

Question 1 – July 2018 – Selected Answer 1

(A) Oil Co. does not have rights to conduct drilling operations on Ranch. At issue is whether Ranch is homestead property and whether husband can properly sign a lease on the mineral rights without his wife's consent.

Under the Texas Constitution, a homestead can be either urban or rural. To qualify as urban homestead, it must be within the city limits of a municipality, it must be serviced by police and fire, and it must have 3 out of five services, such as electricity, water, gas, sewer water, and sewage. Urban homestead must be 10 acres or less of contiguous property. Anything that is not urban will be considered rural. Rural homestead can be up to 200 acres for a family or 100 acres for a single person. Husband and wife here live on their ranch, which is 150 acres, in rural Limestone County. Therefore, their ranch would be considered rural homestead.

Homestead property may not be leased, sold, or encumbered in any way without the consent of both spouses who own the homestead. Even if the homestead is considered separate property of one spouse, you still need joinder of both spouses to lease, sell, or encumber the property. When husband entered into the lease with Oil Co. on Ranch without his wife's knowledge or consent, he violated this requirement. Therefore, because the property is homestead and because the wife did not join in the transaction, Oil Co. has no rights to conduct drilling operations on Ranch.

(B) Oil Co. has rights to conduct drilling operations on Greenacre. At issue is whether Husband and Wife could validly enter into a lease for the mineral estate when they have leased the surface estate to Tenant and tenant is conducting prior surface use on the property.

Under Texas property law, the mineral estate is superior to the surface estate, which is subservient. The reason for this is because the interest in oil and gas in Texas outweighs the interest of any surface right. Typically, a property owner would own both the surface and mineral estate. However, the owner can sever the estates and retain any interest they so choose. Here, husband and wife owned fee simple title to Greenacre. They entered into a 5 year agricultural lease with Tenant for the north one-half of the property. When they did so, they waived all surface rights to the leased portion, but they retained their mineral interest rights. Tenant recorded his lease with Kendall County.

However, under Texas law, even when the surface and mineral estate are severed, even for leasing purposes, the mineral estate still retains dominant rights. The mineral estate holder retains the developmental rights, the executive right to lease, drill and operate, and the economic benefits of royalties, bonuses, and delay rentals. However, when there is a pre-existing use on the surface, the accommodation doctrine comes into play. Under this doctrine, a lessee must accommodate the surface estate if three things are present: (1) a pre-existing use of the surface estate, (2) a reasonable alternative method, and (3) the reasonable alternative method is available to the lessee.

Here, Husband and Wife executed an oil and gas lease with Oil Co that covered all of Greenacre. The Habendum clause stated that the primary term was for 3 years and the secondary term is "for so long thereafter as oil and gas is produced in paying quantities." This can be described as a fee simple determinable, which means that if Oil co. were ever to stop producing in paying quantities on the mineral estate, that the interest would immediately revert back to Husband and Wife. However, because Tenant was there first, it must be established whether the accommodation doctrine comes into play. When Husband and Wife leased the surface estate to Tenant, the lease gave the Tenant the right to "plant, cultivate, and harvest olive trees on the property." This lease was entered into in July 2017. The lease with Oil Co. did not begin until September 2017. Therefore, there was a pre-existing use of the land. The lease gave Tenant the exclusive right of ingress and egress to the north 1/2 of the property. Oil Co. may be able to obtain the oil and gas under the Rule of Capture if they are able to pull the oil from underneath the 1/2 of Greenacre from the 1/2 that is not encumbered. However, the facts do not indicate whether there is a reasonable alternative method for Oil Co. to act on their rights to the drilling operations. Even though Tenant's right to plant, cultivate, and harvest olive trees on the property is a pre-existing right, because the mineral estate is dominant, if there is no reasonable alternative method for Oil Co. to conduct drilling operations, they will be permitted to go onto the 1/2 leased to the tenant. Therefore, Oil Co. does have rights to conduct drilling operations on Greenacre.

(C) No, Bank does not have a valid lien on Ranch. At issue is whether the deed of trust lien on a homestead property is a permissible lien.

Under the Texas Constitution, homestead is a special type of property that is exempted from creditors who attempt to attach to the land. However, there are eight permissible types of creditors who may validly attach to a homestead: (1) a purchase money mortgage, (2) a valid federal tax lien, (3) improvements, such as a mechanic's and materialman's lien, (4) reverse mortgage, (5) home equity loan, (6) owelty of partition, (7) refinance of an otherwise permissible lien, (8) refinance of chattel mortgage.

The two bulls that husband and wife bought out of a loan from the bank would not be within one of these eight exceptions because it is a deed of trust lien. Deed of trust liens are not likely one of the eight permissible homestead liens that may attach. However, if they do fall into the category of one of the permissible liens, it would be able to validly attach. Because it has been previously determined that the Ranch is Husband and Wife's homestead, and because it is likely not one of the eight permissible liens, the Bank does not have a valid lien on Ranch.

Question 1 – July 2018 – Selected Answer 2

(A) Oil Co. does not have a right to conduct drilling operations on Ranch. At issue is whether both Husband and Wife had to enter into the lease with Oil Co. when Ranch is used as their homestead. Under Texas Property law, when property is owned and used as a homestead by a married couple, both spouses must agree and participate in any conveyance or encumbrance that is placed on the property. To claim property as homestead, there must be intent by the owners to

use the property as homestead and some act to show that intent. Property is treated differently for homestead purposes depending on whether it is rural or urban. Property is considered urban if it is located within city limits, within the extra-territorial jurisdiction of a city, or a platted subdivision and is serviced by police and paid or volunteer fire protection and at least three of the following are provided by the municipality or under contract with the city: water, gas, electricity, sewage, storm sewer. Property not meeting these specifications is considered rural. Under these facts, Ranch would qualify as rural. A married couple may claim up to 200 acres as a rural homestead, and the acreage need not be continuous. Here, Ranch is 150 acres of rural property that the husband and wife live on. Therefore, it would qualify as their homestead. As such, Husband needed wife's joinder in any conveyance of an interest in the Ranch. He did not have his wife's joinder in the March 2017 conveyance to Oil Co. and therefore, the lease is invalid. Oil Co. may not conduct drilling operations on Ranch.

(B) Oil Co. may conduct drilling operations on all of Greenacre and may use as much of the surface as is reasonably necessary to develop the minerals. At issue is what an oil lessee's rights are to develop minerals when someone other than the lessor owns the surface. When Husband and Wife granted a tenancy in common lease to tenant and waived all surface rights to the North 250 acres of Greenacre, they still retained ownership of the oil and gas minerals for all of Greenacre. In September 2017, Husband and Wife entered into a valid oil and gas lease with Oil Co. The lessee in an oil and gas lease receives what is called the "working interest" in the minerals. This means the lessee can explore and develop the minerals. The mineral estate holder holds the dominant estate, and the surface owner owns the servient estate. A lessee in an oil and gas lease may use as much of the surface as is reasonably necessary to develop the minerals. Therefore, Oil Co. may use as much of Greenacre's surface as is reasonably necessary to produce the minerals. Depending on Oil Co.'s use of the surface, tenant may be able to seek an accommodation. Under the accommodation doctrine, if a surface owner can show (1) a substantial interference with pre-existing surface use, (2) a reasonable alternative that is not unduly burdensome, and (3) that alternative is available on the leased land, the holder of the mineral estate must accommodate the surface owner. Here, the surface owner will have a pre-existing use of the property for growing olive trees. If Oil Co.'s development of the minerals substantially interferes with that existing use, and tenant may be able to seek an accommodation if it is reasonable and available.

(C) Bank does not have a valid lien on Ranch. As stated above, Ranch qualified as Husband and Wife's homestead. Under Texas Property law, a couple's homestead is entitled to protection from many creditors. Only certain creditors may attach their liens to the homestead. Statutorily authorized liens that may attach to the homestead are typically related to the homestead in some way, and include: purchase money mortgages, land improvement liens, like statutory mechanic's and materialman's liens, owelty of partition liens, federal tax liens, and refinanced liens that could have originally attached to the property. This \$100,000 loan from bank for two bulls does not qualify as one of the statutorily authorized liens that may attach to a homestead, and therefore, the Bank does not have a valid lien on Ranch.

Question 1 – July 2018 – Selected Answer 3

A. Oil Co's Rights to Conduct Drilling Operations on Ranch

Oil Co. does not have any rights to conduct drilling operations on Ranch. The issue is whether a spouse may encumber or convey rights to a homestead without the consent of the other spouse on the homestead. A homestead is a status that gives property owners special protections against certain creditors. A rural homestead may consist of up to 200 acres. To qualify as rural, the homestead, must not be served by more than three municipal services and not be within the municipal limits of any city. A rural homestead may include parcels that are not contiguous. A spouse may not encumber the homestead without the consent of the other spouse that owns the homestead. A conveyance without consent is void. A homestead may be established formally, but property owners are generally granted homestead rights on the land and in the home that is their primary residence.

Here, Husband and Wife own and live on 150 acres in a rural area. Thus, Ranch falls within the rural homestead protection, so their lease is protected from most creditors. Most importantly, Husband has signed a lease of Ranch's mineral rights without the consent of Wife. Thus, the lease to Oil Co. is void, and Oil Co. has no rights to conduct drilling operations on Ranch.

B. Rights to Conduct Drilling Operations on Greenacre

Oil Co. has all the rights of a lessee to conduct drilling operations on Greenacre, but must accommodate the surface use of the agricultural lessee. The issue is the rights of a mineral lessee and whether the mineral estate may be leased after the surface estate has been conveyed. A mineral lease is a fee simple determinable. The lessor keeps a possibility of reverter. In Texas, the mineral estate is dominant over the surface estate. Thus, a lessee of the mineral estate may use the surface as reasonably necessary to explore and develop the mineral estate. This includes rights of ingress and egress at will. The surface owner may not prevent the use of the surface estate for this purpose. However, the lessee of the mineral estate must accommodate the surface owner's use of the land under certain circumstances. If there is a conflict, the surface owner can show that there is an alternative to the mineral lessee's proposed use, and that the alternative is available on the leased tract. The surface and mineral estates may be severed by conveying rights to one without the other. When the surface and mineral estates are severed, the executive right to lease the minerals under the estate remains with the holder of the mineral estate. The executive right is the right to lease the mineral estate. Thus, even when the surface has been conveyed and an "exclusive right to ingress and egress" has been granted, the holder of the executive right may rightfully lease the mineral estate, and the lessee may exercise all the rights of a mineral estate holder, including the right of ingress and egress.

Here, Husband and Wife severed the surface estate from the mineral estate by conveying the surface estate in an agricultural lease. That lease granted the holder exclusive right of ingress and egress. The subsequent mineral lease was permitted because Husband and Wife retained the executive right to the mineral estate, and the mineral estate dominant over the original agricultural lease. It must, however, accommodate the agricultural lessee. If there is a conflict, the lessee may demonstrate an alternative, and Oil Co. should accommodate the ag lessee. If the agricultural lease does take precedence over the mineral lease on the 250 acres leased by Tenant, Oil Co. may drill on the other half of Greenacre, and is entitled to all of the minerals, including

those underlying the portion of Greenacre whose surface is leased, due to the rule of capture. Thus, Oil Co. may develop at will on the surface estate and use it as is reasonably necessary.

C. Does Bank Have a Valid Lien?

Bank does not have a valid lien. The issue is whether and how a homestead may be encumbered. The characteristics of a homestead are discussed above in Section A. A homestead generally may not be encumbered by a debt unrelated to the home itself. A homestead may be encumbered by a purchase-money mortgage, a home equity loan, or a loan to improve the home. Without the ability to encumber, a lien may not issue.

Here, the couple has a homestead, as discussed in Section A. The bank has issued a loan to the couple, seeking to take their homestead as security for the loan. However, a homestead may not serve as security for this type of loan, which is unrelated to the home itself. Thus, the bank does not have a valid lien.

Question 4 – July 2018 – Selected Answer 4

(A) Oil Co. does not have any rights to conduct drilling operations on Ranch.

The issue is whether Husband could lease Ranch's mineral rights without the consent of Wife.

The Texas Constitution provides homestead protection for the primary residence of a family. A family's homestead can be rural or urban, and once established, requires the consent of both spouses for any conveyance regarding such homestead; otherwise the conveyance is void. Such joinder would be required for conveyance of the entire estate, or even a severance conveyance of the mineral estate from the surface.

Here, Husband and Wife own and live on the 150-acre ranch in rural Limestone County, Texas. Accordingly, the ranch is the homestead of the family. Husband accepted the offer from Oil Co. to lease in March 2017 without the consent or knowledge of the wife. Such conveyance of the ranch mineral estate was void because it was done without the joinder of Wife. Accordingly, Oil Co. has no rights to conduct drilling operations on Ranch.

(B) Oil Co. has the right to develop, explore, and produce the entire mineral estate of Greenacre, including an implied easement to access the surface as reasonably necessary to conduct drilling operations on Greenacre; however, Oil Co. must accommodate the prior existing use of Tenant of the north half of Greenacre.

The issues are whether the Husband and Wife had the ability to convey the mineral estate of Greenacre, and whether such conveyance included the dominant mineral estate easement to access the surface, and also whether Oil Co. must follow the accommodation of existing use doctrine.

The mineral estate is the dominant estate, compared to the servient surface estate. Inherent in the mineral estate is the right to access the surface as reasonably necessary to produce minerals underlying the land. Accordingly, even though a landowner leases away surface rights through an agricultural lease, does not mean such landowner leases away the dominant mineral estate with it. The mineral estate, however, is qualified by the accommodation of prior existing use doctrine. The doctrine requires an oil company to use an alternative feasible method of conducting operations, if such option is available on the leased tract, and if a prior use of the surface existed at the time of the lease.

Because Husband and Wife's lease to Tenant provided Tenant exclusive rights of ingress and egress, it appears that Oil Co. would not be able to conduct drilling operations on the northern half of Greenacre. However, the Husband and Wife did not convey in such lease, the mineral estate of the northern half. Therefore, when Husband and Wife leased the mineral estate to Oil Co., after their lease to Tenant, it included an implied easement to access the surface as reasonably necessary to produce the minerals. Accordingly, Oil Co. has such right because it is dominant to any servient surface estate rights. However, Oil Co. must accommodate Tenant's olive trees farming because such use existed first. Tenant could argue that the Husband and Wife conveyed the implied access to surface inherent to the mineral estate through the Tenant's lease; However, such argument would likely fail because no specific reference to such separation was mentioned in Tenant's lease, and the mineral estate is the dominant estate.

(C) Bank does not have a valid lien on Ranch.

The issue is whether the Bank's lien can properly attach to the homestead.

A family's primary residence is granted homestead protection in Texas. The homestead is protected against creditors and only certain liens may attach to it. There are 8 types of liens that may properly attach to a homestead. They include liens pertaining to property taxes, home equity loans, owelty of partition, purchase money mortgages (purchase money for the home itself), reverse mortgages, mechanic and materialmen liens, and a couple others.

Here, though Bank attempted to secure its loan to Husband and Wife through a deed of trust lien on Ranch, such lien is void because it doesn't fall under any of the homestead lien exceptions. Such loan was for the purpose of acquiring Bulls, not for the purpose of home improvement (pertaining to actual construction on the land). Accordingly, even though Husband and Wife each joined the transaction, the lien is invalid.