

OIL AND GAS SYLLABUS

FALL 2014 [file date 8-2-2014]

MW 10:30-11:50

Professor Jacqueline L. Weaver

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Office Hours: e-mail me for a set time, or just stop by the office.

Drop-ins welcome.

I expect to be in the office by 9 AM on MW, staying until 5 pm. I am in class from 10:30 to noon and from 2:30 to 4 pm on Mondays and Wednesdays.

Casebook: The casebook for this course is Weaver, *Texas Oil and Gas Law: Cases and Materials (Fall 2014)*. This casebook is available from Amanda Parker in my faculty office suite, at no cost. (You have paid a copying fee as part of your registration fees). You will receive **only one** free copy. Amanda Parker will keep a list of students who have received a copy.

This 2014 casebook has been updated with the help of Professor Bret Wells who has added a short 2014 supplement, appearing at the back of the casebook. You can add the supplement's inserts into the body of the casebook text, as indicated at the top of each item included in the 2014 supplement.

Objectives: The objectives of this course are to learn the substantive law of Texas Oil and Gas in a comprehensive manner, to integrate the material by applying it in problem sets that test knowledge of the rules, and to learn drafting and practical skills useful, indeed necessary, in the practice of law. In the process, you will review topics in Property and Contract Law, and you will be able to approach the Bar Exam questions in Real Property/Oil and Gas with much confidence.

Class Participation: You are expected to read the assignments and to be prepared in class. We will cover most of the questions in the Notes and Comments sections of the casebook. You will have **Problem Sets** on certain topics which you must prepare in advance of class as best you can. I don't expect you to get all of the answers all the time, because that is why we have class discussion, but you should try them on your own so that you can better understand the class discussion. I will have panels of students assigned to small groups to discuss the problem sets. You are responsible for either working with your small group to jointly answer the Problem Set, or working through it on your own if you cannot arrange joint work. The Problem Set assigned to your small group must be turned into me. If you don't agree with an answer by others in your small group, speak up and submit your own! While a small group will be primarily responsible for responding to the Problem Set, I will also call on others in the class to assure that everyone is doing the reading.

Grade and Final Exam: Your grade in the course will consist of a Final Exam. The exam is closed book and is not multiple choice. Many of the questions are very similar to the problem sets that you do throughout the semester. Some are short and the answer will require no more than 2-5 minutes to write; others will be longer essays requiring 30 minutes or more.

You may submit to me a draft answer to the review problems in the casebook that I do not cover in class. I will grade your answer as if it were an exam question and give it back to you. This gives you several opportunities to test yourself during the course and receive feedback. This is also the purpose of the Problem Sets in general, although you are not required to hand them in, except for the one that you are assigned in a Small Group. The problem sets are designed to apply the blackletter law that you have learned to specific facts in situations commonly confronted by oil and gas attorneys.

Attendance: You must attend 80% of the classes under the rules of the ABA/AALS accreditation committee. For a 13 1/2-week class that meets twice a week, you may not miss more than 5 classes. Please see me if you have an emergency situation. It is a violation of the Honor Code to sign others in as attending.

Lateness: If you must enter the classroom late, please come in quietly. When class has ended, you may sign the attendance sheet when it is returned to me at the front of the room. ***Please sign and mark "late" next to your name.*** It is your responsibility to sign in. Lack of a signature constitutes an absence. My work study handles all the attendance sheet signing, so ask her how many you have missed if you are near the limit. Do NOT ask me.

Laptop Use: I will monitor ***in-class laptop*** use as follows: Your laptop may be used to take class notes or to read notes you have prepared on the assignment under discussion. It is a violation of class rules to use your laptop for web-surfing, answering e-mails, playing games or otherwise doing non-class related activities. If I find violations of this policy, I will disallow laptop use, either individually or for the entire class. I will ask you to self-report violations of this policy by other students in the class, although I will not ask you to name the students. Please do not penalize others' ability to use their laptop by violating this simple rule.

The reading assignments below are my best guess of what we can cover, based on this newly revised edition of the casebook and the new 13 1/2 week semester. If you stay about 20 pages ahead of where we ended, you will always be prepared during the first 5 weeks. We are able to go a bit faster after you become familiar with definitions and basic concepts.

Day 1. August 25 Monday

Preface 1-4 (intro material), and pp. 16-24. Petroleum Geology and conventional versus unconventional oil and gas. I will present a Powerpoint slide show in class on geology, reservoir engineering and maximizing production. The library has the CD on reserve to borrow if you like.

Ch 1, pp 1-2 to 1-8. Rule of Capture and Engineering Background.

Preface pp. 5-8 Oil and Gas Lease Basics. A sample Texas lease is at the end of your CB; a lease used by the state of Alabama in coastal waters also appears at the end to use as a comparison.

Optional: recent news clippings that follow in Preface at pp 8-16. After taking this course, you will not find yourself in the position of the Ely family in the first clipping, should you become a lessor. The International Petroleum Transactions course covers other types of

development contracts that are profit-sharing contracts, like the enterprising Tioga Landowners' Association in New York has bargained for in the second clipping. This is very rare in the U.S.

Day 2: Aug. 27

Ch 1 pp 1-9 to 1-31. Limits on the Rule of Capture. What are the limits? When does the rule of capture not apply?

CB 1-25 to 1-26 has Tex. Nat. Res. Code sections 85.045-.046 on the definition of prohibited forms of waste.

Note: If we don't finish the reading listed for a certain day or week, the remaining pages roll over into the next day/week. We don't just forget about them! You will always know where to begin the next class: where the last one ended. If you then read 20 pages ahead, you will always be prepared.

Monday Sept 1. No Class--Labor Day

Day 3: Sept 3

Ch 1, pp 1-31 to 42. Horizontal drilling and Limits on the Rule of Capture.

Start Production Control: Prorationing.

Ch 2, pp 2-1 to 2-30, with some omissions as noted below. Much of this material—up to the *Pickens* case-- will be handled in lecture format, covering the historical cases that permanently shaped the Texas regulatory and physical landscape by encouraging a huge amount of over-drilling (because of the per-well allowable formula used in the pre-March 8, 1961 prorationing formulas adopted by the Railroad Commission). Yes, the Rule of Capture encourages over-drilling, but so did state regulation in Texas for decades, based on the politics of favoring small operators and small tract owners. You must understand this history to understand Rule 37--the well permitting rules—and to understand MIPA, the Mineral Interest Pooling Act.

Here is how this material will be treated:

- Read *Ohio Oil v. Indiana*, pp 2-2 to 2-5. This early US Supreme Court case gives state conservation commissions great deference in regulating oil fields.
- Omit *Pattie* on pp 2-6 to 2-8.
- Read *Champlin* pp 2-9 to 2-11. U.S. Supreme Court deference again. If storing oil in surface pits causes fires and pollution, why didn't the state conservation agency pass a simple statute prohibiting surface storage? Who would be hurt by such a statute? Does Texas allow market-demand prorationing to prevent waste, like Oklahoma in the *Champlin* case? Refer back to CB 1-25 to 1-26 Definition of Waste.
- Pages 2-12 to 2-23 on *RRC v. Rowan & Nichols* and *Atlantic Refining v. RRC* (usually called the "Normanna" case after the name of the gas field) will be covered by lecture, tracing the history of the East Texas field and its legacy. We will do an **in-class exercise** demonstrating how difficult it is to allocate production to individual landowners in a field where the production must be limited to prevent waste. Should we allocate by how many acres each landowner has above the reservoir? By how deep a well is—the deeper wells getting more allowable? By whether the landowner voted for a Democrat or a Republican in the last county election? (Don't laugh—Yes, this last question is facetious, but ... Texas had a very irrational prorationing system for years.)

- Read pp 2-15 to 2-18 describing the terrible waste in Texas oil and gas fields caused by the lack of cooperative development and the ideology of private property rights.
- Look at Statewide Rule 45 on Oil Allowables on p. 2-30. This is our current Texas prorationing rule for oil wells. Note how the production allowable of a well increases with the size of the proration unit (in acres) and with the depth of the well. Then look at pp 2-31 to 2-32 for how horizontal wells are assigned acreage and production allowables.
- **Pickens v. RRC at pp. 2-24 to 2-26. Draw a diagram of the reservoir at issue in Pickens on page 2-24. Be prepared to present it on the blackboard.** This is a 1965 case and the RRC is not using the old pre-1961, per-well formula that so favored small tracts. Still, Pickens is unhappy with the RRC formula, and if you draw the reservoir based on the description in the case, you can place his tract and immediately see why he is unhappy.
- After class (not as part of the class), look at the Chapter Review Question on page 2-29. Can you formulate the answer to it? What questions do you have about it that we can review in the next class?

Day 4 Drilling Permits: Sept. 8

Ch 2, pp 2-33 to 2-45. Rule 37 and its exceptions. Three early cases: *Gulfland*, *Nash* and *Shell* set up the framework for granting drilling permits on small tracts. Rule 37 appears at pp 2-42 to 2-45.

Ch 2, pp 2-49 to 2-57. *Ryan v. Pickens*. Start **PROBLEM SET ON RULE 37 for SMALL GROUP 1** on page 2-56. Use the graphic on p 2-57 to help. You should be able to match the cases you have read with the rules in this Graphic version of “Chutes and Ladders.”

Days 5 and 6: Drilling Permits

Finish the Problem Set on drilling permits, and do the Rule 37 case based on waste, *Exxon v. RRC* at 2-45 to 2-48.

CB 2-58 to 2-64. Spacing and Density Rules for Horizontal Wells.

Start compulsory pooling. Read CB 2-70 to 73, the *Carson* case on fair and reasonable offers to pool. I will briefly lecture on MIPA, and we will discuss this one case. Then, Day 7 will review MIPA in detail.

Day 7 MIPA

CB 2-65 to 2-74. **Pooling.** Read MIPA, the Texas Mineral Interest Pooling Act on pp. 2-65 to 2-69. Then do the **Problem Set (SMALL GROUP 2)** on page 2-70 which straightforwardly tests your understanding of the basic elements of MIPA, a statute which is written in plain English (for the most part).

The **Section Review Problem** on page 2-74 is a more advanced problem on MIPA. You may draft an answer as if this problem was an exam question worth 30 points (30 minutes of a closed book exam) and I will review it and give you a “grade.” We will discuss the question in class, so hand in your answer before class discussion, or use class discussion to grade yourself.

Day 8: Unitization

CB pp 2-75 to 2-85 on **Unitization**. These are 3 short cases about “holdouts” that refuse to join a voluntary unitization agreement. Do the courts in these 3 different states treat holdouts in a similar manner? Are holdouts disfavored? Do they win anything?

CB 2-86 to 2-93. Read *Manziel* case. Compare the outcome in *Manziel* to the 3 prior non-Texas cases. Does the hold-out plaintiff who has refused to unitize recover any damages or an injunction?

CB 2-98 to 2-99, the Texas approach to Unitization. **PROBLEM SET ON MANZIEL V. RRC (SMALL GROUP 3)** on page 2-98. *Be sure to cite to specific language in the case for your answers.*

CB 2-94 to 2-97 Tidewater v. Jacksons. Do the holdouts recover damages here? On what cause of action?

Day 9:

Ch 2 pp. 2-99 to 2-108. Unitization finished. The *Flour Bluff* case illustrates the huge discretion which the courts vest in the RRC to prevent waste. The excerpt on “*The Legacy*” of the Texas failure to enact compulsory unitization (and early compulsory pooling) is sad reading. [The last pages of chapter 2, pp 2-105 to 2-108 are the Texas voluntary unitization act for your optional reference.]

Start Chapter 3-- Surface vs Mineral estates. Accommodation doctrine.

CB 3-2 to 3-22. **SMALL GROUP 4 PROBLEM SET** in Note 4 on pp 3-21 to 3-22 re: use of freshwater in waterflooding under the Texas Water Code.

CB 3-22 to 3-24 on surface use and horizontal wells.

Day 10:

CB 3-24 to 3-27 on Suburban drilling under chapter 92 of the Tex. Nat. Res. Code. Is the mineral estate still dominant? Everyone should be able to answer the review questions in Notes 3 and 4 on pp 3-26 to 3-27.

Surface vs Mineral Who Owns Hard Minerals?

CB 3-28 to 3-45. **SMALL GROUP 5 PROBLEM SET** on pp 3-41 to 42. To the class: you should be able to answer the Review Problem on page 3-44 on your own.

CB 3-46 to 3-47—who owns shale gas in Pennsylvania: S or M?

Day 11 and half of Day 12: Start Ch 4 on Property Concepts:

CB 4-3 to 4-32. Trespass and slander of title. And trespass by fracking?

CB 4-32 to 4-34, questions on *Coastal v. Garza*. **SMALL GROUP 6**—Answer questions 1 thru 12. Note: *Coastal v Garza* appears in three different places in this CB. The trespass issue is here; good faith pooling and implied covenants appear later.

CB 4-34 to 4-43.

SMALL GROUP 7—you are responsible for Qu. 1 on page 4-38; Qu. 2 on page 4-42 and later when we get to Cotenancy, Questions 2 and 3 on page 4-51.

Days 12 (half) and 13: Ch. 4 Property Concepts

CB 4-44 to 4-51. Cotenancy. You need not do the math in Lizzie Allen accounting on p. 4-48, but it is a straightforward application of cotenancy accounting rules.
CB 4-52 to 4-54. If Humble Oil had a good lease from one cotenant, how can Humble Oil be a trespasser? Impossible!! But it happens. Why?
Ch. 4 pp 4-54 to 4-56. Does *Byrom* overrule the “weird trespass” in *Kishi*?
CB 4-57 to 4-62. Partition. We cover this quickly using the quiz in Note 1 on p. 4-62.
CB 4-62 to 4-67. Adverse Possession. We cover the cases using the **SMALL GROUP 8 PROBLEM SET** on 4-67 to 4-68.
CB 4-68 to 4-75. *Natural Gas v. Pool*—adverse possession in a surprising new context. Do a time line to determine when the adverse possession starts.
CB 4-76 to 4-77. Adverse Poss and Cotenants in *BP v. Marshall*.
CB 4-77 to 4-83. Life tenants and remaindermen.
CB 4-84 to 85. Prior surface leases and mortgages.
CB 4-85 to 4-92. Dormant mineral interests and receivers. I will cover by lecture.

Days 14 and 15: Start Chapter 5—the Oil and Gas Lease

CB 5-3 to 5-13. The habendum clause, introductory cases.
CB 5-13 to 5-18. PPQ. *Clifton v. Koontz*. The marginal well doctrine. **SMALL GROUP 9.**
Questions in Notes on pp. 5-16 to 5-17.
CB 5-18 to 5-28. TCOP
CB 5-29 to 5-33. Shut-in royalties. Know the key dates that apply to terminate the leases in these 2 cases.
[OMIT CB 5-33 to 5-34.]
CB 5-35 to 5-37 on *Rogers v. Osborn*. Savings clauses. The notes after *Rogers v. Osborn* are a good review of the habendum clause section.

Days 16 and 17: The Oil and Gas Lease cont'd

CB 5-38 to 5-41. Force majeure.
Start Delay Rentals:
CB 5-42 to 5-54. Delay Rentals.
CB 5-58 to 5-59. **SMALL GROUP 10 PROBLEM SET.**
CB 5-54 to 58. *Texas Co. v. Parks* and proportionate reduction clause.
CB 5-59 to 5-61. Commencing a well.
CB 5-62 to 5-72. **Pooling. PROBLEM SET SMALL GROUP 11** on p. 5-64 and also do Q. 6 on page 5-64.
CB 5-65 to 69. *Jones v. Killingsworth* and notes.
CB 5-69 to 5-80. Bad faith pooling; cross-conveyancing and joinder. **SMALL GROUP 12:**
Question in note 5 on horiz drilling on p. 5-73, and PROBLEM SET on 5-77.
CB 5-81 to 5-87. *Wagner & Brown v. Sheppard* (Tex. 2008) -- the lease expires, but the tract remains pooled. A very surprising result to most practitioners.

Days 18 and 19: Start Ch. 6 Implied Covenants.

CB 6-2 to 6-26. Implied covenant to develop. **SMALL GROUP 13 PROBLEM SET:** *Qs on pp. 6-8 and 6-13; Note 4 on p 6-20; Qu. 5 on p 6-25.*

The whole class: Be sure you can answer the question in the introductory paragraph to *Sauder* at pp 6-13 to 6-15, after reading the Texas cases on point. It is good review and a nice exam hypo. CB 6-26 to 6-38. Implied covenant to protect against drainage. And to be reasonably prudent.

SMALL GROUP 14 PROBLEM SET: *Qu. 9 and 10 in Notes on pp. 6-33 to 6-34.*

CB 6-39 to 47. *HECI v. Neel*. **THE WHOLE CLASS: SUBMIT THE ANSWER TO Q 2 ON P. 6-47 ON AN INDEX CARD OR PIECE OF PAPER AND HAND IT IN.**

CB pp. 6-47 to 6-49. *Coastal v. Garza* on implied covenants.

Days 20 and 21: Start Ch 7 Royalty clauses and Division Orders

CB 7-2 to 7-30. Introductory cases; *Vela* and *Middleton*: market value versus proceeds in the royalty clause. Notes 5 to 7 on pp. 7-24 to 7-27 are background reading. Note 8 on pp 7-27 to 7-29: The manipulation of prices on the commodity exchanges has been in the news again in 2013 as the trading departments of various banks and oil companies are being charged with violations of federal regulations governing trading of electricity and gas.

CB 7-29 to 7-30 Notes 9 to 11. Be sure to read these notes.

CB 7-31 to 7-34.

SMALL GROUP 15: Note 1 on page 7-33 and Note 4 on page 7-34. Apply the royalty clause on p 7-34 to the same price data as in the hypos on page 7-6: Should royalty be paid based on a \$1.00 price or \$1.20?

Days 22 and 23: Royalty clause (cont'd).

CB 7-35 to 7-42 –“at the well” language for deductions from royalties.

CB 7-43 to 7-53 Implied covenant to market cases.

CB 7-54 to 7-71. Division orders. There is a small Problem Set on page 7-58 in the text box on the 1985 Division Order Act, and a larger Problem Set on the 1991 Division Order Act at pp 7-67 to 7-69, Notes 1-4. Before tackling this last Problem Set, read the 1991 Div Order Act at 7-62 to 7-67, using the outline on pp. 7-61 to 7-62 to annotate the statute. **SMALL GROUP 16** has the D/O problem set on p. 7-58 and pp 7-67 to 7-68 Note 1 only. **SMALL GROUP 17** has Problem Set on page 7-68, notes 2, 3 and 4.

CB 7-70 to 7-73. Finish royalty chapter (take or pay); and Chapter Review of two drafting solutions proposed for lessors by an experienced practitioner.

Days 24 and 25. Start Ch 8 Executive Rights and NPRIs.

CB 8-2 to 8-13. Cover this material by focusing on the bolded provisions in the cases: Do these provisions create a royalty interest that must be shared with the NPRI? There are blackletter answers—yes or no. Use Note 4 on page 8-5 as your outline list. **SMALL GROUP 18**

PROBLEM SET: Note 4 on p. 8-5; Qs 1 and 2 on p 8-8; Q 2 on p. 8-13.

CB 8-14 to 8-26. Term interests and duty of good faith. **SMALL GROUP 19. Problem in Note 5 on pp. 8-17 to 8-18 (not the optional Problem) and Notes 2-3 on p. 8-21 to 8-22 on *Manges v. Guerra*.**

The Review Problem on page 8-22 is for the whole class. If you like, treat this as a 30-minute final exam Q and draft a model answer and turn in for a grade.

CB 8-27 to 8-33. NPRIs and Pooling. Everyone should be able to fill in the equation on p 8-32. [I will lecture on *DeBenevides* case and notes following on pp 8-33 to 8-35, if there is time. You need not read these pages.]

CB 8-36 to 8-39. Notes on the E/R as an interest in real property, including summary of *Lesley v. Veterans Land Board*.

Note: Thanksgiving holidays from November 26 to November 28 (NO CLASS ON WEDNESDAY NOVEMBER 26).

Day 26 (Monday November 24) and Day 27 (Monday December 1, which is the last day of class.

Ch. 9 Conveyancing

Note that this chapter is presented in a different manner than the usual CB chapters. Each section presents a paradigm set of conveyancing facts, and then gives you the blackletter rule governing that situation. Follow the CB assignment reading carefully, because you usually do not need to read the whole case that resulted in establishing the blackletter rule. The case is in the CB as a reference—especially for those of you who go into oil- and gas-related practices.

CB 9-1 to 9-5. “out of” versus “of.” Mother Hubbard. (Omit 9-5 to 9-13, the case itself).

CB 9-14 to 9-20. Mineral or royalty interest? *French v. Chevron* is required reading at pp 9-18 to 9-20. **Key Problem Set here on pp. 9-15 to 9-18, crucial to Bar Exam. SMALL GROUP 20.** I provided the answers to some of the examples.

CB 9-21 to 9-24. Land described vs land conveyed paradigm. You need not read the case—only the paradigm.

CB 9-25 to 9-30. *Duhig* doctrine. *Duhig* is a Bar exam favorite.

CB 9-31 to 9-37. Nonapportionment rule paradigm and community lease paradigm. Omit Note 5 on p. 9-33 on *Hoffman v. Magnolia*.

CB 9-38 to 9-39. The two-grant theory. The important thing is to know how to correctly fill out the deed form on page 9-38 and to avoid making the mistake that so many drafters have made using this form, as shown in the table on page 9-39. You need not read the *Concord* case at p. 9-40 that illustrates the two-grant theory and analysis.

CB 9-51 to 9-57. Rule against Perpetuities. This is a review of Property I. Just read *Hamman v. Bright* on p. 9-55 and the note on page 9-57 re: drafting solutions to avoid a RAP problem.

CB 9-58 to 9-61. Relinquishment Act applies to certain state lands. A slice of Texas history.

LAST DAY OF CLASS: MONDAY DECEMBER 1.

The final exam is on Friday December 12, 2013 from 10:00 am to 1:00 pm with an extra hour for non-native English speakers in the LLM program.