

Texas Real Property 2009-2010

February 2009

QUESTION 1

In 2001, Brad and his wife, Cora, purchased Greenacre, a 100-acre tract of land in Collin County, Texas. They immediately began to live in the home on Greenacre. Upon her uncle's death in 2004, Cora inherited Whiteacre, a 50-acre tract of land also located in Collin County, Texas. Greenacre and Whiteacre were within a few miles of each other and were not within the city limits or extraterritorial jurisdiction of any town. Brad and Cora farmed both Greenacre and Whiteacre as their primary source of income.

In 2005, Ace Oil proposed favorable terms to Cora, and without consulting Brad, Cora signed an oil and gas lease with a three-year primary term describing both Greenacre and Whiteacre.

In 2006, Cora inherited her parents' home (the "Denton Property") located in the city of Denton in Denton County, Texas. In 2007, Cora borrowed \$10,000 from First Bank to pay gambling debts. To secure the loan, Cora granted First Bank a Deed of Trust lien on the Denton Property. The Denton Property was rented to a series of tenants.

On November 1, 2008, Cora leased the Denton Property to Toby. Toby and Cora signed a one-year lease, and Toby paid the \$800 November rent and a \$700 security deposit. On November 6, 2008, a lightning strike in the yard at the Denton Property damaged a water line so that no water could flow from the water main to the home. The damage was a casualty loss covered by Cora's insurance. On November 7, Toby gave immediate written notice of the damage to Cora. On November 15, Toby gave written notice to Cora that he was terminating the lease, and he moved out, leaving the home in excellent condition. Cora did not begin repairs until she received insurance proceeds on November 30. Toby demanded that Cora pay him \$500 in damages because of her delay in making the repairs. In addition, Toby demanded a full refund of the November rent and security deposit.

After Cora repaired the water line, Brad and Cora moved to the Denton Property. After moving to the Denton Property, Cora defaulted in payment of the loan from First Bank. First Bank notified Cora that it intended to begin foreclosure proceedings. Cora told First Bank that it did not have a valid lien because the Denton Property was her homestead.

- 1. In 2007, did Ace Oil obtain a valid oil and gas lease as to Greenacre and Whiteacre? Explain fully.**
- 2. Did Toby properly terminate the Denton Property lease, and is he entitled to recover the damages, rent and security deposit that he has demanded? Explain fully as to each.**
- 3. Will Cora prevail in her assertion of the invalidity of First Bank's lien? Explain fully.**

QUESTION 2

In 1955, Able Inc. (“Able”) purchased Blackacre, a 200-acre tract of land in Chambers County, Texas, from the seller, Rex, Inc. (“Rex”). Rex reserved a one-eighth ($\frac{1}{8}$) royalty interest in any and all oil, gas, and other minerals.

In 1956, Able signed an oil and gas lease that leased Blackacre to Joe’s Oil Co. (“Joe’s Oil”). Joe’s Oil drilled a producing oil well and made correct royalty payments to Able and Rex until production ended in 1958. Joe’s Oil then abandoned the well without properly plugging it.

In August 2008, Able signed an oil and gas lease of Blackacre to New Oil Co. (“New Oil”). In September 2008, Able sold an 80-acre tract out of Blackacre to Gloria and retained the other 120 acres. The warranty deed to Gloria contained an exception to exclude Rex’s one-eighth ($\frac{1}{8}$) royalty interest. However, the warranty deed to Gloria did not contain a reservation of any interest in the oil and gas by Able.

In November 2008, New Oil discovered the abandoned well located on the 120-acre tract retained by Able. As required by law, New Oil reported to the Railroad Commission that the well had not been properly plugged and might be a pollution hazard. Joe’s Oil no longer exists, and its sole shareholder, Joe, cannot be located.

In December 2008, New Oil drilled a producing oil well on Gloria’s 80-acre tract. In January 2009, New Oil sent a division order to Rex. Rex agreed that its royalty share was properly listed in the division order, but refused to sign the division order because it included a statement requiring Rex to acknowledge responsibility for plugging the abandoned well.

Able and Gloria each claim to be entitled to the remaining share of the royalty payment due under the lease after payment to Rex of Rex’s share. New Oil has not made any royalty payments to Rex, Able or Gloria.

- 1. Can the Railroad Commission properly require Able, Rex or New Oil to plug the abandoned well? Explain fully.**
- 2. What are New Oil’s responsibilities to Rex once Rex refuses to sign the division order? Explain fully.**
- 3. To whom should New Oil make the royalty payments for the well on Gloria’s 80-acre tract? Explain fully.**

QUESTION 9

In 2000, Van, a resident of Harris County, Texas, purchased Whiteacre in Washington County, Texas from Sal. In payment for the purchase, Van gave Sal a promissory note in the amount of \$100,000 (the “Note”) payable in monthly installments of principal and interest on the first of each month. Payment of the Note was secured by a deed of trust covering Whiteacre, which included a power of sale. The deed of trust was properly recorded with the Washington County Clerk.

Van was a member of the board of directors of ArtCorp, a Texas non-profit corporation. Van wanted to help ArtCorp achieve its goal of opening an art museum on Whiteacre. In 2002, Van obtained Sal’s consent to transfer Whiteacre to ArtCorp, with the understanding that Van would continue to make the payments on the Note. Van properly executed, acknowledged, and delivered a warranty deed conveying Whiteacre to ArtCorp. ArtCorp neglected to record the warranty deed at that time.

In 2003, after following all required procedures, Creditor recorded an abstract of judgment in the Washington County Real Property Records giving notice of its lien arising from a \$50,000 judgment against Van.

In 2004, ArtCorp recorded its warranty deed from Van in the Washington County Real Property Records.

In late 2008, ArtCorp made an oral agreement to sell Whiteacre to Bob for \$120,000. ArtCorp intended to use part of the purchase money to pay off the Note. Bob discovered Creditor’s judgment lien on Whiteacre while making a search of the real property records and notified ArtCorp of its existence. ArtCorp told Bob the lien based on a judgment against Van was ineffective because Whiteacre no longer belonged to Van and not to worry about it.

Van failed to make the January 2009 payment due on the Note. On January 12, 2009, acting on Sal’s instructions, Trudy, the trustee under the deed of trust, sent a written notice by certified mail to Van stating that Van’s failure to pay was a deed of trust default and giving Van until January 22, 2009, to cure the default and avoid commencement of foreclosure proceedings. Trudy sent a copy of the notice of the default to ArtCorp.

ArtCorp asked Sal to postpone the foreclosure to give ArtCorp time to consummate the deal with Bob and pay off the Note. Sal refused and directed Trudy to proceed with the foreclosure. The loan documents properly waived all notices other than those required by law. Sal has also suggested to Bob that, by buying Whiteacre at the foreclosure sale, he would be better off.

- 1. What statutory requirements must Trudy fulfill as trustee in order to effect a proper foreclosure on Whiteacre? Explain fully.**
- 2. Is ArtCorp correct in its assertion that the judgment lien was ineffective? Explain fully.**
- 3. Assuming that Trudy effects a proper foreclosure, discuss whether Bob would be better off if he bought Whiteacre at the foreclosure sale rather than by buying it from ArtCorp. Explain fully.**

Base answers to all parts of Question 9 on the law in effect on July 30, 2009. Any statutory changes approved in the 2009 legislative session, but not yet in effect, need not be discussed.

QUESTION 10

Hal owned Blackacre, a 150-acre tract of land in Tyler County, Texas, subject to a one-eighth ($\frac{1}{8}^{\text{th}}$) royalty interest in oil, gas, and other minerals reserved by Raul, the previous owner of Blackacre. Hal farmed Blackacre and received income from the sale of water from a water well located on Blackacre.

Hal signed an oil and gas lease, leasing Blackacre to Ace Oil Company (“Ace”). Ace began exploration activities and preparation of a drill site. For access to the drill site, Ace constructed a new road that intersected the existing road to Hal’s water well. In the process of construction, Ace left large piles of dirt obstructing part of the existing road, making it impassable. The dirt could have easily been located a short distance away from the roads. As a result, Hal lost income from water sales because the trucks that carried the water were unable to reach the well. Because Hal was angry, he installed a locked gate across the new road and refused to provide a key to Ace.

Big Oil Company (“Big”) was aware that Ace had begun exploration on Blackacre. Determined to purchase royal interests in the area, Big searched the Tyler County real property records and discovered Raul’s reserved interest in Blackacre. Big purchased Raul’s royalty interest.

A few days later, Big informed Hal that, since Raul had conveyed his royalty interest to Big, Hal was obligated to pay Big a share of the proceeds of sales of water when those sales resumed.

- 1. Was Hal entitled to deny Ace access on the new road? Explain fully.**
- 2. What are Hal’s rights, if any, against Ace for the road obstruction? Explain fully.**
- 3. Is Big entitled to a share of the proceeds of water sales? Explain fully.**

February 2010

QUESTION 3

Dale, a widower, owned Greenacre located in Henderson County, Texas. In December 2008, Dale and Tom entered into a three-year written lease (the “Surface Lease”) under which Greenacre was leased to Tom for storage of trucks and other equipment. In the Surface Lease, Dale granted to Tom exclusive possession of the surface of Greenacre, and Dale waived any right to use the surface for any purpose during the term of the Lease, including use for the exploration for and production of oil, gas or other minerals. The Surface Lease was promptly recorded with the Henderson County Clerk.

In January 2009, Dale died. Dale bequeathed to his sister, Sue, a one-eighth (1/8th) royalty interest and all executive rights to execute oil and gas leases for Greenacre. Dale bequeathed to Nora, Sue’s daughter, all other interests in Greenacre not bequeathed to Sue.

On Nora’s birthday soon after Dale’s death, Sue told Nora that she was making a gift to Nora of the executive rights in Greenacre that Sue had received from Dale. At the time, Sue intended to have her lawyer prepare a document that could be recorded to provide evidence of the gift, but she forgot to do so.

In August 2009, Nora signed an oil and gas (the “Mineral Lease”) covering Greenacre with Athens Oil Company (“Athens”). Nora told Athens that the Mineral Lease did not need Sue’s signature on the document because Sue only owned a royalty interest in Greenacre.

Athens wanted to purchase Sue’s royalty interest so it mailed to Sue a \$500 check. The cover letter from Athens asked only that Sue sign and return “the enclosed document.” The document had no descriptive heading, and it contained words in small print purporting to convey to Athens Sue’s royalty interest in the oil, gas and other minerals on Greenacre. Sue was aware of the Mineral Lease signed by Nora, so she assumed that the check was a royalty payment from Athens. Without reading the document, Sue signed it, returned it to Athens, and cashed the check. Sue later examined her copy of the document she had signed and discovered for the first time that it purported to convey her royalty interest to Athens. Sue did not wish to rescind the conveyance but, instead, wanted to sue Athens for damages. Athens intends to begin drilling activities on Greenacre.

- 1. Can Sue claim that the Mineral Lease was not effective, and, if so, on what bases? Explain fully.**
- 2. What rights, if any, can Tom assert to preclude Athens from conducting drilling activities on the surface of Greenacre? Explain fully.**
- 3. What prerequisites must Sue satisfy before bringing suit against Athens, is it likely that she can prevail in the suit, and, if so, what recovery can she obtain? Explain fully.**

QUESTION 4

Martha, a single person, owned Whiteacre, a ranch located in Hill County, Texas, in fee simple. In April 2006, Martha conveyed Whiteacre to her son, Stan, by a properly signed and acknowledged gift deed.

The deed recited that, “Martha gives and grants Whiteacre to Stan, for as long as Stan maintains the family chapel on Whiteacre. If Stan ever destroys the family chapel, Whiteacre shall automatically revert to Martha, without any further act by Martha.” The deed was properly recorded in the Hill County Real Property Records in April 2006.

In June 2007, to expand the ranch operations, Stan purchased Redacre, a tract adjacent to Whiteacre, and he demolished the family chapel. Although Stan paid for Redacre with cash that was community property belonging to him and his wife, Eve, the warranty deed that conveyed Redacre to him named only Stan as the grantee. This deed to Redacre showing Stan as the sole owner was properly recorded in the Hill County Real Property Records.

In December 2008, Stan and Eve divorced in Falls County, Texas. In dividing the marital property, the court awarded Redacre entirely to Eve. Nothing was recorded in the Hill County land records concerning the divorce or Eve’s ownership of Redacre.

In January 2009, Martha learned of the destruction of the family chapel, took possession of Whiteacre, and leased it to Pete. At the same time, Pete, unaware of the divorce proceedings in Falls County, offered to buy Redacre from Stan. Stan agreed to sell Redacre to Pete but told Pete that he would only give him a quitclaim deed. Pete paid a discounted price for Redacre and received the quitclaim deed, which recited that Stan “releases, remises and quitclaims to Pete all of Stan’s right, title and interest in and to Redacre.”

Eve, who wanted to conduct ranching operations on Redacre, demanded that Pete vacate Redacre. Pete refused, asserting that he owns Redacre.

- 1. Was Martha entitled to lease Whiteacre to Pete? Explain fully.**
- 2. What are Eve and Pete’s arguments in support of their respective claims of superior title to Redacre, and who will likely prevail? Explain fully.**

July 2010

QUESTION 11

Mona owned Whiteacre, a five-acre tract in rural Comal County, Texas. Gail owned Greenacre, a ten-acre river-front tract adjoining Whiteacre. Greenacre was improved with a vacation cabin.

In September 2009, Gail hired Workman to build a large addition to Gail's vacation cabin located on Greenacre. In November 2009, with knowledge that Workman had not yet finished the addition, Mona offered to purchase and Gail agreed to sell Greenacre. On December 1, 2009, Mona made full payment to Gail of the agreed sale price. Gail then signed and acknowledged a Warranty Deed conveying Greenacre to Mona that met all requirements for a valid deed, including a complete legal description of Greenacre. The Warranty Deed was immediately and properly filed in the Comal County Real Property Records. Gail had not paid Workman, and Mona did not ask if Workman had been paid.

On December 4, 2009, Workman timely filed with the Comal County Clerk a proper affidavit claiming a mechanic's lien on Greenacre. Because Gail had always purported to own Greenacre, Workman immediately sent a copy of the affidavit to Gail by certified mail.

Gail, knowing that Ben was interested in purchasing Whiteacre and some river frontage on Greenacre, drafted a Warranty Deed, which purported to convey Whiteacre from Mona to Gail. On December 7, 2009, pretending to be Mona, Gail forged Mona's signature to the Warranty Deed before a notary, who required no proof of identity. The forged Warranty Deed appeared complete and correct, and Gail immediately recorded it in the Corral County Real Property Records.

On December 14, 2009, Gail told Ben that she had purchased Whiteacre, and showed him the recorded forged Warranty Deed. Ben did not know that Gail had sold Greenacre to Mona. Ben offered to buy Whiteacre and two river-front acres of Greenacre from Gail. In exchange for payment of a fair price by Ben, Gail signed, acknowledged, and delivered to Ben a Warranty Deed, which purported to convey both Whiteacre (with a full description of that five-acre tract), and a portion of Greenacre, which she described as "two acres on the river side out of Greenacre." Ben duly recorded this Warranty Deed in the Comal County Real Property Records.

Mona, Ben, and Workman are now fully aware of the all the foregoing facts.

1. **What rights, if any, does Workman have in Greenacre, and what must he do to enforce those rights? Explain fully.**
2. **What rights, if any, does Ben have in Greenacre? Explain fully.**
3. **Who owns Whiteacre? Explain fully.**

QUESTION 12

Jim, a widower, owned fee simple title to Blackacre and Redacre, both located in Liberty County, Texas. On April 1, 2009, Jim entered into two oil and gas leases with Big Oil Company ("Big Oil"), one covering Blackacre and the other covering Redacre.

Each lease was dated April 1, 2009. The leases included the following provisions:

- Term of Lease: The term of the Blackacre lease was for "two years from April 1, 2009, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from Blackacre." The term of the Redacre lease was for "one year from April 1, 2009, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from Redacre."
- Delay Rental: The Blackacre lease stated, "if operations for drilling to a depth of at least 1,000 feet are not underway within one year from the date of the lease, the lease shall terminate unless Big Oil pays to Jim the sum of \$3,000 as a delay rental on or before April 1, 2010."
- Force Majeure: Both leases stated, "When drilling or other operations are delayed or interrupted by fire, storm, flood, war, rebellion, insurrection, riot or strike, or as a result of any cause whatsoever beyond the control of Big Oil, the time of such delay or interruption shall not be counted against Big Oil."

On February 15, 2010, Big Oil drilled to a depth of 300 feet and completed a gas well on Blackacre capable of producing a very small amount of gas that would be insufficient to pay costs of production. Big Oil immediately shut in the gas well.

On March 31, 2010, an employee of Big Oil was on the way to pay Jim the delay rental of \$3,000 for the Blackacre lease, when the employee was involved in a serious accident. Consequently, the delay rental payment was not made, which Big Oil did not realize until April 30, 2010. On that day, Big Oil made the \$3,000 payment, and sent a letter to Jim stating that the failure to make a payment on or before April 1, 2010 was caused by an accident beyond its control so that the late payment was excused by the force majeure clause.

Also on February 15, 2010, Big Oil completed an oil well on Redacre that produced paying quantities of oil. On April 5, 2010, a small fire caused by a lightning strike at the oil well on Redacre caused its production to be shut down. Repairs were begun immediately, were completed on April 15, 2010, and production resumed on Redacre the day repairs were completed. Big Oil sent Jim a letter informing him that production on Redacre had resumed on April 15, 2010.

On May 4, 2010, Jim returned to Big Oil the \$3,000 delay rental payment and declared that he considered both leases terminated.

- 1. Is Big Oil's lease of Blackacre terminated? Explain fully.**
- 2. Is Big Oil's lease of Redacre terminated? Explain fully.**