

Question 9 – February 2014 – Selected Answer 1

(1) First and foremost, under Texas Law, you can only claim one Homestead Exemption, so if Tom has an option, he can only claim one. Tom could claim a homestead exemption for the house located in the city of Dallas. Under Texas law, an urban homestead can comprise of 10 acres and can be used as a residence or a place of business for the individual claiming the homestead exemption. Here the home is only 2 acres and is within the city of Dallas so it fits under the urban homestead exemption, and Tom can use it as a residence or place of business. The issue that arises is we don't know how Halah's family got the house. The facts indicate that it has been in the family for over 100 years, so the title probably doesn't suffer from any defects or there would've been a challenge by now. Also, is so, the family has been in possession for 100 so an argument for adverse possession would come into play.

Under Texas law, for rural homestead exemptions, the home can be used for residential purposes and is 200 acres for family/100 acres for single person. Here the ranch retreat wouldn't really qualify without some changes. It is rural because it is in the country but Tom could only claim 100 acres. Also it couldn't be considered a "ranch retreat" it would have to be for his personal use. Here the Rural Rental property could fall under the rural exemption 90 acres, but Tom couldn't rent it out to Farmer Brown. Tom would have to end that lease and use the property as his residence.

In conclusion, Tom could opt to claim the urban exemption for the house in Dallas or the Rural Exemption for the rural rental house, if he gave Farmer Brown 30 day notice that he needed to move out. His best option appears to be Dallas because he won't have to make any changes to the property or remove any tenants.

(2) (a) Parcel appears that it could be conveyed as a general warranty deed because, as mentioned above, it has been in the family for 100 years. The facts do not indicate anyone has contested it and if anyone did contest it, tom would have an adverse possession claim that he would then get adjudicated and he would have a general warranty deed.

(b) Parcel B can only be conveyed as a quit claim deed at this time. Halah won it at a card game as a quit claim deed and she would only be able to convey what she owns, by Texas Law, which is a quit claim deed, it has only been 4 years so it is probably not ripe for and verse possession claim for anything further. Though the Executor or Tom could try to do a title search to see if the grantor to Halah had a superior interest to convey.

(c) Parcel three could be conveyed as a General warranty deed if after research was done it was found that the encumbrances that once made it a special warranty deed were no gone as previously mentioned usually a grantor can only convey the interest they have, however if encumbrances or conditions on a special warranty deed are removed, it could become a general warranty deed.

Question 9 – February 2014 – Selected Answer 2

Tom could likely claim a homestead on any of the properties.

The issue is whether any of the homesteads meet the requirements of a Texas homestead.

In Texas, a homestead exemption may be claimed on urban or rural properties. To qualify as an urban property, the property must be within a municipality and is limited to 10 acres. To qualify as a rural property homestead exemption, the property for a single person is limited to 100 acres (200 for a family) on a rural property. If there is more acreage, then the additional acreage will not be included under the exemption. A rural homestead must have police and fire protection as well as utilities such as water,

sewer and trash. A homestead exemption may be claimed either formally or informally. For an informal claim, the claimant must actually possess the property and intend to use it as the primary home, or intend to possess the property and take an overt act towards making the property the homestead. Additionally, the claimant must have some claim of title and possession or a right of possession to the property.

Here, Parcel One qualifies as an urban property in the City of Dallas. It is within the city limits of the municipality of Dallas and is 2 acres. Thus, the full property may be subject to the homestead exemption should Tom elect it. Moreover, Tom likely has title to the property considering they have possessed the property over 100 years.

Parcel Two is rural. Assuming there are proper utilities, and the property is served by police and fire protection, the property may likely qualify for the homestead exemption. However, the exemption is limited to 100 acres for a single person like Tom. Accordingly, the remaining 100 acres would be subject to creditor claims. As for title, Tom now has a quitclaim deed to the property and the right to possess it. Thus, up to 100 acres of Parcel Two may qualify for the homestead exemption.

Parcel Three is also rural. Although there is currently a tenant, Farmer Brown, he is own a month to month lease. Tom has special warranty deed to the property from Halah and the right to possess the property. So, Tom could cancel the lease at any time, and with proper notice, eject Farmer Brown. The property is 90 acres, 10 less than the maximum for a single person, so all of the property could be subject to the homestead exemption.

For any of the properties, Tom would need to move out of his apartment and begin to possess the property, or overt acts that indicate he will possess the property, with the intention of making it his homestead. Therefore, Tom could likely claim any of the properties as his homestead.

The Quality of Deeds

When a deed is conveyed, it comes with present covenants, future covenants, or both, depending on the quality of the deed. General warranty deeds come with both present and future covenants. Special warranty deeds come with present covenants, but no future covenants. A quitclaim deed comes with no covenants, however. A quitclaim deed effective says "whatever interest I have in the property is now yours." Thus, if the grantor has no interest, then the grantee gets no interest by a quitclaim deed. Furthermore, when a party has adversely possessed property for a long period of time, he may acquire marketable title and a fee simple absolute.

Considering that Parcel One has been in the family for well over 100 years, the Executor may likely grant a general warranty deed. Even if some other party had an interest in Property One, they likely lost it long ago because of adverse possession by Halah's and Tom's families.

Parcel Two was given to Halah by quitclaim deed, meaning that whatever interest the grantor from the card game had in the property, is the same interest that Halah received. Halah cannot convey more than she has. Therefore, the Executor cannot likely give Tom and present or future covenants and must give Tom a quitclaim deed. Halah received Parcel Three via special warranty deed, which means that the grantor, her father, gave her present covenants, but no future covenants. The present covenants merged with the title she obtained and are no longer actionable if they were breached. However, once again, it is a property that Halah's and Tom's family has possessed for a long period of time (69 years). Under adverse possession laws in Texas, Halah has probably acquired a marketable title by now because no one else has sought to claim the land or property. Accordingly, Executor can likely give Tom a general warranty deed. Therefore, the Executor can likely give Tom a general warranty deed for Parcel One and Parcel Three, and give Tom a quitclaim deed for Parcel Two.

Question 9 – February 2014 – Selected Answer 3

1) (a) Parcel One

Tom may claim Parcel One as his homestead. Any single person is entitled to claim 10-acres as his/her homestead property if it is an urban (as opposed to rural) homestead. The 10-acres must be contiguous.

Here, the home is located within the City of Dallas, so it is an urban homestead. The property is comprised of two acres, so it is definitely within the 10-acre maximum allowed for urban homesteads, and there is no indication that the two acres are not contiguous. Thus, Tom may designate this property as his homestead, provided he spends the majority of his time residing here.

(b) Parcel Two

Tom may claim 100 acres of the 200-acre ranch retreat as his homestead, if he does not want to claim Parcel One as his homestead. A single person may claim a rural homestead of up to 100 acres, which do not need to be contiguous. Here, the ranch is 200 acres of improved land in rural Wise County, which means it would qualify as a rural homestead. However, it is too big to be within the maximum acreage allotted to a single man (a family or married couple may designate up to 200 acres as a rural homestead). Also, the homestead must be where the person actually resides for the majority of the time. There is no indication there is a home on this property, so Tom will need to begin building a home and spend the majority of his time living on the ranch if he wishes to designate this as his homestead.

(c) Parcel Three

Tom may not claim Parcel Three as his homestead if Farmer Brown continues to rent the property. To claim property as his homestead, a person must actually reside on the property the majority of the time. Here, Parcel Three is rural rental property that is rented to Farmer Brown on a month-to-month lease. Tom would have to terminate Farmer Brown's lease and move into the farmhouse himself to designate this property as his homestead. If so, the farm is rural and only 90-acres, so it falls within the 100-acre rural homestead maximum for a single person. Thus, Tom would have to move onto the land himself to designate this parcel as his homestead. Otherwise, it would meet the requirements.

(2) (a) Parcel One

The Executor may use a general warranty deed to convey Parcel One to Tom. A general warranty deed warrants title against any defects created by the grantor or previous grantors. This type of deed is not used if there may be issues arising in the chain of title prior to the grantor's ownership of the land. Here, any title issues would long since have been resolved. This is Halah's former home and has been in Halah's family for over 100 years. If there has been no claim made on this parcel, any adverse possession statute or statute of limitations would have long since expired. Thus, Halah's executor can be certain that a general warranty deed would be appropriate.

(b) Parcel Two

The executor should only use a quitclaim deed to convey Parcel Two to Tom. A quitclaim deed merely transfers any interest the grantor may have in the land. It does not actually purport to transfer any interest. Here, Halah won this 200-acre ranch retreat in a card game in 2010. There is no indication that Halah has any sort of title to the land, so the 3 and 5-year statutes of limitations for adverse possession (which both require color of title) would not be available. Further, even under the longer statutes of limitations, the time period has not yet expired, and there is no indication that the other requirements of open and notorious, continuous, and adverse possession have been met. The facts do not indicate that anyone, including Halah, have cultivated or used the land. Thus, the executor should be extremely wary of warranting this conveyance against title defects and should instead quitclaim any interest Halah may have had in the property through a quitclaim deed to Tom.

(c) Parcel Three

The executor may convey Parcel Three to Tom using a general warranty deed. When property is conveyed to another using a quitclaim deed, it puts the grantee on inquiry notice of potential defects in title. Here, Halah's father received this land by quitclaim deed in 1945. However, there has been no title claim made on this parcel, and it has been over 50 years. Given the length of time, the open, obvious, adverse, and hostile possession of the property by Farmer Brown, a tenant, any of the adverse possession statutes would have run by now. Thus, Halah would have had good title in this parcel at the time of her death. While she did receive a special warranty deed from her father in 1968 (which only warrants title for any defects that arose because of the grantor, not because of prior grantors), enough time has passed that title is secure. Thus, the executor may convey Parcel Three to Tom with a general warranty deed.