

Question 3 – February 2018 – Selected Answer 1

(1) Yes, the unrecorded Blackacre Gift Deed was binding on William.

The issue is whether Doug's failure to record the Blackacre Gift Deed ("Gift Deed") makes the conveyance invalid. Doug's failure to record does not invalidate William's conveyance of the property to Doug. A conveyance is executed upon the transferor's delivery of the deed to the transferee. Here, William delivered the deed to Doug and Doug "promptly put it in his desk drawer for safekeeping." The fact that William continued to pay all taxes on Blackacre does not affect Doug's ownership. Therefore, the transfer was binding on William.

(2) To be effectively recorded, the Blackacre Gift Deed should have been recorded in the property records of the Navarro County's clerk's office. The facts state that the land was located in rural Navarro County, Texas. Since the land did not fall within any other county, the deed was only required to be recorded in the Navarro County clerk's office.

(3) No, the Supply Company lien is not a valid lien. The issue is whether Supply Company's lien is of the kind permitted to attach to a person's homestead. The Texas Constitution permits only certain kinds of liens to attach to a person's homestead, such as mortgages, mechanic's liens, and others not relevant here. The facts specifically state that Blackacre met all the requirements for and became Doug's rural homestead. Since Supply Co's lien is not of the kind permitted in the Texas Constitution to be placed on a person's homestead, the lien affidavit on Blackacre for the unpaid patio furniture is not a valid lien. Of course, Supply Co. is still entitled to enforce its claim against Doug's estate as one of his creditors.

(4) Yes, the Blackacre Cash Deed was valid as to Ellen. The issue is whether Ellen was a bonafide purchaser for value. Since William had transferred his interest in Blackacre to Doug as a gift, William had no right to subsequently transfer Blackacre to Ellen. A person may not transfer land in which he has no interest. However, Ellen's interest in the land will be protected because she was a bonafide purchaser for value of Blackacre. The facts state that Ellen did not know either William or Doug prior to purchasing Blackacre from William. Furthermore, Doug's failure to record the Blackacre Gift Deed means that, even if Ellen had searched the Navarro County property records, she would not have been able to obtain any notice of the Gift Deed. Thus, Ellen had no actual or constructive notice of Doug's claim in Blackacre. It could perhaps be argued that since Doug had built his dream home on Blackacre that, if Ellen had seen the home, she would be inquiry notice that someone was living on the land. However, this argument would fail because it could have just as easily been William's home on Blackacre. Moreover, Doug had died by the time Ellen purchased the land from William, so she could not have knocked on the door to speak to the person inside to determine whether there were any competing claims. Therefore, since Ellen had no actual, constructive, or inquiry notice of Doug's interest in Blackacre, and since she paid value for Blackacre, the Blackacre Cash Deed was valid as to Ellen.

Question 3 – February 2018 – Selected Answer 2

(1) Yes, the gift was binding on William when he transferred the deed to Doug. The issue is whether a gift of real property is binding on the donor when the deed is not recorded.

Under the Texas Property Code, a gift of real property is binding on the donor when the donor executes the deed and transfers the property. The transfer of the property can be accomplished by transferring possession of the deed. Here, William executed a valid Special Warranty Deed to Doug and transferred the deed to him. The fact that Doug did not pay consideration for the property or the fact that Doug did not record the deed or the fact that William continued to pay the taxes on the property will not affect the conveyance. Although a deed has to be recorded to have effect against third parties, the lack of recordation will not affect the conveyance as between the parties. Further, consideration is not required to effectively convey real property. Finally, the fact that William continued to pay the property taxes does not overcome the presumption that William intended to convey Blackacre to Doug. The facts state that William was merely paying the taxes on Blackacre as a gift. Even if actual possession of the property itself were a requirement, Doug moved onto Blackacre shortly after the conveyance.

(2) The Blackacre Gift Deed should have been recorded in the Navarro County conveyance records. At issue is where a deed of real property is to be recorded under the Texas Property Code.

Under the Texas Property Code, a deed conveying real property is to be recorded in the conveyance records of the county in which the real property is located. If the property is located in more than one county then the deed should be recorded in both counties. Here, we are told that Blackacre is located in Navarro County, Texas. Thus, the deed conveying Blackacre must be recorded in the Navarro County conveyance records.

(3) The Supply Company lien is not a valid lien as to Blackacre. At issue is whether a lien for unpaid patio furniture is effective on property that qualifies as a homestead under Texas Property Law.

Under Texas Property law, a family or a single person may establish a homestead. A homestead is the place that the family or single individual makes his or her home. A person may only have a single homestead. A homestead may be established on urban or rural property. If the homestead is established on urban property, the homestead is limited to 10 contiguous acres of land. A homestead will be located in an urban area if the homestead is serviced by paid police enforcement and paid or volunteer fire department AND if the property is serviced by at least three of the following: water, electric, natural gas, sewer. Any property not classified as urban property will be rural. If the homestead is rural property then the homestead is generally limited to 200 acres. The 200 acres need not be contiguous, but the tracts must all benefit the homestead. However, when a single person establishes a homestead in a rural area, the homestead is limited to 100 acres.

Here, we are told that Doug moved to Blackacre and built his dream home there. Further, we are told that Blackacre meets all the requirements for a rural homestead. Thus, because Doug

intended to make Blackacre his home place, Blackacre will be Doug's homestead. Further, because Doug is a single man, he is only entitled to homestead protection on 100 acres of rural land. Because Blackacre is exactly 100 acres, Doug will be entitled to homestead protection on the entirety of the tract.

When property qualifies as a person's homestead, the person obtains certain protections. Among other protections, the homestead property is out of reach of many types of creditors. There are exceptions, for example, for mechanic liens, IRS liens, purchase money mortgages used to purchase the home, etc. But, none of those exceptions appear to apply here. Thus, Patio Supply Company will not be able to place a lien on Doug's homestead. Patio Supply Company may attempt to argue that it provided, on credit, patio furniture for Doug's house and should be considered a purchase money mortgage for the home, but this argument will clearly fail. The exception for purchase money mortgages applies to funds used to purchase or build the actual home, not secured purchases of home furnishings. Patio Supply Company may, indeed, have a valid security interest in the patio furniture itself, but its lien cannot be valid against Doug's homestead.

(4) The cash deed to Ellen was valid. At issue is whether a subsequent purchaser has a valid claim to the property when the purchase acquired the property for value and without notice.

Under Texas Property law, a subsequent purchase of real property that (1) purchases for value, and (2) purchases without notice (constructive, inquiry, or actual) of a prior deed will have valid title to the property even if the property was previously sold to a third party. Texas is a notice jurisdiction. This means that a subsequent purchaser that pays value for the property and does not have actual, constructive, or inquiry notice of a prior conveyance. Actual notice is when the subsequent purchaser actually knew of the prior conveyance. Inquiry notice is when the facts surrounding the conveyance should cause the reasonable person to make an inquiry into the grantor's title. A purchaser will have constructive notice when a prior deed is properly recorded in the appropriate public records.

Here, Ellen purchase Blackacre for value. even though she paid cash for the property, nothing in the facts indicate that she paid a significantly reduced price or did not pay value for the property. Further, she did not have notice of the prior sale (either actual, constructive or inquiry). We are told that Ellen did not know of the earlier deed, so she will not have actual notice. We are also told that Doug did not record the prior deed, so she will not have constructive notice. Nothing in the facts give rise to an argument that Ellen should have been put on inquiry notice. Thus, Ellen is a bona fide purchaser under Texas law and has a valid deed to Blackacre.