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1. Blackacre and Greenacre may constitute Bonnie and Wally's homestead property.

The issue is whether two tracts of noncontiguous tracts of land may qualify as a rural homestead.

Under Texas Law, a family may have an urban or rural homestead. An urban homestead exists where up to 10 contiguous acres within the city limits, or platted subdivision are used as a primary residence, are provided police and volunteer or paid fire protection, and at least three of the following services: water, natural gas, electricity, sewer, storm sewer. A homestead that does not qualify as urban is considered rural. A family may hold up to 200 non contiguous acres as a rural homestead.

Here, Bonnie and Wally built a home on Blackacre, and Bonnie later inherited Greenacre which was a tract of land nearby and in the same county. Together, the tracts equal 125 acres and would be within the allotted amount for a rural homestead. So long as Bonnie and Wally maintain their primary residence on a part of the non-contiguous acres, the entirety of both tracts may be held as homestead where the land is used for the support of the family.

2. No, Big Oil's oil and gas lease is not valid.

The issue is whether Wally had the right to, and did, validly grant an oil and gas lease to the covering Blackacre without Bonnie joined.

Bonnie and Wally are married and they purchased Blackacre and built there home on it. If Blackacre is a homestead, both parties would have to be on an instrument conveying the property. A lease is a conveyance of a fee simple determinable in the mineral interest of the property. In oil and gas leases, the lessee obtains the mineral interest in fee simple determinable, and there is a possibility of reversion to the grantor upon the happening of a condition--usually no production during the secondary term. Here, because Blackacre is, as described in section 1, the couple's homestead, both parties would have had to be on the instrument conveying an interest to the property. Because Bonnie was not on the lease with Big Oil company, the lease is invalid and unenforceable.

3. No, Lisa did not receive a mineral interest in the gift deed from Bonnie.

The issue is what right Lisa acquired from Bonnie's gift deed.

A mineral owner holds the executive rights to lease, receive bonus and delay rentals, and has the right to go onto property to extract minerals through reasonable means. If she does not have the rights to do those activities, it is more likely that she was granted a non participating royalty interest. A nonparticipating royalty interest is one held by an individual that does not own the land, but instead owns a portion of the land owners royalty interest that has been carved out. Lisa was given an interest in all the "oil and gas produced, saved, and marketed, cost free, in Greenacre." Language to that effect, describing the interest being to the minerals "produced, saved, marketed, cost free," and without description of the minerals as "all oil and gas under or beneath" Blackacre, and absent mention of "executive rights" to the minerals, a presumption arises that the conveyance was actually one of a royalty interest in oil and gas produced on the property.

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1) Bonnie and Wally's homestead

Bonnie and Wally have a rural homestead established on Blackacre, but that homestead does not include Greenacre. At issue is whether a non-contiguous piece of property can be included in a rural homestead. A homestead is property protected by Texas law against certain encumbrances and conveyances. A homestead is declared not by formal law, but by intent to establish a homestead and by actions that show you are supported by the homestead or use it. In Texas, there are rural, and urban homesteads. Urban homesteads exist when a property of 10 acres or less exists within a municipality, is served by voluntary/professional police, fire, and three utilities are provided such as sewer, water, electricity, or natural gas. Neither property Bonnie and Wally own seem to be an urban homestead because there are no services listed but more importantly, they are outside the limits of a municipality. Because of this, both properties are subject to qualify for rural homesteads.

A rural homestead can be 100 acres for a single person, or 200 acres for a family/married couple. The lots can be contiguous, or non contiguous if they are not too far in distance. Here, the total acreage of Blackacre and Greenacre is 125 acres, and the lots are only a few miles apart. However, a homestead is not automatically over all land owned. The non contiguous land must be used to support the family in order to qualify for being part of the rural homestead. Here, Bonnie and Wally have built a home on Blackacre. This will show that Blackacre supports the family and that they have intentions for it to be their homestead. Greenacre is non contiguous, and unimproved. While that doesn't per se prohibit it from being part of the homestead, there is no evidence supporting that Bonnie and Wally use the property for anything at all, much less support of their homestead. Because Greenacre is not used at all to support Bonnie and Wally's homestead, it is not considered part of their rural homestead. Bonnie and Wally have a rural homestead consisting of 50 acres, otherwise known as Blackacre.

2) Big Oil's lease with Wally

Big Oil's oil and gas lease is invalid because it was not signed by both spouses. At issue is whether a homestead can be encumbered/conveyed without participation by both spouses. For a homestead to be validly transferred, it must be signed by both spouses of the homestead. A husband cannot sell a homestead home without the wife's participation. Even though this is a lease of the mineral estate, rather than a sale of the entire estate or the surface, it is still a conveyance of property rights of the homestead. It is conveying a Fee Simple Determinable to Big Oil, while retaining a Possibility of Reverter for the lessor. It is a Fee Simple Determinable because of the habendum clause, which states that if the primary term ends without production, or production ceases during the secondary term, the exclusive right to explore/develop the mineral estate automatically reverts back to Wally. Wally signed the oil and gas lease alone without participation by Bonnie. Wally attempted to transfer property rights in the homestead unilaterally, which is not permissible. Because the lease was only signed by one spouse, the lease is invalid unless Bonnie signs the lease. Because the lease is invalid, they may make Big Oil a good faith trespasser in which Bonnie and Wally would have actionable methods to gain gross revenue from all production.

3) Lisa's interest in the gift deed

Lisa did not receive a mineral interest from Bonnie in the gift deed. Lisa received a non-participating royalty interest, or a "NPRI." At issue is whether Bonnie's gift is interpreted as a mineral interest, or a royalty interest. The description of the interest usually governs the

classification of the conveyance. A mineral interest is usually described as all of the oil and gas "in and under the land" or similar language. A mineral estate interest suggests property in the underlying minerals, rather than the profits that can be received from development. Lisa's gift conveys "oil and gas" which would lean towards a mineral interest. However, it states that Lisa owns an interest in the oil and gas "produced, saved, and marketed, cost free." This is royalty interest language. The language is suggesting that Lisa owns an interest in the proceeds from the oil and gas, after it is brought up from the ground, collected, and sold, cost free." A royalty interest owner does not own the minerals under the ground, but only a royalty from the production of the minerals. Further, the royalty is a cost free share in the production. The language of the conveyance, along with "cost free" is entirely consistent with a royalty interest. Lisa also was not granted an executive right, or any other rights. This is consistent with a non-participating royalty interest. Royalty owners usually only have an interest in cost free profits, but cannot explore or develop the mineral estate, or lease the mineral estate to others. The royalty interest does not receive bonus or rentals or any working interest. Because of the language of the deed, the exclusion of any bonus, rental, or executive rights, Lisa's gift will surely be classified as a royalty interest, rather than a mineral estate.

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(1) Which Tract Constitutes Bonnie and Wally's Homestead Property

Blackacre constitutes Bonnie and Wally's homestead property. Absent additional facts, their homestead protection does not extend to Greenacre.

A family may have only one homestead. For property to be a homestead, the family must (1) intend to make the land their homestead, and (2) occupy the land or make prepatory steps to occupy the land. The family need not make a formal declaration of homestead. Moreover, one spouse's separate property can be the family's homestead.

Here, Bonnie and Wally clearly made Blackacre their homestead. They built a home on Blackacre and occupied it together, making it their home. Moreover, the entire tract receives homestead protection because it is a rural homestead, giving Bonnie and Wally (as a couple) up to 200 acres of protection (Blackacre is 50 acres, well within the limit). Blackacre is not an urban homestead because an urban homestead requires (1) the tract to be located in a municipality or subdivision, (2) be served by fire and police, and (3) receive at least 3 of (a) water, (b) sewer, (c) storm sewer, (d) electricity, and (e) natural gas from the municipality. Here, Blackacre is not within the limits of a municipality or its extraterritorial jurisdiction, and thus is rural.

Greenacre probably is not afforded homestead protection, absent additional facts. Greenacre is Bonnie's separate property because she inherited it from her mother. However, homestead protection may extend to a spouse's separate property. At issue is whether Bonnie and Wally could also receive homestead protection over Greenacre, a noncontiguous piece of land a few miles from Blackacre. Greenacre is also rural property. Bonnie and Wally receive up to 200 acres of protection, and the acreage may encompass noncontiguous tracts, such as Greenacre. Greenacre feasibly could receive homestead protection in addition to Blackacre because the combined acreage between the properties is under 200 acres (i.e. 125 acres). However, the noncontiguous tract must be used for the support of the tract that is occupied. Here, there is no evidence that Greenacre is used for anything (e.g. farming) to support Blackacre, where the couple lives. Because of this, Bonnie and Wally probably only receive homestead protection over Blackacre, and not Greenacre.

(2) Is Big Oil's Oil and Gas Lease Valid

Big Oil's oil and gas lease is not valid. While Big Oil is producing in paying quantities (and thus its lease would survive if it were valid and running into the secondary term), it is invalid because only Wally signed it. An oil and gas lease is a transfer of a property interest--the lessor gives the lessee a working interest in the land, entitling the lessee to explore and develop the land to produce oil and gas. Because the lease is a property interest, it must comply with all rules of property law. The lease failed to do so. Here, Big Oil and Wally's failure to join Bonnie is fatal. Although tenants in common can ordinarily lease land without the consent of the other owners, they conveyance of any interest in land that is a homestead requires the signature of **both spouses**. As noted above, Blackacre is Bonnie and Wally's homestead property. Thus, Bonnie was required to sign the lease in addition to Wally. Big Oil and Wally's failure to do so is fatal to Big Oil's lease, and renders it invalid.

(3) Whether Lisa Received a Mineral Interest

Lisa did not receive a mineral interest, regardless of her excited proclamation that "[She's] a

mineral owner!," but rather received a nonparticipating royalty interest. Because the conveyance was in Greenacre, which was not Bonnie and Wally's homestead, Bonnie was entitled to make a property conveyance without Wally's permission or signature. Moreover, no consideration was needed to deed a property right. At issue, then, is the nature of the conveyance based on the conveyancing language.

Language in a conveyance that refers to the minerals, for example, "in or under" a tract conveys the mineral estate. Language that offers minerals "produced, saved, and marketed" conveys a royalty interest. Mixed language will result in a conveyance of the mineral estate.

Here, the conveyance merely gave Lisa a 1/16th interest in "all the oil and gas produced, saved, and marketed cost free" in Greenacre. This conveyance follows the language of a royalty interest, and thus merely gave Lisa the right to receive a 1/16th royalty on all oil and gas produced from Greenacre. The deed did not give Lisa executive rights, or the rights to receive the bonus or delay rentals. Ownership of the mineral estate includes all of these rights--the right to enter leases, the right to delay rentals, and the right to a bonus. Because Lisa did not have these rights, she has a nonparticipating royalty interest, which includes fewer rights than a mineral estate owner. Accordingly, she may want to curb her enthusiasm.