

**ADVANCED OIL AND GAS CONTRACTS**

**LAW 6226**

**FALL, 2017**

**SYLLABUS**

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## INTRODUCTION

There is no question that this isn't your usual syllabus. It is longer than most, and I did it this way because I want students to be aware of what they are facing in this course. Not just the readings and assignments, but the whole range of what I will be trying to teach this semester. Your first assignment is (1) read this syllabus, and let me know if you have any questions about it during the first class and (2) complete the form that I have posted, and return it to me.

### PART ONE - ORGANIZATION OF THE COURSE; ASSIGNMENTS

#### *Organization*

There is a logical organization to the way this course will work. We will begin by defining a "Prospect" which begins life as a gleam in the eye of a geologist or a landman, and then begins to take shape as the leasing process begins. After the leases are taken, then the small oil company begins looking for investors or industry partners, through the medium of farmouts or participation agreements. One of the industry partners is appointed the operator of the Prospect, and it is up to the Operator to select the drilling company and the various service companies. Wells are drilled, put on line and the production is sold. If it is a gas well, then we may see the construction of a pipeline system and a gas plant. Finally, there may be a sale of the entire Prospect or an interest in the Prospect to a third party. Along the way, there may be financing arrangements put in place. We'll probably not get to speak about financing arrangements much, but we will if we have time.

#### *Assignments*

The Assignments that are in place will follow the chronological order of the Prospects above, and we'll be dealing with a landowner, out in West Texas, and a fictional oil company, The Greater Amalgamated Bonanza Oil Company, GABOC. Most of the assignments will involve our fictional landowner and one or more fictional oil companies. The assignments and the portfolios are listed, and the specific of the assignments are included in each of the portfolios. Not all of the portfolios have an assignment included, but you are responsible for ensuring that you will meet the requirements for the course. We may, from time to time, have informal assignments as well – I may ask you to come to class with a question, or I may ask you consider something before class. While these don't "count" as an assignment, they will "count" as part of class participation.

### THE PORTFOLIOS AND ASSIGNMENTS

#### *List of Portfolios*

Syllabus, Outline of Course, Background, Notices .....	Week 1*
Seismic Agreements, Licenses, Prospect Generation .....	Week 2

Confidentiality Agreements .....	Week 3*
Oil and Gas Leases .....	Week 4*
Pooling and Fieldwide Units, Texas .....	Week 5
Spreading the Risk, Assignments and Farmouts .....	Week 6*
Joint Operating Agreements .....	Week 7*
Joint Operating Agreements, continued .....	Week 8
Drilling Contracts .....	Week 9
Master Service Agreements .....	Week 10
Gas Contracts .....	Week 11
Purchase and Sale Agreements .....	Week.12
Miscellaneous Oil Field Agreements .....	Week 13

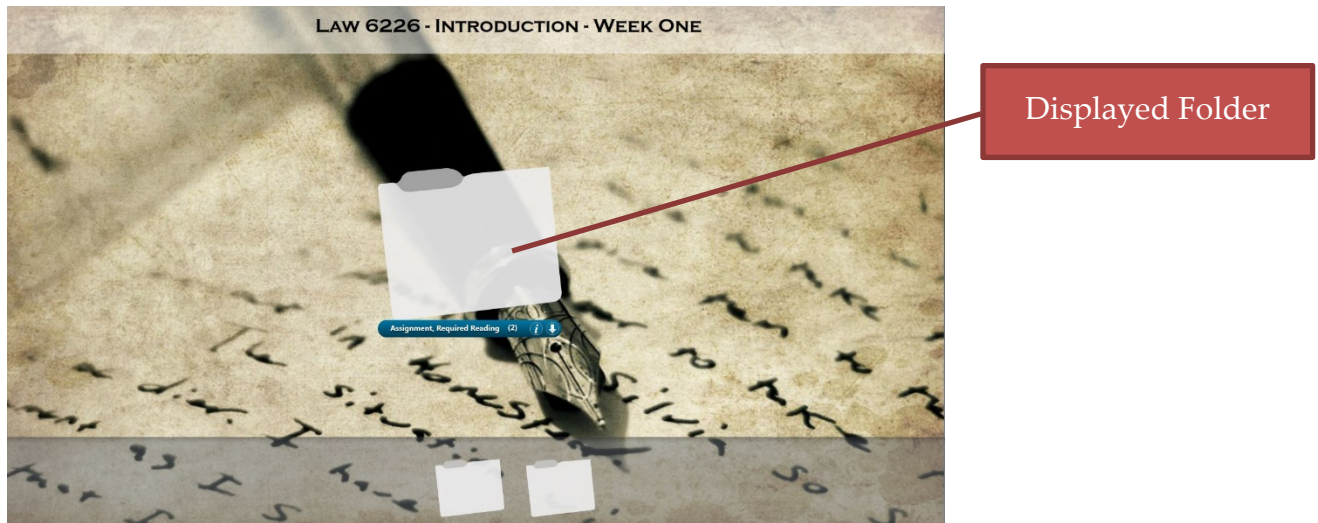
\*Assignments are due for each of these; other than the first assignment, on notices, the assignments will be due on the Monday following the day we discuss these in class.

The foregoing is a guess. That's the schedule I'd like to keep, and it has some play in it, so that if we get distracted and find ourselves pursuing a particular discussion longer than we might otherwise do, we'll have the time to adjust our schedule, or If there is an intervening holiday, we'll make some adjustments. The assignments are due on the Monday before class, after we've talked about the item. For example, and if we are on schedule, we will discuss the oil and gas lease in week 4; the first oil and gas lease assignment will be due on Monday of week 5. I hope that will give me the time to read through them, return them to you and discuss the items and concerns in the class of week 5, while it is still fresh in our collective minds; you may not get the document back on week 5, but I will have at least seen it. There isn't necessarily an assignment for each week, but it will be your responsibility to check.

### ***How to Use the Portfolios***

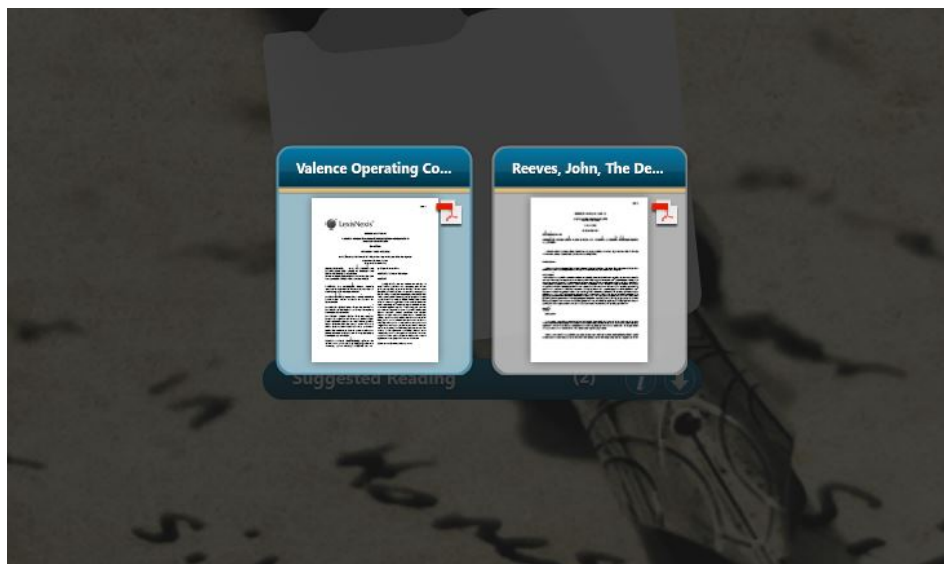
You'll be sent the portfolios for the course, once you have sent me your email address. I've tried the various other systems the law school has, and none of them work as well as sending these in directly to you. If you haven't used portfolios in Adobe before, they can be a little confusing, so here is a quick lesson, using the portfolio for Week One.

When you first open the portfolio, you will be faced with the following:

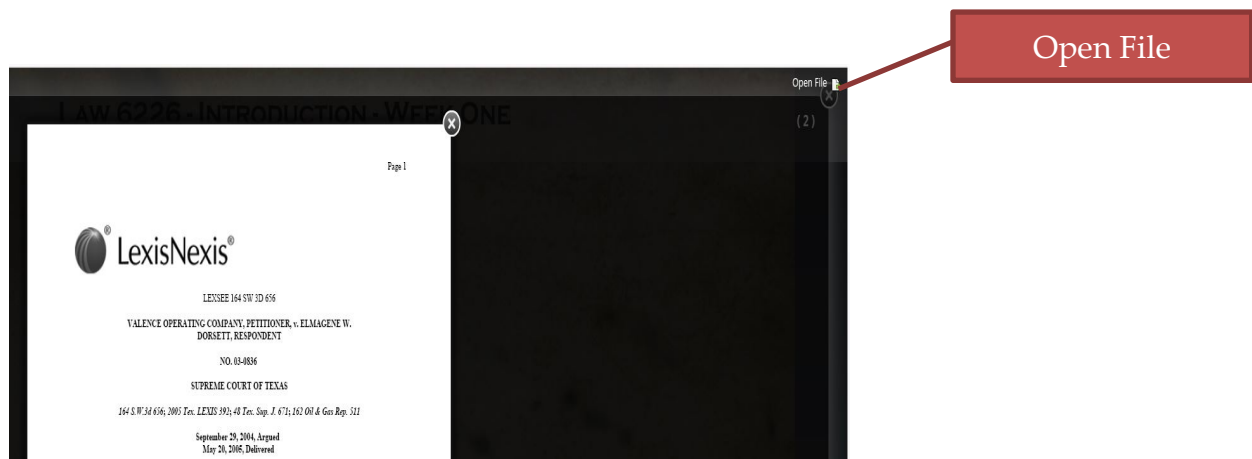


The centered section tells you that there are two folders within the Portfolio, with the displayed one labeled “Assignment, Required Reading.” The parentheses tells you that there are two folders in the Portfolio, with the small folders at the bottom being those folders. Clicking on the first one will bring up the Assignment and the Required Reading for the day, and clicking on the second one will bring up the folder marked “Suggested Reading.”

Double clicking on the “Suggested Reading” brings up the files within that section. It will look like this:



The displayed documents are the suggested readings for this module. Each one of the files is either a PDF or a word document, or, occasionally, may be a photo or other file. Clicking on those files will bring the file up for you to work with. You may read it on your computer, or open the file and save it to your computer.



Simply double click on the open file, and it will open in Adobe. You may save it as a separate file if you want to do so.

The assignment files are mandatory; the suggested readings are optional. There is more about these in the following sections.

## PART TWO – THE MECHANICS OF THE COURSE

The following is intended to give students a general idea of what students are expected to know when they sign up for the course, the way the course works, how assignments are to be submitted and some general information.

### *Prerequisites*

While a course in oil and gas is highly recommended, it is not a prerequisite to this course, but it might be a bit difficult if you haven't gone through at least some kind of preparation. A grounding in basic concepts of property law is an absolute prerequisite; if you still have your old property textbook, you may wish to dig it out from time to time if you have forgotten some of those terms. Some helpful works are described below; most of them are available at the Lexis site, the Westlaw site or in the library. At the very least, read the first assignment, which will give a small taste of the background. For those of you who are FLLMs, you may find some of our concepts a bit strange, and I would encourage you to do a bit of outside reading to get ready for the course. If you are interested in some additional, preparatory reading, see the section below entitled, Scope of the Course – Readings In Oil and Gas Law, or read the A.W. Walker article that is referred to there.

### *The Reading Material*

I take the position that students in this course are adults. The only material that a student has to read is the material that is required for an assignment. For example, if I ask the students to revise a lease form, then the students will need to at least read the form to determine how to modify the form. All of the other readings and materials are optional. Read them or not, it is up to each individual student. What has been delivered to you is a fairly comprehensive library of research and some forms for an upstream or exploration and production lawyer; if you have aspirations to work in this field, reading the material is a good idea. Not reading any of it will mean that a student hasn't gotten much out of this course. There is a lot of information in the readings; I do not expect anyone to read all of it.

### *The Work, Submissions and Responses*

#### *What you will need*

Before you can submit work in this course, you will need Microsoft Word and Adobe. I realize that there are other word processing programs out there, but I have had problems with them in the past. Please don't use any Word program earlier than 2003. So far as Adobe is concerned, you can get by with the free version of Adobe Reader, available on the Adobe website. Better yet is the full Adobe Acrobat program, and the best of all is the Adobe Acrobat Professional Program. I don't expect you to purchase any Adobe products, but you will need them in order to download and open the portfolios. Make sure you have a reasonably recent version of Reader or Acrobat;

Reader 8 or above, and Acrobat 8 or above. Version 8 doesn't work too well, but it is usable.

### *Track Changes; Redlining*

Part of what you will be required to do is to take existing work and make changes to the document. You will be required to show the changes, and the way that is done is through track changes or redlining. This is a critical skill that should be mastered, and it is explained below, in the section entitled Some Observations About Documents and Word Processing.

### *Assignments*

This course is designed to familiarize students with some of the documents which are in common use in the domestic, onshore oil and gas business. The course will stress solutions, which are to be worked out by the students, for problems which are presented to counsel representing upstream oil and gas companies. My expectations are that students will prepare and submit, more or less, on a weekly basis during the first part of the course, drafts of documents or portions of documents, addressing particular issues. The syllabus contains a list of the items which we hope to cover during the semester; we may modify that as time goes by, but it is a good place to start, so far as planning is concerned. Students are expected to have their documents prepared and submitted by e-mail at least two days in advance of class, which, on our schedule means Monday. You have until Midnight of the day it is due to turn it in. The date and time stamp shown on the submission E-mail is the time when received and will be counted as the time of submission.

Please Note: The failure of a student to have work delivered on time will result in the work being considered late, and will have a negative impact upon the student's grade. Furthermore, failure to turn work in on time will be treated as an absence. Failure to turn in an assignment at all will negatively impact the student's grade.

Each assignment is included in the Adobe portfolio for the part being studied that weekend. Please read the assignments carefully, and do your best to respond to the problem. For the most part, there is no "right" answer, so using your best guess is what will work. Lawyers don't always have a right or wrong for the work they do for clients, so part of the course consists of learning how to exercise your judgment. If you have any questions, please send me an e-mail or call me and I'll do my best to answer the questions you pose. Note: some assignment refer to other documents, some of which might be attachments or exhibits to the document the student is working with. Do not attach those documents, or worry about their contents, unless specifically directed to do so.



### *Collaboration*

If students want to collaborate on an assignment or on all assignments, that is fine with me, and I encourage it. I particularly suggest that if a person has not had a course in oil and gas, or alternatively, a course in real property, then that person should attempt to collaborate, preferably with a JD or LLM student that has had a course in oil and gas and real property. There are a couple of reasons for this. First, this will teach students the value of collaborative drafting and working together. Most of a student's career after law school, and certainly the early part that career, requires the ability to collaborate with colleagues; this process is difficult, at times, but the only way to learn it is to go through it. Secondly, a student will find that the student's colleagues have ideas that may differ from their own; those ideas may be better, worse or about the same, but they will be different; it is up to the student to make this process work. If two students are turning the same work, please just turn in one document, with the names of each student collaborating on it.

### *How to submit work; responses.*

If this course is to have some value, students will need to submit their work before class, and in sufficient time so that I'll have a chance to look it over. That means, for the most part, work will be due the Monday after a class. In other words, if the topic under discussion is an oil and gas lease, then the Monday afterwards, the assignment on that topic is due. That allows the student to have the topic fresh in mind, and we can discuss it the next time we meet. I expect that the work will be submitted by a student, or if students are working in teams, by one of the team members, in Word format. If I have time, comments will be made on the work, and sent back to each student, generally in Adobe format. The reason that it will be sent back in Adobe format is that I have found that many students are not familiar with the reviewing capabilities of Word, and it causes some problems for them. Submit the work by e-mail to me, and it will be returned by e-mail. Please don't submit the work in the body of an e-mail, since that tends to make responses, particularly to teams, a bit difficult, and also means that the way I save documents isn't useful for me.

On each assignment, do the following:

Make sure that the assignment is saved as Name, assignment.doc. For example, Jones, notice provisions.doc, works fine. John Henry Jones, Assignment One.docx works as well. Please make sure your name appears on the first page of the assignment.

### ***Some Observations About Documents and Word Processing***

I assume that each student is somewhat familiar with Microsoft Word or some other widely known word processing program. I would prefer that all work be done in Word, but can work with other formats, so long as they can be readily converted to Word. Submit work as an attachment to the e-mail, and not as an e-mail. Comments, if any,

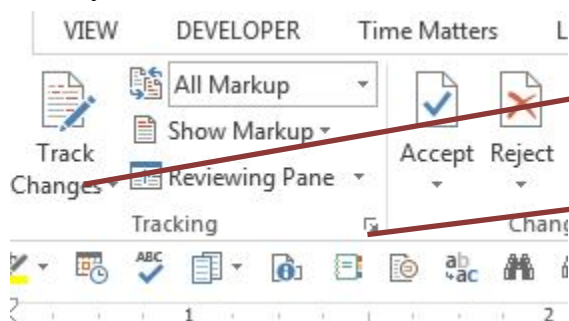
will be returned in the form of a mark-up of the Word document, generally as an Adobe PDF document, and not as a hard copy.

Students should download the documents, if they are working on a form. Before working on a form, if you are using Word 2013, do the following:

On the menu bar, select Review:

Review

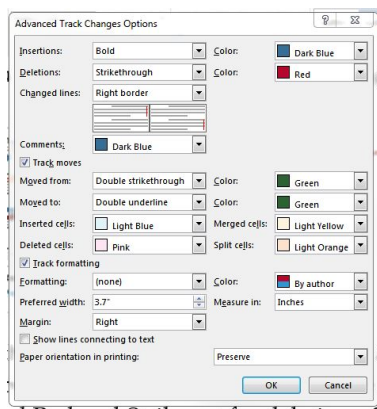
Once you have done that, select Track Changes:



Track Changes

Advanced Options

You can then customize the Track Changes by selecting the down arrow, which will take you to the Advanced Settings, you can pick the color you would like to use. I'd advise Bold and Blue for inserts and Red and Strikeout for deletions.



Most version of Word have something like this for you to use, so there may be a slight variation, depending on the Word version you have. If you can't make it work, see me after class and we'll figure it out.

### *Making It Pretty*

While the substance of your work is the most important, clients will judge you as well on your presentation. This means that the document should be properly formatted, spell checked and edited. Proof-read everything before you send it to me, and do the

best you can to ensure that the document is the best you think you can turn out, both with regard to form and substance.

Your documents, with rare exceptions, should be letter sized, with 1" margins all around. Some place on the first page, you should identify the name of the student who are responsible for the work.

Generally, you should avoid the use of more than one font in your documents, and keep bolding, italicization and other formatting to a minimum. I prefer non-justified paragraphs, since they are a bit easier to read.

#### *Some Additional Ideas*

All of the following are optional, and you don't have to do them, but you should learn how. Clients, I have found, especially like most of the following:

#### *Line Numbering of documents*

Drafts are easier to work with and discussions are easier if they are line-numbered on the left hand side. I usually use continuous line numbering, so that each line is numbered consecutively.

#### *Footers*

I usually identify a document with a footer that will look something like the following:

**PURCHASE AND SALE AGREEMENT  
ASSET PURCHASE, HARRIS COUNTY, TEXAS  
DRAFT OF JANUARY 1, 20XX**

**PAGE 1  
FOR DISCUSSION ONLY**

#### *Automatic Numbering, Outline*

I'd encourage you to learn how to do automatic numbering in a document. It makes revisions and deletions extremely easy, and has the virtue of forcing consistency in numbering. As a side benefit, it permits moving paragraphs around and making sure that all of the numbers are automatically updated.

#### *Cross References*

If you can learn how to do it (and it is fairly simple to do), along with automatic numbering, utilizing the cross references and index marking capability of Word will allow you to ensure that all of your cross references are correct and you can build a glossary of defined terms which is fairly useful. It takes a bit more time to build a first draft, but it is invaluable for revisions.

## PART THREE – BACKGROUND

### *Scope of the Course – Readings In Oil and Gas Law*

The materials which will be used are derived, for the most part, from forms which have been developed through the course of several years of practice in the oil and gas exploration industry, as well as cases, articles and other materials that I've gathered over the years. At present, so far as I am able to determine, there does not exist a widely available compendium of forms which are widely in use in the oil and gas exploration and production industry, and which are readily available to persons who are not in the industry, other than some form books which have been assembled by those who are not necessarily familiar with the day to day operations. While several companies have put together their own lists of preferred forms, and while several web sites maintained by independent companies or industry groups, such as the American Association of Professional Landmen ("AAPL") offer those forms, they are not generally available at minimal cost to individuals, and even though I have requested it several times, the AAPL is not willing to make those materials available to me at a reasonable price. The only form book which I am aware of which has accompanying text was prepared by me, in collaboration with C. Randall Hill, back in the late 1980's, 2 David J. Muchow and William A. Mogel, eds., *Energy Law And Transactions* §20 (LexisNexis Matthew Bender 2013). Note: that chapter has been updated by Lanny Yates, so I don't take responsibility for it anymore). It is accessible through Lexis. Some of the older works in the area have forms, most notably Eugene J. Kuntz, *A Treatise on the Law of Oil and Gas* (Matthew Bender, Rev. Ed. 2013), but those are mostly adjuncts to treatises or like works. Kuntz is also accessible through Lexis. There is a form book that is for use by landmen (and I'll explain who they are in class), by Gary Rippetoe; it is, unfortunately, hard to come by. Last time I checked, Gary's e-mail address is: garyrip48@aol.com, and if you want to buy the book, it is available at: [www.Landmansfieldmanual.com](http://www.Landmansfieldmanual.com). I didn't make it a required book for the course, since it is expensive (\$85.00 last I looked), and you might have found it to be of limited use. I do, however, recommend it for those of you that will go on in this industry – it is a great starting place.

The most useful hornbook in regard to oil and gas is R. Hemingway, *Oil and Gas Law And Taxation* (2013), which is currently in its fourth edition. Professor Hemingway does offer some basic forms in his book, but I wouldn't recommend them, other than for historical purposes. More comprehensive are Howard R. Williams and Charles J. Meyers, *Oil and Gas Law* (LexisNexis Matthew Bender 2013) and Eugene J. Kuntz, *A Treatise on the Law of Oil and Gas* (Matthew Bender, Rev. Ed. 2013) both of which are also available through Lexis. Both the Williams and Meyers and Kuntz work, particularly in the early chapters, are useful in helping students to understand the historical background of oil and gas exploration and both present an overview of the various scientific background which are useful for a minimal understanding of the nature of oil

and gas, their location, migration and the means and methods which are utilized to search for oil and gas, although neither of these works address the newer technologies. For those who have an interest in the technical side of oil and gas exploration, Norman J. Hyne, *Nontechnical Guide to Petroleum Geology, Exploration, Drilling and Production*, 2nd ed. (2001), is a worthwhile book, if you can locate it.

For a quick understanding of oil and gas law, you might want to check into John S. Lowe, *Oil and Gas Law in a Nutshell*, 5th ed. (2009), which can be purchased through Amazon; it may be available in the library. You might see if the library has Joseph Shade, *A Primer on the Oil and Gas Laws of Texas*, 5<sup>th</sup> ed. (2013). The seminal work in Texas, on what an oil and gas lease is all about is A.W. Walker, *The Nature Of The Property Interests Created By An Oil And Gas Lease In Texas* 7 TEX. L. REV. 1 (1928) and following articles. A copy of that is in the materials in the portfolios.

The Oil and Gas Section of the State Bar of Texas maintains a library of articles and speeches which go back several decades. It is incredibly useful as a place to start your research or to understand what the particular concepts might be in an area. You can access the Section website at <http://www.oilgas.org/>, and there are sections there that will assist you in becoming a member. It is a remarkably cheap (\$35.00 per year), and I highly recommend it. They may have a special rate for students, but I'm not sure about that.

We will be discussing in detail, some of the issues regarding liability and how the industry has evolved away from affixing liability based on negligence to a "no fault" concept of liability. It is a fairly complex subject, and I highly recommend Don Butler's *Handbook for Upstream Oilfield Contract Administrators*, (2014), which is available through Amazon. If you go into transactional law, this book will become an important addendum to your library.

### ***Real Property Concepts***

Oil and gas law derives from, and is heavily dependent upon, the law of property. An understanding of the concepts of real property law is essential; not only is there a need for the student to have a grasp of the concept of fee title, conveyancing and ownership issues, but the arcane law of easements, rights of way and the severance of estates, horizontal and vertical, are dealt with everyday, not to mention the law of probate, guardianship, divorce and intestate succession – and it is not enough to know the law of today, but one must understand the law as it has evolved over the century and more that this State has been in existence. The oil and gas practitioner is faced with the need to have an understanding of title to real property, which, unfortunately for those of us who work in Texas, is confusing, contradictory and appears, at times, to be confabulations created for the unwary. For specific questions dealing with Texas land titles, the only source worth mentioning is Fred L. Lange and Aloysius A. Leopold, *Land Titles and Title Examination*, 3 – 5A *Texas Practice Series* (1992 and later editions and

updates); it is available on WestLaw, and while I haven't checked, there should be a hard copy version in the library. Mr. Lange was an attorney at Amoco Production Company for many years and Professor Leopold taught Texas title law for some forty years or more. This work is an indispensable source in understanding title law in Texas, which is a result of this State's having been originally a Spanish colony, then a Mexican state, then a Republic and finally having entered the United States through a treaty. Texas is unique in the United States in that it owns its public lands, and through a series of historical accidents and precedents, the minerals, including oil and gas, unless alienated by the State (or one of the many predecessors to the State of Texas) belong to the State. In most other Western States, title to the public lands and to the minerals underlying them is vested in the United States, and not the individual state.

Consequently, in dealing with State of Texas or United States of America owned land or minerals, the General Land Office or the Bureau of Land Management will be involved, generally with their own procedures, forms and regulations. Dealing with Native Americans is a whole different world, since one of several agencies may be involved, or the individual Native American may be involved, or the tribe, acting as a sovereign nation may be involved. Fortunately, in Texas, Native American land title issues are extremely rare, although they do occasionally crop up.

Lawyers that specialize in title opinions are perhaps some of the best pure lawyers in the business: they minutely examine and study the history of a tract over a period of decades to come to conclusions about mineral ownership, and, based upon those opinions, oil operators will bet millions of dollars. We won't be covering that in this course in any detail, but will be touching upon some aspects of it, since it will impinge upon the way a lawyer approaches some of the problems.

Our first meeting will discuss concepts of title examination and the recording statutes, very briefly, so that you will understand the system of land registration that is in use in Texas.

### *Other Areas of Law*

In addition to real property law, the oil and gas practitioner is required to have a grasp of the concepts in the Uniform Commercial Code, particularly in regard to the sale of goods. Since the 1930's the sale of undivided interests in oil and gas leases has been held to be the sale of a security, although most transactions dealing with the sale of an undivided interest are exempted from regulation by the federal government through The Securities Act of 1933, (15 USCS §§ 77a, et seq.), The Securities Exchange Act of 1934 (15 USCS § 78a, et seq.) and the securities acts of the states (see, e.g., The Securities Act, Tex. Rev. Civ. Stat., art. 581-1, et seq. (2004); the lawyer that forgets that the securities laws are lurking in the background does so at his peril, or, more properly, at his client's peril.

While every responsible operator does his best to ensure the safety of the workplace, a rig floor is an inherently dangerous place. The use of volatile and toxic chemicals, the use of equipment that is large and complex and a host of other factors have meant that accidents happen, and people's health and indeed, their lives, are put at risk. While safety programs are important, and are regulated by OSHA and other agencies, the management of risk and the coverage for risks are the purview of the insurance industry. Indeed, more than one lawyer has observed that the whole purpose of writing contracts is nothing more than the allocation of risk – I don't quite ascribe to that doctrine, but there is a more than a kernel of truth in it. A working knowledge of insurance law will help the general oil and gas lawyer.

The oil and gas industry has been the subject of anti-trust suits over the years, and, indeed, served as the impetus for some of the original anti-trust legislation back at the turn of the 20th century. It isn't anticipated that the matters raised in this course will include anti-trust materials or problems, and the normal practitioner doesn't practice with one eye on the anti-trust issues. Nevertheless, that body of law and accompanying regulations have shaped the industry, and will continue to do so in the foreseeable future.

The oil and gas industry is a regulated industry: the location and drilling of wells for oil and gas, as well as the production, measurement and transportation of oil and gas are regulated by various agencies, most notably the Railroad Commission of Texas. Other agencies, federal and state, have important regulatory roles as well, most notably the agencies charged with protection of the environment, such as the Environmental Protection Agency, the Air Quality Board and a host of other agencies, generally referred to by their initials. All of those agencies were created under a variety of statutory schemes, both federal and state, and all of those agencies then have promulgated regulations, and most of them are empowered to conduct hearings, issue subpoenas, and, last, but not least, levy fines or impose other sanctions. Agency issues are not restricted to environmental agencies and the Railroad Commission; under some circumstances, for example, the presence of an archaeological site (whether onshore or offshore) may involve agencies which are not usually thought of as impacting oil and gas exploration, but those agencies have ability to proscribe oil and gas exploration activities. In some cities, city ordinances have an impact upon oil and gas activities, including, for example, in the City of Houston, which requires certain types of fences to be placed around wells, when trucks can be used and a variety of other restrictions (Code of Ordinances, City of Houston, Texas, Chapter 31, Oil & Gas Wells).

Increasingly, clients are concerned about managing individual risk in a number of different ways, beyond that offered by insurance. Hence, clients will frequently wish to discuss the use of varying forms of corporate or other entities, such as Subchapter S

corporations, limited liability companies, family partnerships or other types of entities which can be used to limit individual liability.

### *Taxes*

Many oil and gas transactions are rendered economic or non-economic, in part, because of the effects of taxes upon the activities that take place. The Internal Revenue Code of 1986, as amended, along with its attendant regulations, the memoranda and private rulings issued by the Internal Revenue Service affect business decisions every day, and, to a large extent, all of those pervade many of the instruments which are drafted by a practitioner.

### *Financings*

Beginning in the 1980's, the boom and bust cycle of the industry became much more pronounced, which lead to oil and gas companies seeking not only traditional financing through mortgages or deeds of trust, but creating exotic instruments based on old concepts that were mutated to serve a variety of financing schemes. The production or oil payment was resurrected in a new fashion to allow banks, foundations, trusts and other investors to finance oil and gas exploration and production, since many of those institutions were prevented for one reason or another from participating directly in the oil industry. The well-rounded oil and gas practitioner was, in the boom times, required to learn financing law, which again sent him back to the Uniform Commercial Code, but to different parts of it – generally, Article 9. When the bust came, the unfortunate well-rounded oil and gas practitioner began attending seminars regarding the Bankruptcy Act and its amendments.

If the foregoing isn't enough, the principles of general contract law are still applicable, as well as the principles of legal drafting. Since the advent of Enron, Dynegy and some others, it now appears that a well-rounded oil and gas lawyer should have some understanding of criminal law and procedure.

### *Insurance; Liability*

Almost all students have heard of the Macondo or Deep Water Horizon catastrophe. While it remains a major turning point in how regulation in the offshore industry will work, even more importantly, it reminded all of us in the industry how important the issues of liability and risk management have become. Beginning in the 1990's, the industry began experimenting with the concept of apportioning the risk for people, property and pollution based upon ownership, rather than negligence or alternative to negligence, or the so-called knock-for-knock process. The insurance industry has taken the lead in that process and has pushed companies towards that end. The evolution of the master service agreement or MSA has driven more of us to that end result, and will be a subject that we will cover in more detail as the course progresses.



## *The Lingo*

Finally: the oil and gas exploration industry, as many other industries, has developed its own language which is virtually impenetrable to those who are not conversant with it. Some of it is profane, some of it is inexplicable and almost all of it is colorful.

Williams & Meyers, *A Manual of Oil and Gas Terms* (LexisNexis Matthew Bender 2013), also found on Lexis, is useful. Even more useful is Lalia Phipps Boone, *The Petroleum Dictionary*, which is, sadly, no longer in circulation, and certainly not being published. Terms as colorful as 'boll weevil,' 'doodlebugger,' 'toolpusher,' 'roughneck' and 'roustabout' (a new worker on the drilling rig floor, a geophysicist, a foreman, an experienced worker on a rig floor and a common laborer, respectively) are still in use, but rarely used by a lawyer that doesn't work in the industry. For those terms, Williams & Meyers is a helpful source, but if that doesn't work, find an old mossback lawyer. For the uninitiated lawyer, the first time he or she is asked to prepare a farmout with a convertible ride APO with a thirty day spud, there is a sinking feeling of dread. Don't ever be afraid to ask questions and keep asking them until you are certain you understand. I've been in and around this industry for my entire life, and, for better or worse, use many terms from time to time that may not be explicable to non-industry types. Feel free to ask me what I said, or ask for a translation, at any time.

## *What You'll Be Doing*

You will be given an introduction to some of the documents which are common in the industry, only one of which is a standard, commonly accepted form. The rest are common, but aren't widely accepted in their forms.

To begin with, to familiarize you with the communication and discussion arrangements, you will begin with taking the notice provisions which are currently found in a standard joint operating agreement and making it more useful in today's world. In Exercise One, you will amend the standard notice provision, which provides for notices by telex and telegraph and change it so that notices may be sent by electronic mail.

Other matters you will work on: amending an oil and gas lease, learning about farmouts and making changes to a farmout form, learning about joint operating agreements, master service contracts, pooling designations and other arrangements. You will be asked to respond to client inquiries about specific problems, or a client will give you a fact situation and you will need to draft a document in response to those inquiries.

Finally: don't panic. One of the elements of practicing law, and those of you who may have worked for a law firm or are somewhat familiar with the industry will have discovered by now: somebody always has a form, and frequently, all you will need to do is to modify an existing form. We'll be working on that assumption, and I'll provide the initial forms.

#### PART FOUR – SOME OBSERVATIONS ABOUT DRAFTING

Good drafting is learned, and is learned by doing. All lawyers have begun by working on existing forms, modifying them to fit the particular needs of the clients, but there are times when the forms simply don't work, and then, the lawyer needs to be prepared to start with a blank piece of paper. The following are some observations based on many years of practice:

Be consistent. Good draftsmen learn that stock phrases should always be the same, unless a real difference is required. For example, if in one sentence, you state, "the directors, officers, employees and consultants of a Party" then in the next paragraph, it is a bit jarring to read, "the officers, directors, agents, consultants and employees of a Party." It isn't wrong, but it reads a bit better, and shows attention to detail.

Avoid archaic language. While it might seem like "good legal writing" to use 18th century English, we don't talk like that anymore, and our clients tend to get a bit confused when we do that. Examples of this are: Jones Oil Company, a corporation organized under the laws of the State of Texas, hereinafter referred to as "Jones." It's better to say: Jones Oil Company, a Texas corporation ("Jones"). Another example: Payment may be effected by check or draft of Jones, providing for payment in lawful tender of the United States of America, which said payment shall be in the amount of One Thousand, Four Hundred Ninety Two and 26/100 Dollars (\$1,492.26). Better: Jones may pay by check in the amount of \$1492.26. Honest. You really don't have to spell out numbers. A good rule of thumb: one through ten are spelled out, and 11 to infinity are rendered merely as numbers. Avoid legal Latin, if you can. *Supra, infra, vel non, in haec verba* and other phrases like that, while fun to use, confuse our clients, and we can use English instead. The term "fee simple" is generally understood; "fee simple absolute" is less understood, and few will understand enfeeblement.

Develop some standard contract phrases and paragraphs and put them where you can find them readily. I have probably two dozen "canned phrases" which I have saved on my computer, and I use them in many of my documents. For example, here is my counterpart language: "This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument; provided this Agreement shall be effective as to each party upon its execution of this Agreement, whether all counterparts are executed by a party or not. In making proof of this Agreement it shall not be necessary to produce nor to account for all counterparts, and it shall be sufficient to produce but one counterpart original hereof executed by the party sought to be charged thereby." Another example: "This Agreement and the other documents and instruments delivered hereunder (except as otherwise specifically provided) shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements executed and performable

wholly within that State, excluding any conflicts-of-law rule or law which might refer such construction and interpretation to the laws of another State.”

Have some organizational scheme in mind. Chronological order is one way of approaching a problem. First, Party A does one thing, then Party B does something in response, then both Parties do something together. For example, Party A will provide access to all of its data in respect of an area, and then Party B will examine it and analyze the data, and will propose a well at a specific location. Together the parties will participate in the drilling of the well.

Read it aloud. If it doesn't read well when read aloud, chances are it isn't written well. This will also help you proof your document.

Stilted language confuses people – your clients prefer direct, easy to understand agreements and documents, and it is unnecessarily confusing to utilize deliberately obfuscatory language, and frequently, it is a sign that the drafter doesn't really grasp the material. The best praise a lawyer can receive, at least in this industry: “It doesn't read like a lawyer wrote it.”

If you have some spare change, I'd strongly recommend Kenneth A. Adams, *A Manual of Style for Contract Drafting* (3<sup>rd</sup> Edition, 2013). I don't agree with all that he does, but it sure is an improvement over the forms that seem to be in wide use. It is available on Amazon, both as a hard copy print form and as a Kindle download.

## PART FIVE – LAW SCHOOL REQUIREMENTS; GRADES; EXAMS

### *Student Attendance*

Students are expected to attend class in accordance with Law School policies, at present, that requires that a student attend 80% of the class sessions – irrespective of excused absences. Please note: (a) this is a law school requirement, not mine; (b) missing a class doesn't mean that a student is entitled to miss an assignment. There will be a roll circulated at the beginning of the class. If a student arrives after the roll is circulated, it is the student's responsibility to see me at the end of class to ensure that his/her name is placed on the roll. For a class that meets 13 times, that means that after three absences a student must be dropped from the course. Remember: late assignments are absences.

### *My Attendance*

I'll try and make all the classes, but I might miss one. I'll send an e-mail or text message as soon as I know that I can't make class, so please check your e-mail and texts on the day of class. I'll do my best to give you ample warning.

### *Course Hours*

The course hours are from 4:00 to 6:00; in accordance with law school policy, that translates to 100 minutes of actual class time, not 120 minutes. I intend to run the class from 4:00 to 5:50, so that the extra ten minutes, over the semester, will equate to an extra class. This, I hope, will obviate the need for any make-up classes in case I miss one. If this creates a problem for a student, please let me know and we'll work around it somehow.

### *Grades*

Final grades in the course will be assigned in accordance with the Law School's policies in place, which will mean that grades must be within a specified range, and, in order to meet the policy requirements, it might mean that the average of the exercises and assignments won't necessarily determine your final grade. Please recognize that I am not in a position to question or to alter the law school's policies, and I intend to follow them.

I have discovered that placing grades on students' papers has resulted in expectations that I can't fulfill: a student might receive two or three B+ grades, an A and a few others, and is disappointed at the end of the semester to discover that didn't translate out to a high average, after the application of the law school policies. Hence, the "grade" on your paper will be a good, very good, excellent, not so good or words of that ilk – those do not have analogues with B, A-, A or C. Generally, I will review the papers, consider the student's class participation, whether a student has managed to at least read some of the material and a student's timeliness in turning in work in an unscientific, but not arbitrary, manner and issue grades based on the law school policy. That usually means that one or more of you will be unhappy; I'm sorry, but life works out that way. I

usually try to get the highest average I can, but I am constrained by law school policy. I've tried for exceptions in the past – they aren't given out, and I've lost that argument for several years, and I expect that I would lose it this year.

Some of you may be disappointed, because I have marked your papers and have stated that you have done very good work, or something like that. You may have that on all your assignments, but at the end of the day, you won't get an A in the course. The reason for that is that there are other students in the course, and they may have done slightly better work than you, or may have participated in the class discussions more than you did. Finally, because of the curve requirements, even though you did exemplary work, I can't give out all A's, and if your work was slightly below somebody else's work, they'll get the A, and you may get a B+.

Grading is a difficult process, and it isn't made any easier by the fact that all grades have to meet the Law School's policies. Class participation will be part of the course grade, and students are expected to participate in class discussions.

Failure to meet a deadline will result in a penalty. I don't consider a reasonable excuse to be that "somebody else was supposed to e-mail it," nor are your dog's dietary requirements a reason for not turning in an assignment. If you consider me to be a client, and you to be a lawyer, you should recognize that clients aren't going to be overly thrilled with those excuses. That means that if you are sick, out of town, interviewing for a job or any one of the myriad reasons that would constitute a good excuse, that doesn't mean you don't have to turn it in on time; if it is late, it is late.

### ***Exams***

There will be no final examination in this course – I intend to work the students hard during the course, and that should suffice. Given the nature of the class, a final would be fairly meaningless in any event. As a consequence, please understand that your attendance, your weekly work and your participation take on a great deal of meaning: there isn't going to be an opportunity for you to impress me with how much you crammed for the exam. There won't be one.

### ***Communications***

#### ***E-mail***

Students should send their work, in Word format, to me by electronic mail to [TRB@explorationlaw.com](mailto:TRB@explorationlaw.com). You will be supplying me with your preferred e-mail address, your cell phone number and some other information, designed to allow us to communicate more readily.,

#### ***Telephone calls***

I'd prefer that students communicate by e-mail, since that means that I can respond at a time which may be a little easier for me. However, when a student needs to, I am available by telephone at (713) 840-8250. If you reach my voice mail, which is fairly

likely, please leave a message with a telephone number where you can be reached and a time when you can be reached.; I will call back, as soon as I can or when you specify, if I can do that.

### *Texts*

If you want to send me a text, that's fine. The text number is the same as my phone number, that is (713) 840-8250. Feel free to send me texts, if that is your preferred way of communication.

### *Office Hours*

I don't maintain an office at the law school. If you have a need to visit with me in person, please call, text, or e-mail me and we'll make some kind of arrangement. I will be available, for a short while, after class. Depending on whether there is another class scheduled after this class, discussions may have to take place in the parking lot or in the lounge area.

### *Laptops and Cell Phones*

Use of laptops during class is permitted – and for that matter, encouraged. If you have set up your laptop to play sounds or music when e-mail arrives, or when documents are opened, either turn that feature off, mute it or lower the volume to the point where it will not be an annoyance. If you want to surf the web instead of paying attention, that's your choice – just so long as you don't interrupt or bother the rest of the class.

Please turn off, mute or change your cell phones to a vibrate mode. If there is a reason to leave it on because of family or other emergencies, that's understandable, but if you have to have a conversation, please leave the room.