BarCzar

OIL & GAS JULY 2018

(A) Oil Co has no right to conduct drilling operation on Ranch.

Under Texas law, an oil and gas lease cannot be executed on property owned by a married couple, unless both spouses consent. Thus, a lease entered by either, without the joinder or ratification of the other, is void. Here, Husband and Wife own fee simple title and live on a 150-acre ranch in Limestone County. In March 2017, Oil Co approached the couple with an offer to lease Ranch's mineral rights. Without Wife's knowledge or consent, Husband accepted the offer. The lease was signed by Husband only. Since, the lease was not consented to or ratified by Wife, Oil Co has no enforceable right to conduct drilling operations on Ranch.

(B) Oil Co may conduct drilling operations on Greenacre, subject to Tenant's agricultural lease.

Under Texas law, once severed, the surface estate is subservient to the dominant mineral estate and, generally, may be reasonably used to develop the underlying minerals of the property. However, the right of the mineral estate owner to use and access the surface estate may be limited by a pre-existing restriction or by terms of another contract, of which the parties are on notice.

Here, Husband and Wife own fee simple title to Greenacre. In July 2017, they entered into a five-year agricultural lease with Tenant for the north half (250 acres) of Greenacre. Included in the lease that Husband and Wife conveyed to Tenant are, inter alia, exclusive rights of ingress and egress. The lease was properly recorded. Two months later, in September, Husband and Wife executed an oil and gas lease with Oil Co that covered the entirety of Greenacre. Because Husband and Wife conveyed away their rights to use and access the northern half of Greenacre, and Oil Co was on notice of Tenant's exclusive rights to use and access the northern half of Greenacre, Oil Co will only be able to conduct drilling operations using the southern half of Greenacre. Thus, Oil Co may conduct drilling operations on Greenacre, but must do so subject to the terms of Tenant's agricultural lease.

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

Under the Texas Property Code, a rural homestead is limited to 200 acres for a family, whether or not contiguous parcels. Once properly designated as a homestead, the Texas Constitution permits only a few types of liens to attach to a Texas Homestead. Here, Husband and Wife own fee simple title and live on 150-1acre ranch in rural Limestone County. The couple live on the property which show both intent and overt acts consistent with using the land as a home. The property is also within the 200-acre limit and in rural Limestone County. The property qualifies as a rural homestead and entitled to Constitutional protections. Husband and Wife took out a loan from Bank to buy two bulls for the Ranch. The purchase of the bulls is not one of the eight liens that can properly attach to a homestead. Thus, the lien is not validly attached to Ranch.

TEXAS REAL PROPERTY JULY 2018

(A) As among the three creditors, Liberty County's lien is in first position, Contractor's lien is second, and Bank's lien is third because Texas has adopted a notice recording act.

Under the Texas Property Code, a conveyance of real property or an interest in real property is void against a creditor or subsequent purchaser without notice of the interest. Thus, the order or priority of competing property interests is based on whether or not subsequent creditors had notice of the prior existing interest.

Here, Developer owner a large tract of land in Liberty County. Developer entered into an agreement with Contractor, who was supposed to build a commercial office building and lifestyle center on the property. Contractor began its work on October 16, 2016. Later, Developer borrowed money from Bank to continue paying Contractor. Bank's loan was secured by a deed of trust lien on the property and recorded February 1, 2017. In May 2017, Developer skipped town and stopped paying Contractor and Bank. Contractor properly filed its Affidavit for Mechanic's Lien. Bank subsequently found evidence that Developer may have had an existing tax lien due to unpaid property taxes in 2015.

Liberty County's tax lien gets priority because a record search of Property's title revealed evidence that Developer did not pay its 2015 ad valorem taxes. This evidence put any subsequent creditors, Contractor and Bank, on inquiry notice of a preceding tax lien existing on the property. Contractor's lien filed in May 2017 relates back to its initial notice, the Affidavit of Commencement, properly filed in October 2016. Bank's lien is third in order because it was on notice (record/inquiry/constructive) of both the County's and Contractor's property interests prior to loaning Developer the money to continue financing its construction project.

(B) Bank must take the following steps to exercise its power of sale right via the Deed of Trust: Under the terms of the Deed of Trust, the Bank is required to dive Developer 10 days' written notice and an opportunity to cure any default prior to pursuing any remedies. This is different than the legally required notice discussed below.

Under the Texas Property Code, Bank must take the following steps to post the Property for a non-judicial foreclosure sale: 1) send 20-day notice of default via certified mail, including an intent to accelerate the debt, and opportunity to cure the default; 2) send notice of sale at least 21 days before the date of the sale by posting on the courthouse door of Liberty County, filing the notice in the Liberty County clerk's office, and to each debtor via certified mail; 3) the contents of the notice should contain, among other things, that the sale will be held in Liberty County, at a public auction, between 10am and 4pm of the first Tuesday of a month.

BUSINESS ASSOCIATIONS JULY 2018

(A) Neither Al, Brian, nor Charlie (collectively hereafter "the partners") will be personally liable to the supplier on the past due debt because the partners registered their partnership (Brick LLP) as a limited liability partnership ("LLP").

An LLP is an association of two or more persons to carry on a business as co-owners for a profit that provides personal liability protection to the owners. Under the Texas Business Organizations Code, all partners in an LLP enjoy personal liability protection from both the contract and tort debts of the business and the other partners. This insulation from personal liability is an attractive reason to register an existing partnership as an LLP in Texas. However, there are exceptions to that blanket liability protection for a partner's own tortious conduct and the negligent supervision of an employee, agent, or another partner.

The supplier's claim against Brick, however, does not trigger those exceptions. If the debt to the supplier cannot be satisfied by the assets, resources, and insurance coverage of the partnership, the supplier does not have a basis for personal recovery against any one of the partners in their individual capacities.

(B) Brian, but not Al or Charlie will be personally liable on the tort suit against Brick LLP.

Even though a limited liability partnership offers the individual partners personal liability protection for both contract and tort claims asserted against the partnership, that protection does not extend to a partner's own tortious conduct and/or the negligent supervision of an employee, agent, or another partner.

Here, Brian's status as a limited partner cannot insulate him from liability for his own tortious acts. Al and Charlie, however, will not be personally liable for Brian's tortious acts, even though committed in the scope and course of his employment. A party seeking to recover, personally, against a partner of an LLP must first exhaust the assets of the partnership. Here, there is insufficient insurance coverage to pay the claim and Brian may be responsible to pay the difference to the plaintiff from his personal funds.

(C) Al and Charlie will be personally liable on the debt owed to Mortar Limited's suppliers because Mortar is a limited partnership ("LP").

An LP organized under the Texas Business Organizations Code must have at least one general partner and at least one limited partner. The general partner(s) in the LP is personally liable on the debts and obligations of the partnership and the other partners, while the limited partners enjoy personal liability protection similar to that of the partners in an LLP. However, limited partners who participate in the management and control of the entity can lose their personal liability protection.

Here, Al is the general partner of the business, and he has no personal liability protection on the debt owed to the suppliers. Charlie, who "frequently consults with Al about business operations" may have, arguably, participated in management and control of the business and in so doing, may have lost the shield of liability protection provided by his status as a limited partner. Brian, in contrast, is a limited partner who does not participate in the day-to-day operations of the business and he will have no personal liability to the suppliers.

(D) Brian will be personally liable for the tort judgment if he is found liable for commission of the alleged tort.

Brian's status as a limited partner in the partnership will not absolve him from liability for his own tortious acts.

BarCzar

INTESTATE ESTATE DISTRIBUTION JULY 2018

Part A

Ann and Bob's separate and marital estates will be distributed as follows:

House

The house will pass to Bob's son, Chris. The house in Houston was acquired before Bob's marriage to Ann, and is classified as Bob's separate property. Because Bob died without a will, his separate property will be distributed pursuant to the Texas Estates Code, which follows a per capita with representation intestacy scheme. Under the Texas intestacy scheme, when a party dies without a will and without a surviving spouse, his estate will pass first to his surviving lineal descendants. Here, Chris is Bob's sole heir.

The house was purchased in 1998, one year before the couple's 1999 marriage. All assets acquired before marriage are the separate property of the acquiring spouse. Bob also spent $80,000 of separate property to renovate the house prior to marriage. Separate funds spent to enhance or maintain a separate property asset does not give rise to a reimbursement claim. However, community funds spent to enhance or maintain a separate property asset may give rise to a reimbursement claim. Here, the $300,000 in mortgage payments paid from earnings during the marriage are community property, as income earned during marriage by either spouse is community property. However, if such a claim is asserted, the court will have to deny it because the couple resided in the home during marriage and benefitted from the use of the asset and a court may not reimburse the community estate for the living expenses of the couple or either spouse.

Tex. Fam. Code §3.409 **NONREIMBURSABLE CLAIMS**

The court may not recognize a marital estate's claim for reimbursement for:
(1) the payment of child support, alimony, or spousal maintenance;
(2) the living expenses of a spouse or child of a spouse;
(3) contributions of property of a nominal value;
(4) the payment of a liability of a nominal amount; or
(5) a student loan owed by a spouse.

Checking account

Chris and Donna will each take $10,000 from the checking account. Jointly held assets with express rights of survivorship are non-probate assets that do not pass through the probate estate. The checking account worth $20,000 is a non-probate asset because it contained a survivorship provision. The Estates Code provides that a party must survive a decedent by at least 120 hours to have legally survived the decedent for probate purposes.

Estates Code §121.052 **REQUIRED PERIOD OF SURVIVAL**

A person who does not survive a decedent by **120 hours** is considered to have predeceased the decedent for purposes of the homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. . . .

Here, because neither Ann nor Bob survived the other by 120 hours, we treat their deaths as simultaneous. As such, Ann's ½ interest in the joint account will pass to the beneficiary of her estate; and Bob's ½ interest in the joint account will pass to the beneficiary of his estate.

Life Insurance Policy

Ann's niece, Donna, is entitled to collect the proceeds of Ann's $200,000 life insurance policy. Life insurance policies are non-probate assets. They do not pass through the probate estate but in accordance with the contractual terms of the policy. Under the Texas Insurance Code, a named beneficiary who survives the decedent by 120 hours or more is, generally, entitled to receive the policy proceeds. Here the named beneficiary, Bob, died two days after Ann, thus he did not survive her by the requisite 120 hours, and is ineligible to take. Because no alternate beneficiary is named in the policy, the proceeds will be paid into Ann's estate. Since Ann died without a will, her sole heir, Donna, will inherit the policy proceeds.

Doll Collection

Donna will inherit the $10,000 doll collection. Property acquired by inheritance during marriage is separate property. Here Ann, inherited the property in 2003, while she was married to Bob. Because the doll collection is Ann's separate property and because Ann's husband did not survive her the doll collection will pass via intestacy to Ann's closest lineal relative – her niece Donna.

Part B

Chris has two options if he does not want to claim his inheritance from his deceased father's estate. He may disclaim the property or assign his inheritance to another party. The Texas Property Code provides that an heir or beneficiary may disclaim part or all of an interest in an estate.

Property Code § 240.009 **[DISCLAIMER]** To be effective, a disclaimer must: (1) be in writing; (2) declare the disclaimer; (3) describe the interest or power disclaimed; (4) be signed by the person making the disclaimer; and (5) be delivered or filed . . . .(c) A **disclaimer is irrevocable**.

Property Code § 240.051 **DISCLAIMER OF INTEREST IN PROPERTY** If an interest in property passes because of the death of a decedent: (1) a disclaimer of the interest: takes effect as of the time of the decedent's death; and **relates back** for all purposes to the time of the decedent's death; and (2) the disclaimed interest is **not subject to the claims of any creditor** of the disclaimant.

The disclaimer must be in writing, signed, notarized, and delivered to estate administrator and the probate court in the county where the administration is pending within nine months of the date the interest becomes possessory. Once properly made, a disclaimer is irrevocable and dates back. If Chris properly disclaims his interest in Bob's estate, he will be treated as having predeceased, and his son Edward will take his father's share.

The other option that Chris has is to assign his interest in Bob's estate to a third party.

> Estates Code §122.201 **ASSIGNMENT** A person who is entitled to receive property or an interest in property from a decedent under a will, by inheritance, or as a beneficiary under a life insurance contract, may assign the property or interest in property to any person.

Assignment can be more effective than disclaimer in that it will allow Chris to designate someone other than his son Edward to claim his interest and at the same time avoid any tax consequences.

WILLS & ESTATE ADMINISTRATION JULY 2018

(A) Mary

Mary will not take under Luke's will and has no claim to his estate. The rule in Texas is that **divorce** cuts off an ex-spouse's claim to a decedent's estate, including claims under will and as designated life insurance policy beneficiary. An ex-spouse and any relative of the ex-spouse who is not also a relative of the decedent may not serve as estate administrator. Here, Mary and Luke divorced after the execution of his will and prior to Luke's death. Because Luke did not expressly state that his intent was for Mary to take whether she was married to him at the time of his death or not, and he did not subsequently amend his will, Mary takes nothing from his estate.

(B) Peter

Although Peter is a named beneficiary in his father's will, he will likely take nothing from his father's estate. Unlike a majority of jurisdictions, Texas has **does not have** a codified a "slayer statute" in the Estates Code. Such a statute would prevent Peter, who is convicted for Luke's murder, from taking under Luke's will.

Estates Code §201.058 **CONVICTED PERSONS**

(a) No conviction shall work corruption of blood or forfeiture of estate except as provided by Subsection (b).
(b) **If a beneficiary of a life insurance policy** or contract is convicted and sentenced as a principal or accomplice in willfully bringing about the death of the insured, the proceeds of the insurance policy or contract shall be paid in the manner provided by the **Insurance Code**.

NB: Texas does not have a slayer statute for inheritance (our statute covers only life insurance policy proceeds). A party with standing may seek the imposition of a constructive trust to prevent the murdering heir from inheriting. Legal title does pass to the murderer but equity treats the murderer as a constructive trustee of the title because of the unconscionable mode of its acquisition and then compels the murderer to convey it to the heirs of the deceased, exclusive of the murderer.

Peter's brother Tom has an interest in Luke's estate, as such he has standing to petition the court in equity seeking the imposition of a constructive trust. A constructive trust is an equitable remedy that will prevent the unjust enrichment that would occur if Peter were allowed to benefit from his own wrong doing. If the court imposes a constructive trust, Peter's interest will be held constructively in trust for Tom.

(C) Tom

Tom has a life estate in the ranch and will take an outright 1/3 of the residue of Luke's estate which will include the stock portfolio. Because Mary is not married to Luke at the time of his death she is treated as having predeceased Luke, and Tom's future interest created by will becomes possessory at the time of Luke's death. Tom is the sole member of the class of Luke's children eligible to take.

(D) Beth will take 1/3 of the residue of Luke's estate that includes the stock portfolio and she will take a 1/3 share of the ranch upon Tom's death. Even though Tom will be the constructive trust beneficiary of her father's interest, upon his death his interest passes outright to Beth as his heir. Beth is an heir of Peter, and upon expiration of the life estate, she will take a 1/3 share in the ranch in fee simple.

(E) Steve will take 1/3 of the stock portfolio and residue of Luke's estate and he will take a 1/3 share of the ranch in fee simple. Texas has an antilapse statute that prevents lapse and preserves will gifts intended for beneficiaries who are lineal descendants of the testator's parents. Steve's mother Rachel is the testator's daughter. She predeceased her father, but left one lineal descendant – Steve. As Rachel's son, and Luke's gradson, Steve is also a lineal descendant of his testator-grandparent. The gift of life estate devised to Rachel may be claimed by her son in accordance with the antilapse statute. Steve's claim to his mother's life estate and his own future interest in the property outright will merge leaving Steve with a fee simple absolute in 1/3 of the ranch. Applying the same antilapse statute, Steve will claim the 1/3 of the residue gifted to his predeceased mother Rachel.

(F) Kelly

Kelly has a valid interest in the remainder of the of the ranch and upon Tom's death her interest will vest. Beth's claim that Kelly has no interest in Luke's estate is incorrect. Under the Esates Code, an adopted child has the same inheritance rights from and through her adoptive parents as a biological child. The fact that Kelly was adopted as an adult does not limit or reduce her inheritance rights through Tom's bloodline. Kelly's adoption as an adult, however, will preclude any inheritance from her biologial parents.

CONSUMER LAW JULY 2018

(A) Under the DTPA, Carl has several claims he can assert against Dan.

In order the prevail under the DTPA, the plaintiff must establish that he is a consumer, that the defendant engaged in prohibited conduct, and that prohibited conduct was the producing cause the plaintiff's damages.

Carl is a consumer under the DTPA. A consumer is one who seeks or acquires goods or services by purchase or lease. Here, Carl acquired Dan's CPA Services by purchase when he made on online payment of $5000. Carl can bring claims based on the laundry list for misrepresentation of quality and characteristics, and failure to disclose.

In order to establish a violation of the laundry list, a consumer must show the defendant relied on the prohibited conduct to his detriment. For misrepresentations Carl need only show that a representation was made and that it was false. For failures to disclose, the consumer must show that the defendant failed to disclose a material fact that was known before the transaction, and that if the consumer had known he would not have entered into the transaction. Here, Dan represented that he was a "very successful CPA" with "over 30 years" of experience, had "tons of clients," employed an "extensive staff," and had "an updated computer system capable of handling any online filing." Impressed by these representations, Carl decided to hire Dan to file his taxes and made an online payment of $5,000. After the filing deadline when Carl was contacted by the IRS, it was revealed that Dan had no staff, a single laptop computer, was not a CPA, had very few clients, and an overall bad reputation. Because Dan made several false representations about the quality and characteristics of the services he provided, and because Carl relied on these statements to his (Carl's) detriment, Carl will have a viable misrepresentation claims against Dan. For the very same reasons, had Dan disclosed the truths about his business and qualification, it is likely Carl would have hired someone else to do his taxes. Thus Carl will have a viable failure to disclose claim against Dan too.

(B) Dan may assert the lack of a 60-day notice/settlement offer as a defense to Carl's DTPA claims.

Under the DTPA, a potential plaintiff looking to sue under the DTPA is required to give the potential defendant 60 days' notice of the plaintiff intent to file a claim. The notice must give the defendant reasonable details of the specific complaint, amount of damages sought, and any other expenses claimed. This is required to promote the settlement of disputes outside of the court system.

Here, Carl hired an attorney who immediately filed suit against Dan, without sending the proper notice requirement. Although this is a valid option for Dan, the remedy is only to abate Carl's claim until the proper notice is given; it does not create a substantive defense against the claims themselves.

(C) Carl has several remedies and damages available under the DTPA.

A consumer who prevails under the DTPA is entitled to economic damages, additional damages, reasonable and necessary attorney's fees and court costs. Here, Carl would be entitled to economic damages, that is, pecuniary expenses incurred due to Dan's illegal conduct. Carl will be able to recover the $5,000 that he spent to retain Dan's services, and the additional penalties and interest charged by the IRS due to Dan's misrepresentations. Also, because there is evidence that Dan acted knowingly, Carl can recover additional damages, up to three times the amount of his economic damages, plus mental anguish damages. Carl would recover mental anguish damages, because he had a substantial disruption in his daily routine. Carl suffered an anxiety attack that required medical treatment after he found out about Dan. Carl will also recover the reasonable and necessary attorney fees and associated court costs required to successfully pursue his case.

COMMUNITY PROPERTY July 2018

Part A

Wife may not set aside the premarital agreement because she signed it voluntarily and the agreement does not appear to be unconscionable on its face.

A **premarital agreement** is an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage. A premarital agreement must be in writing and signed by both parties. A premarital agreement is unenforceable when one party did not enter into the agreement voluntarily.

Here, the agreement was prepared by Husband's attorney and Wife signed the agreement without consulting an attorney. The issue of voluntariness arises when one party to a marriage is represented by counsel and the other party does not have the benefit of legal counsel before entering into the agreement. A stronger case for involuntariness would arise if Wife were rushed into signing the agreement on the eve of the wedding or if Wife requested time to consult with an attorney and was not permitted to do so.

A premarital agreement is unenforceable when the agreement is unconscionable. A premarital agreement is unconscionable if the objecting party 1) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; 2) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and 3) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party. Whether the agreement was entered into voluntarily is a question of law for the court to determine. A question of voluntariness may not be submitted to a jury in Texas.

Tex. Fam. Code §4.006 ENFORCEMENT. (a) A premarital agreement is not enforceable if the party against whom enforcement is requested proves that:

(1) the party did not sign the agreement voluntarily; or

(2) the agreement was unconscionable when it was signed and, before signing the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Here, Husband failed to disclose that he owned a checking account with $20,000. Wife did not voluntarily waive disclosure of any or all of Husband's assets. That omission can be grounds to set aside the premarital agreement so long as Wife should not reasonable have known about the account or the nature of Husbands assets and debts. The estates of the parties is considerable in size, and the non-disclosure of a comparatively small asset may not be enough to render the agreement unconscionable.

Part B

Provision 1 of the premarital agreement is enforceable and Husband will take 60% of the community estate upon dissolution of marriage. Normally, upon dissolution of marriage community property will be divided in a manner that the court deems just and right, but the Family Code allows parties to contractually agree as to the manner that property will divided upon dissolution.

> **Tex. Fam. Code §4.003 (a)(3)**
> The parties to a premarital agreement may contract with respect to the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

Provision 2 of the premarital agreement is invalid and unenforceable. Parties may not enter a marital agreement that adversely impacts a child's right to support.

> **Tex. Fam. Code §4.003 (b)**
> The right of a child to support may not be adversely affected by a premarital agreement.

The provision that neither party will pay or receive child support violates the public policy of Texas and is expressly prohibited by the Texas Family Code.

Provision 3 of the premarital agreement is enforceable. Under the Family Code, parties may agree by **partition agreement**, to convert separate property to community property. Such an agreement may be entered into before marriage and need not be ratified after marriage. However, any agreement to convert community property to separate property will only be effective if entered into during or after marriage. Therefore, the agreement to convert Husband's separate property home to community property upon marriage is valid and enforceable.

Provision 4 requiring Wife to write a will and convey her separate property inheritance to Husband is unenforceable. Under the Family Code, a party cannot make an enforceable agreement to dispose of their separate property upon death, unless the premarital agreement also meets with Wills Act formalities.

> **Tex. Fam. Code §4.003 (a) (5)**
> The parties to a premarital agreement may contract with respect to the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

Here, even though the premarital agreement was signed by both parties, it has not been witnessed by two disinterested parties. As such, Wife may keep the $250,000 she inherited from her grandmother and it will not be subject to the terms of the premarital agreement or the court's just and right division powers.

COMMERCIAL PAPER JULY 2018

(A) Yes, Retailer is liable to Supplier on the dishonored Check.

Under the Texas Business and Commerce Code (TBCC), a drawer is liable on an instrument that is presented and dishonored once he has been notified of the dishonor. Also, an agent (with authority) that issues a check on behalf of the principal binds the principal in liability to the payee.

Here, Employee worked for Retailer for over a decade and was in charge of managing all facets of the business. Employee had actual authority to sign checks on behalf of Retailer. On September 1, Employee signed a company check for $4,000 to pay for dresses from Supplier. The check was drawn on Retailer's bank account at Alpha Bank. Alpha refused to pay the check due to insufficient funds. Because Employee had authority to sign the check, Retailer is liable on the instrument to the payee. Assuming notice of the dishonor is communicated the Retailer, it is liable to Supplier on the underlying $4,000 debt for the dresses.

(B) No, Employee is not liable to Supplier.

Under the TBCC, an authorized agent who signs a check on behalf on the principal, is not personally liable on the check, so long as the principal's name and account information is identified on the check.

Tex. Bus. & Comm. Code §3.402 (c)

If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

Here, Employee signed the check for $4,000 solely in her name without disclosing her status as an agent for the principal. However, because the check was drawn on Retailer's bank account and identified Retailer on the instrument, Employee is not personally liable on the instrument, despite the drawee's dishonor.

(C) No, Employee is not liable to Tent Sales on Note 1.

Under the TBCC, an agent who issues an instrument on behalf on a principal, signs in a representative capacity, but fails to identify the principal, is only liable to a non-HDC if the original parties (principal and payee) intended for the agent to be personally liable.

Here, Retailer instructed Employee to purchase a tent from Tent Sales. Tent Sales knew Employee and of her existing agency relationship with Retailer. Tent sales agreed to be paid the purchase price, $15,000, with two notes. Note 1, $10,000, was signed "Kelly Smith, Agent," but did not identify the principal. Since Tent Sales is not an HDC, Employee would only be liable if it is clear

Retailer and Tent Sales intended Employee to be personally liable. Tent Sales knew Employee was there in an agency capacity, on Retailer behalf because Tent Sales had done business with Retailer via Employee previously. There is no evidence that the original parties intended Employee to be personally liable. Thus, Employee is not liable to Tent Sales on Note 1.

(D) Yes, Employee is liable to Beta Bank on Note 2.

Under the TBCC, an agent who issues an instrument on behalf on a principal, signs in a representative capacity, but fails to identify the principal, is liable to a HDC.

Here, Retailer instructed Employee to purchase a tent from Tent Sales. The purchase price, $15,000, was made with two notes. Note 2, for $15,000 was signed “Kelly Smith, Agent,” but did not identify the principal. Tent Sales sold Note 2 to Beta Bank. Beta Bank will qualify as a HDC, because they purchased and took possession of the note pursuant to valid a negotiation. Also, there is no facts to indicate Beta Bank acted in bad faith or was otherwise aware of an existing defense, defect, or claim on the note. Since Beta Bank is a HDC, and Employee failed to identify Retailer on the note, Employee is liable to Beta Bank on Note 2.

SECURED TRANSACTIONS JULY 2018

(A) No, Bank cannot recover possession of New TV from Amy, because Amy took it free of Bank's security interest.

Under the Texas Business and Commerce Code, after default, a secured creditor may take possession of the collateral without judicial process, if it proceeds without breach of the peace.

Here, Bank doesn't have the superior interest in the New TV and may not repossess it. The competing parties here are: Bank, Amy, and XYZ. Bank loaned ABC money to finance its operations. In return Bank took a security interest in all of ABC's inventory to secure its loan, which it properly perfected. Bank is a secured perfected creditor in all of ABC's inventory.

Later Amy bought a new TV from ABC, $800. She paid $200 up front and signed an installment agreement to pay $50/month for the remaining balance. ABC also retained a security interest in the new TV until the balance was paid off. Amy qualifies as a buyer in the ordinary course of business. Meaning she purchased the new TV (inventory) for value, in good faith, without knowledge that the purchase violated an existing security agreement. As a BIOCB, Amy takes the new TV free from Bank's existing perfected security interest.

ABC sold and delivered the installment agreement (chattel paper) to XYZ Credit, and notified Amy. XYZ is an unsecured creditor, and only entitled to repayment from Amy in accordance with the terms of the Installment Agreement. Although ABC has defaulted, Amy took the new TV free of Bank's security interest, so Bank cannot cover possession of it from Amy.

(B) XYZ has the rights to the installment payments from Amy on the New TV.

Under the TBCC, where a one buys chattel paper by 1) giving new value and 2) taking possession in the ordinary course of business, the purchaser has priority over a competing security interest in the chattel paper that is claimed as proceeds of inventory subject to a security interest.

Here, Bank loaned money to ABC and took a security interest in ABC's inventory. ABC sold a TV (a piece of its inventory) to Amy for $200 cash and a $600 installment agreement. ABC sold and delivered the installment agreement (chattel paper) to XYZ. Since XYZ took possession of the chattel paper and gave new value for it, XYZ has a superior interest over Bank who only has an interest in the chattel paper as a proceed of the new TV (inventory).

(C) No, Capitol cannot recover possession of Old TV from Joe.

Under the TBCC, after default, a secured creditor may take possession of the collateral, without judicial process, if it does so without breaching the peace. However, a buyer who purchases collateral who pay value and take delivery take free of any unperfected security interest, so long as they have no knowledge of the existing security interest.

Here, Capitol sold Amy Old TV and took a security interest in it. Amy was to make payment to Capital on it until Old TV was paid off. Capitol never perfected it interest. Later, Amy sold Old TV to Joe and did not tell him about the existing agreement with Capitol. Joe took possession the Old TV for value and had no knowledge of Capitol's security interest. Further, Capitol was an unperfected creditor at the time of Joe's purchase. Therefore, Joe took Old TV free from Capitol's security interest. Thus, Capitol cannot recover possession of Old TV from Joe.