

Question 9 – July 2012 - Selected Answer 1

1. The highest quality of deed Rob could use under the circumstances to convey the tract to Allyson is a general warranty deed. At issue is the interest a property owner has in property when he is not able to trace title back to its origination. Under Texas law, a property owner may only convey the property interest he owns. If the property owner does not have a fee simple absolute in the property, meaning total ownership of the tract in fee simple absolute, then he cannot convey full interest in the property to another person. Because property owners might have different levels of interest in property, Texas law allows the property owner to convey his interest in the property by different instruments. A property owner may execute a quitclaim deed, the least desirable type of deed, a special warranty deed or a general warranty deed, the most desirable type. A quitclaim deed is a deed that purports to convey whatever interest the property owner has in the property because he does not know what interest he owns. This is the least quality of deed because a property owner may have a miniscule interest in the property and the deed is only conveying that miniscule interest. A special warranty deed purports to convey the entire interest in the property but the property owner does not make any assurances as to what interests property owners who owned the tract before his inception of title might have. The highest quality of deed is a general warranty deed where the owner purports to convey his entire interest in the land, which is 100% of the interest, and makes a warranty that not others have an interest in the property unless specifically stated (i.e. someone might have a mineral interest in the property). Because a general warranty deed purports to convey the entire tract of land with no encumbrances, certain warranties are also included in the deed (i.e. warranty of seisin, warranty against encumbrances, warranty of further assurances, etc.). In the present case, the facts state that Rob's family has owned the property since before Texas became part of the United States. Because property interests are usually not traced that far back (especially because the land would not have been platted before Texas became part of the US or it would have been platted as his family's when Texas became part of the US), Rob could convey a general warranty deed to Allyson asserting that he has full ownership interest in the property and assuring her of such.

2. Rob will not be able to claim the entire remaining 200 acres for a homestead exemption. At issue is whether Rob's property is considered rural or urban and what amount of property a single person may claim for a homestead exemption. In Texas, a couple is able to claim 10 acres of urban property for a homestead exemption and 200 acres of rural property for the exemption. A single person may only claim 100 acres of rural property for the homestead exemption. In the present case, because Rob is single, he will only be able to claim 100 of the acres as his homestead. In addition, under Texas law, a person may only have one property as a homestead, thus Robert may not claim any other properties as his homestead if he elects to claim the rural property. Another issue is whether the property would be classified as rural or urban. In Texas, a property is considered rural if it is significantly detached from the city limits and is an urban property as apparent on its face. In the present case, while the property has access to the city's electric service and is covered under the city's extraterritorial jurisdiction as a recognized municipality, it does not have access to any other city services and it is served by a volunteer fire department. The facts establish that the property would be classified as rural instead of urban for homestead exemption purposes thus entitling Rob to claim 100 acres as his homestead.

3. The deed from Allyson to Emily was valid, albeit missing a few requirements under Texas law, and thus not recordable. At issue are the requirements of a deed for a valid conveyance of property. In Texas, a deed must be signed by the party against whom enforcement is sought and also must state that price for the property and give a reasonable description of the tract to be conveyed. In addition, the deed must either be notarized or signed by two witnesses. In order to be recordable, the deed must meet the latter requirements. In the present case, Allyson signed the deed and adequately described the 50 acres to be conveyed but the deed was neither acknowledged by a notary public or otherwise witnessed. As such, the deed is not recordable in its present condition.

4. ABC Bank does not have an enforceable lien on Emily's 50-acre homestead tract. At issue is whether a lien is enforceable when it is not recorded. In Texas, in order to have a valid lien on property, the lien holder must file the lien in the county where property is held to give others notice of the lien. If the deed of the conveyance to the person who is mortgaging the property has not been recorded and the lien holder then records their security interest, the lien is considered "wild" because a person searching the county's grantee-grantor index would not be able to tell what property to which the lien attached by performing a regular title search. Furthermore, a bank is not able to foreclose a security interest on property which is a person's homestead when the lien is not a purchase money mortgage used to finance purchase of the property. In the present case, the facts do not establish that Emily recorded her deed, and based on the analysis in Part 3, she would not likely be able to do so. In addition, the facts do not establish that the mortgage company recorded its security interest in the county where the property was held. Finally, Emily did not obtain the money from ABC Bank to purchase the property, thus ABC Bank would not be considered to have a purchase money mortgage allowing foreclosure. As a result, the mortgage company does not have an enforceable lien in the homestead tract and would not be able to foreclose on such.

Question 9 – July 2012 - Selected Answer 2

1. The highest quality of deed that Rob could use under the circumstances to convey the 300-acre tract to Allyson would be a general warranty deed. A warranty deed includes present and future covenants. The present covenants are made solely to the immediate purchaser and include: the covenant of the right to convey, the covenant of seisin, and the covenant against encumbrances. The future covenants run with the land and include: the covenant of warranty, the covenant of quiet enjoyment, and the covenant of further assurances. Any party who owns land in fee simple absolute may validly convey a warranty deed. Here, Rob owned fee simple in an unencumbered 500-acre tract of land. He has owned the land since before Texas became part of the USA. Therefore, he can validly warrant that he has the right to convey (same as the covenant of seisin), and that there are no encumbrances. The future covenants will still bound Rob in the future. However, at the time, he has title, so he can grant a general warranty deed.

2. No, the homestead exemption Rob claimed in the remaining 200 acres is not valid, as he is limited to 100 acres. The issue is whether a single person may claim 200 acres as a valid rural homestead. Under Texas law, a property owner may claim a homestead if he intends to use it as a homestead and actually using it as

so. For a rural homestead, the maximum amount of acreage claimed is 200 acres (though it need not be contiguous) for a family. However, where only a single person claims a homestead, urban homesteads are limited to 100 acres. A urban homestead may be claimed for 10 acres, and it must be contiguous. Here, Rob is entitled to a rural homestead. It is within the extraterritorial jurisdiction of the city (a municipality), is served by a volunteer fire department, and has access to the City's electric services. However, these factors alone are not enough to consider the property to be urban. He receives no other utilities from the city, including water or plumbing. It is difficult to imagine a 300 acre tract of land within a city. Therefore, his property should be considered rural. Nonetheless, Rob is a single man and, therefore, is only entitled to 100 acres as his homestead. Therefore, Rob may not claim the remaining entire 200 acres as his homestead.

3. The deed Emily received from Allyson was valid to convey the 50 acres to Emily, but it was not recordable. The issue is what requirements a deed must satisfy to convey title and to be recordable. Under Texas law, a deed is valid to convey property if it adequately describes the land to be conveyed and be signed by the party conveying the property. The grantee does not have to sign the deed. In order to be properly recorded in the county records, Texas law requires that deeds be acknowledged by a notary public or witnessed in some other fashion. Here, the deed was valid to convey the 50 acres because it reasonably described the property and was signed by Allyson, the grantor. It is irrelevant that Emily, the grantee, did not sign the deed. However, the deed is not recordable because it was not signed by a notary public, or otherwise witnessed. Emily has valid title to the property, but is susceptible to losing to a future bona fide purchaser of the party. Texas has a notice statute, which means that a future bona fide purchaser of this tract of land, as long as it has no actual notice of Emily's deed, will prevail over Emily's claim to the land. There is no record notice of the deed because it is not recordable. Therefore, while the deed Emily received from Allyson was valid to convey the 50 acres to Emily, it was not recordable.

4. No, ABC Bank did not have an enforceable lien on Emily's 50 acre homestead tract. The issue is whether a bank who gives a line-of-credit loan to another party may enforce a lien on that party's homestead. Under Texas property laws, a homestead is generally free from the claims of creditors. However, homesteads are still subject to: purchase money mortgages, federal tax liens, unpaid property taxes on the property, mechanics' and materialmen's liens on the property if in writing, loans to enable divorce, and home equity loans for up to 80% of the property. Here, Emily has a valid homestead on her 50-acre lot. Bank gave Emily a line of credit loan to finance the daily operations of her business. The homestead was offered as collateral for the loan. ABC Bank does not have an enforceable lien on Emily's homestead because security interests on a homestead for a line of credit are not enforceable. It does not fall within any of the exceptions to the general rule that liens on a homestead are unenforceable. Therefore, ABC Bank does not have an enforceable lien on Emily's 50-acre homestead tract.

Question 9 – July 2012 - Selected Answer 3

1. A general warranty deed is the highest quality deed that Rob could use under the circumstances. At issue is what deed can an owner of a fee simple unencumbered tract of land convey to a buyer.

A fee simple owner of land has ultimate title to land and can do whatever he or she wants with the land. There are no restrictions on a fee simple owner. Therefore the fee simple owner can convey by the highest quality deed available in Texas which is a general warranty deed. A general warranty deed contains several different warranties including three present covenants or warranties and three future covenants or warranties. The present warranties are the (a) covenant of seisin, (b) right to convey, and (c) warranty against encumbrances. The future warranties are the (a) covenant of quiet enjoyment, (b) the general warranty, and (c) the covenant of further assurances.

Here there is no question that Rob owns the land in fee simple. He therefore has the right to convey the land (right to convey) and the property that he can grant in a deed is under his control (seisin). There are also no encumbrances on the property (warranty against encumbrances). He can satisfy the covenant of quiet enjoyment because there is no other person that can come and claim superior title since he has owned the property in his family before Texas was part of the United States. He can also give a general warranty deed on the land as well as further assure Allyson that if for some reason there was an issue with one of the covenants, he would help to clear it.

Therefore the general warranty deed is the highest quality deed that Rob can convey.

2. No, the homestead exemption claimed by Rob is not valid. The issue is whether a 200-acre piece of land can be classified as a homestead by a single person. In Texas, a person may claim a homestead exemption for either a rural piece of land or an urban tract of land. The limits for rural land are 200 acres for a married couple and 100 acres for a single person. The land does not need to be contiguous in a rural setting. For an urban homestead, the max is 10 acres and the lot must be contiguous.

Here, the court must first determine whether the property is rural or urban. While the land is in the extraterritorial jurisdiction of the City, it is most likely considered a rural property. Since Rob is not married, the most he can claim as a homestead would be 100 acres of the remaining portion of his land.

Therefore the homestead exemption claimed by Rob in the remaining 200 acres is not valid.

3. Yes and No. Allyson did validly convey the deed to Emily but it is not recordable. At issue is whether a deed that is not acknowledged is considered a valid conveyance and therefore eligible to be recorded. In Texas, a deed must be a signed writing that contains an intention to convey property, the property description, and the person to whom it is conveyed. The grantor must be deliver the deed to the grantee. To record the deed it must be properly acknowledged. A deed is properly acknowledged in two ways. The first way is by someone entitled to acknowledge a deed (such as a notary public). The second way to acknowledge a deed is to obtain two witnesses signatures.

Here Allyson gave Emily a signed writing describing the tract of land. All the requirements are met for this conveyance. Allyson had intent and gave a signed writing with a property description naming the grantee (Emily). She delivered the deed to her sister. All the necessary requirements for a valid conveyance are satisfied. Emily is not able to record the deed though because it has not been acknowledged by someone entitled to acknowledge nor is it signed by two witnesses.

Therefore while the conveyance from Allyson to Emily was valid, the deed cannot be recorded until it is properly acknowledged.

4. No, the bank did not have a valid lien on Emily's 50-acre homestead. At issue is whether a line-of-credit loan to finance daily operations of a business qualifies as a valid lien on a homestead. Property designated as a homestead has priority over creditors and cannot be foreclosed on except in certain situations. The only valid liens that have priority over a homestead property are: (a) Purchase Money Mortgages, (b) Tax liens, (c) home improvement loans, (d) refinancing, or (e) owelty partitions.

Here, Emily is able to claim a homestead exemption of the 50-acre tract even though she is operating her business there. It is a rural tract of land so it falls under the 100- acre requirement for a single person. Therefore only a certain number of creditors can place a lien upon her homestead. The line-of-credit loan to finance daily operations of her business does not qualify as a privileged lien against the homestead. Even though Emily used the property as collateral, ABC Bank will not be able to place a lien on her property.