

Oil & Gas Law

Class 18:

**Lessor Title Issues (3 of 6) –
Terminable Interests &
Executive Rights**

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3/19

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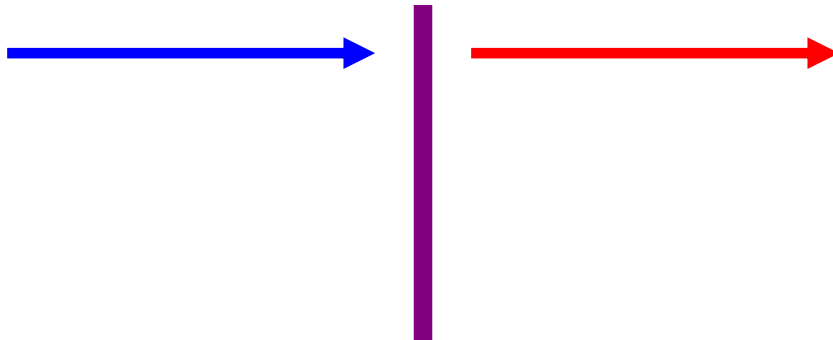
Last Class ...

■ Shared Ownership

□ Concurrent



□ Successive



Terminable Interests – Intro (1)

- Found in states w/ long history (p. 464)
- Any interest (mineral; royalty; mineral type etc.) for any time → “slice & dice principle”
- **Definition?**
- ---

 - Int. in O&G that can end (i.e., can be terminated)
 - Terminates on specified date when (a) there is no production by that date, or (b) production ends on or after that date
 - Like OGL – fee simple determinable interest (G’ee), and a possibility of reverter (G’or)

Terminable Interests – Intro (2)

- Grant of land “... for X years, and for so long thereafter as oil and gas are ...
 - ... produced in paying quantities.”
 - ... produced in commercially paying quantities.”
 - ***Where have we seen this lang. before?***
- ***Why create a terminable interest at all?***

Archer County v. Webb – Facts

- 1929: “royalty deed” of half the royalty
 - ❑ A deed conveying **NOT** a right to possess / use / develop property, but a conveyance of the right to receive a royalty
 - ❑ 15-year term, and thereafter as long as oil or gas are produced in commercially paying quantities
- 1940: OGL w/ 10-year P.T.
 - ❑ Well completed in 1943; never produced (except for 3 ½ month period in late 1948 / early 1949)
 - ❑ Shut-in royalties tendered, but refused
- ***Assuming a standard 1/8 royalty in an OGL, how much royalty was conveyed in 1929?***

Archer County v. Webb

- ***Were the terms of the Min. Deed met?***
- Ct: actual production, in paying quantity, not merely capable of production (but that IS the TX approach to OGLs)
- ***Did pymt of shut-in royalty constitute “production” or did OGL otherwise modify the Royalty Deed?***
- Ct: shut-in royalty applies to OGL only, not to Royalty Deed
- ***Would the result / analysis be different if this case arose in OK? (see p. 469-70 N2)***

Archer County v. Webb

- ***What are the 2 overarching issues here?***
 - ***Do terms in a pre-existing royalty deed mean the same as in subsequent OGL***
 - ***where OGL construes terms of other doc?***
 - ***Can OGL modify a terminable int. doc?***
 - whether the intent of the parties to the Lease and the other instrument are really the same
 - **see pp. 469 – 470, N2 & 3**
 - ***Any other OGL clauses apply?***
 - ***If you were drafting a Royalty Deed, how would you pre-empt this kind of claim?***
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Executive Right

■ “Executive Right”

- Defn. on p. 472; includes the right to lease
 - Least defined
- Co-Tenants: each has the Exec. Rt. (right to lease) **unless** it has been severed and retained by 1 co-tenant
- This right is considered a separate land interest because it is frequently severed from other rights associated with land / mineral ownership

■ ***What 4 other rights are included in the Mineral Interest?***

Executive Right

- **EX:** owner of the mineral interest conveys $\frac{1}{2}$ of the minerals, but retains the other $\frac{1}{2}$ **PLUS** the right to lease
 - the Grantee has received a **nonparticipating mineral fee interest**
 - ... which would include (1) the right to join in the OGL signed by the Grantor, and receive bonuses, delay rentals and royalties, or (2) the right to NOT join in the OGL and to be a non-consenting co-tenant, and receive accounting and net profits after costs are deducted
 - **NOTE:** this is different from the nonparticipating royalty interest (NPRI)!

Executive Right

- It is the retention of the right to lease that generates most of the problems
- The retention of the right to lease puts the G'ee (whether they hold a mineral interest or a royalty interest) in the hands of the G'or
- Therefore, 2 questions arise ...
 - First, what obligation does the Grantor owe to the Grantee to lease at all?
 - Second, what obligation does the Grantor owe to the Grantee to get a “good” lease?

Bass – Facts / Issue

- Dispute between fee mineral owner and the 1/8 NPRI owner ...
- ... re whether mineral owner should lease / develop 22,000 ac.
- ***What are the NPRI owner's theories?***
- ***Court's ruling?***

Executive Right – Other Points

- Self-dealing
 - Always viewed w/ skepticism
 - Requires a higher level of proof to get acceptance
 - pp. 480-1 N4
- Different level of obligation / duty owed between
 - 1. a mineral owner and a royalty owner
 - -- the royalty percentage is fixed
 - -- t/f, there is “less” to manage
 - -- t/f, there is less of an obligation
 - 2. co-tenants in the mineral estate
 - -- the non-participating mineral owner is depending on the executive for more (i.e., the royalty)
 - -- t/f, the scope of the duty is broader and the level of reliance is higher

Executive Right – Notes / Questions

- Note 6: utmost fair dealing” standard adopted by most jurisdictions
- Note 7: assignability / duration / divisibility
- Other issues to think about:
 - -- where the Executive also owns the surface
 - -- whether the Executive needs the non-participating royalty owner’s consent to pool
 - -- whether the Executive can ever lease to himself in good faith

Problem – p. 473

- Developer owns 100% of surface, 20% of minerals and the executive right
- Developer decides to subdivide the surface into housing tracts
 - Brochure: no drilling will ever take place
- Other mineral owner wants to drill
- ***Does other mineral owner have legal basis for a complaint?***
 - **Lesley v. Veterans Land Bd., 352 S.W.3d 479**

Problem #2

- Maria Rodriguez
 - Owns 50 acres and exec. rt., subject to prior grant of $\frac{1}{2}$ of the royalty
 - Needs money currently for kids' college and orthodonture
 - 2 alternate leases:
 - Black Dirt: \$300 / acre bonus + $\frac{1}{8}$ royalty
 - Uvalde: \$ 50 / acre bonus + $\frac{3}{16}$ royalty
- ***Taking into account the Bass case, what advice do you give her?***

Problem #2

- **First – analyze the business deals**
 - ***What are the relative benefits and risks of each offer?***
- **Second, there are 3 stds. against which Maria's decision will be judged**
 - **fiduciary duty**
 - **duty of utmost fair dealing:**
 - **the same degree of diligence and discretion that an average landowner would use to obtain for himself the benefits derived from either developing / leasing from a disinterested 3rd party**
 - **good faith / reasonable judgment**
- ***Which one applies, and why?***

NEXT CLASS ...

- **TH 3/27: CL 19**
 - **L'or Title Issues (4 of 6) – Conveyances & Reservations 1 (of 2)**
 - **Ch. 3, Sec. F**
 - **pp. 511 – 546**