

# Syllabus

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## Advanced Oil and Gas Contracts Course 6226

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## ***PART ONE – 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 the course. 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 on the Lexis site or in the library.

### ***The Work, Submissions and Responses; Attendance***

*What the work in the course entails.*

This course is designed to familiarize students with some of the documents which are in common use in the domestic, on shore 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 oil and gas companies. My expectations are that students will prepare and submit, more or less, on a weekly basis, drafts of documents or portions of documents, addressing particular issues. Students are expected to have their documents prepared and submitted by e-mail at least one day in advance of class; comments will be made on each student's submissions; revisions of those documents are expected to be made by the following class meeting.

I expect that, after the first session, students will work in teams. Depending on the number of students, there will be about three or four teams that will work on each problem or exercise. 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, you will find that your colleagues have ideas that may differ from your own; those ideas may be better, worse or about the same as yours, but they will be different; it is up to you to make this process work.

Each assignment will be posted on the Web Board site for this course. I'll generally post an assignment on the day the class is to meet, in the form of an exercise. Read it carefully, and respond to the problem. If you have any questions, please send me an e-mail.

*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 two days before class. I expect that the work will be submitted by one of the team members, in Word format. Comments will be made on the work, and sent back to each team member, 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. Hence, if a student doesn't have at least Adobe Acrobat, please make sure you acquire as soon as possible, by downloading the most recent version from [www.adobe.com](http://www.adobe.com). Submit the work by e-mail to me, and it will be returned by e-mail.

#### *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.

#### *My Attendance.*

I'll try and make all the classes, but I might miss one. I'll send an e-mail as soon as I know that I can't make class, so please check your e-mail 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 5:45, so that the extra five 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.

#### *Why I Don't Have A Real Syllabus.*

Experience has shown me that the class works best if I spend the time to work with the students at the pace that the class seems to dictate. I have enough material to keep students busy for a couple of years, so we won't run out of material, but trying to rush and stuff it all into a single course is impossible. I want to give students a reasonable background and way of approaching problems and issues, rather than trying to overload them. We'll talk about in class, but as a general proposition: the forms and the contracts which are in widespread use in the domestic, on-shore oil and gas industry have served as the models for the offshore industry and the international industry as well. If you can grasp the domestic on-shore industry, you are well on your way for the others.

#### *Grades*

**FINAL GRADES IN THE COURSE WILL BE ASSIGNED IN ACCORDANCE WITH THE LAW SCHOOL'S POLICIES IN PLACE, WHICH WILL MEAN THE UTILIZATION OF A CURVE, 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, SINCE I DON'T INTEND TO CURVE THE ASSIGNMENT GRADES. 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 factor in a totally 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 curve 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 four years already, and I expect that I would lose it this year.

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. As a general proposition, I'll grade each exercise or assignment, and that will be your grade for the exercise. Class participation and attendance 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.*** This means that all members of a team might be penalized if an assignment is late in arriving. I don't consider a reasonable excuse to be that "somebody else was supposed to e-mail it." If you consider me to be a client, and your team to be a law firm, you should recognize that clients aren't going to be overly thrilled with that kind of excuse. That means that if one of the team members is sick, out of town, interviewing for a job or any one of the myriad reasons that would constitute a good excuse, that won't excuse the other team members. Each of you should have a copy of the document to be submitted, and it is up to each team member to make sure I get it on time; it's better that I get two copies than no copies.

There will be no final 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.

## ***Communications***

### ***Web Board***

Exercises, forms and other materials will be posted on the Web Board for the course. Students are expected to download the exercises. Occasionally, there might be some other way of sending materials to students, but I expect that most of it will be available on the Web Board; I expect that it will be up and running in before class starts.

### *E-mail*

Students should send their work, in Word format, to me by electronic mail to [TRB@explorationlaw.com](mailto:TRB@explorationlaw.com). Do not sent e-mails to me via the Web Board. For reasons I don't understand, utilizing the Web Board to communicate with me isn't as useful as sending it to me directly. At the first class session, you'll be asked for your preferred e-mail address; if you decide to use a different address, please let me know.

### *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 phone 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.

### *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 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.

Please turn off your cell phones during class or put it on vibrate/silent ring. If there is a reason to leave it on because of family or other emergencies, that's understandable, but if you have to have the conversation, leave the room.

## ***PART TWO – DOCUMENTS AND WORD PROCESSING***

### ***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.

Comments 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, do the following:

Go to Tools and select Customize from the drop down menu. Select Toolbars, and from the list of available Toolbars, check the Reviewing Toolbar, click Close. When the Reviewing Toolbar is displayed, go to “Show” select “Balloons” and select “Always.” In Options, select Bold for Insertions, Red for Color, Strikethrough for Deletions and Blue for Color. The other selections are optional and you may select whatever you want. Make sure that Track Changes is turned on.

For original drafts or documents created by students, please send a final version, without reviewing marks.

### ***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. 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 students 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, 2005**

**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 – THE COURSE*

### *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. At present, so far as I am able to determine, there does not exist a 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 Petroleum Landmen (“AAPL”) offer those forms, they are not generally available at minimal cost to individuals, and even though I have requested it several times, they are 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, (David J. Muchow and William A. Mogel, eds., *Energy Law And Transactions*, Chapter 20, “Oil and Gas Contracts” (2004). Note: that chapter has not been updated since the original publication) This particular work is out of date, and while useful for background purposes, isn’t a source for recent work in the area. It is accessible through Lexis. Some of the older works in the area have forms, most notably Eugene J. Kuntz, *The Law of Oil and Gas* (2003), 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. 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*, 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*, (2003) and Eugene J. Kuntz, *The Law of Oil and Gas* (2003) 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*, 4th ed. (2002), which can be purchased through Amazon; it may be available in the library. I have requested that the library put on reserve Joseph Shade, *A Primer on the Oil and Gas Laws of Texas*, Texas Wesleyan University School of Law; 2nd Edition.

### ***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*, Volumes 3 – 5, Texas Practice Series, (1992). Mr. Lange was an attorney at Amoco Production Company for many years, and 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.

### ***Other Areas of Law***

In addition to real property law, the oil and gas practitioner is required to have a grasp upon the concepts of 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 20<sup>th</sup> 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.

### ***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, also found on Lexis, is useful. Even more

useful is 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.

I would suggest you read through the next section before you tackle any of the problems, since if you are like most students, you haven’t done much legal drafting, and it might help to have some idea of how to address drafting issues.

#### *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 18<sup>th</sup> 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 *enfoeffment*.

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."