toby properly terminated the lease and is entitled to recover his security deposit and a portion of his rent. Toby is probably not entitled to recover damages in Texas, there is no implied warranty of habitability created by the lessor. There is however, a statute that requires the landlord to repair conditions that materially affect the health and safety of the tenant. No water to the house clearly constitutes a condition that materially affects the health of the defendant. Tenant, as required by the statute notified Cora of the condition. Cora, however, failed to repair the condition. Toby waited one week before terminating the lease. This is likely a sufficient time period, as there are no facts to indicate Cora was attempting to correct the problem. In fact, she waited until insurance proceeds were received. Because Cora is in violation of the Texas statute, Toby was justified in terminating the lease when the landlord fails to repair, the tenant can terminate the lease or stay and sue for damages. Because Toby was entitled to terminate the lease, he should recover his rent for the remainder of the month he did not occupy the premises. In addition, because the property was left in "excellent condition" Toby is entitled to a return of his security deposit. If a landlord does not return the entire deposit the landlord must give a specific detailed notice of the reason for and the amounts withheld. Finally Toby is probably not entitled to damages because he chose to terminate the lease. Under the statute, the tenant can terminate the lease or stay and sue for damages. Toby chose to terminate so damages are not recoverable

3. Cora will not prevail on her assertion that the First Bank lien is invalid. While the Denton property may qualify as the homestead for Cora and Brad, the assertion of a homestead will not defeat the lien of a prior creditor. Here, to have a homestead Cora & Brad must show intent to make it the homestead and actually live there. They have likely met this test. However, their lien on the property was obtained by Cora to pay gambling debts prior to the couple making the property their homestead. A later change in homestead, or assertion of a new homestead cannot defeat creditors who obtained a lien before the property became a homestead.

END OF EXAM