

# **Oil and Gas Law – Spring Semester, 2014**

**Course No. 5355 – Section No. 22350; Class meets Tu/Th 7:30 – 9:00 PM**

**Prof. Chuck Brownman**

***“... And then one day, he was shootin’ at some food,  
and up through the ground come a-bubblin’ crude.  
Oil, that is.  
‘Black Gold’. ‘Texas Tea.’ ”***

**-- Famous Theme Song; from where?**

## **1. Course Information:**

A. my view of what students need to know – Students should learn enough material not just to be able to pass the Bar questions, but they should also obtain a basic understanding of the oil & gas business, since they will almost invariably encounter it regardless of what field(s) of law they go into

B. my assumptions – I intend to teach not just Texas law, but theories and approaches adopted by other jurisdictions on major issues, for two reasons –

1. first, because the oil & gas industry is a national (really, international) business, and if you’re going to be a part of it (whether directly or indirectly), you need to understand (at least to some extent) the significant variations and differences between the approaches used by different jurisdictions; and
2. second, ideas and theories tend to migrate from one jurisdiction to the next, especially on important issues, and it is incumbent on you to have a sense of how other states deal with these issues, because you are bound to encounter the same arguments

C. my philosophical approach – I intend to utilize several different approaches to classroom discussion, not just case law. Good lawyers have “clients”, and these “clients” have real-world problems, real-world goals, real-world conflicts – and these clients expect lawyers to take those problems, figure out what is relevant and what is not, figure out what further information is needed, and give them an answer to the question “what do I do now?”. So in my view, because lawyers deal with problems in the real world, they need to learn in law school how to be able to deal with problems. Dealing with problems means knowing not just what the law is, but why the law is what it is (the theories and assumptions behind the development of the law), and how and when to apply it.

## **2. Instructor Availability and Contact Information:**

I will be available for questions / discussion in four ways: (1) on Tuesdays and Thursdays, for about 30 minutes or so prior to class; (2) after class, for as late (within reason) as you care to stay; and (3) by appointment, at a mutually agreeable alternative location; or (4) by email to me at [chbrownman@aol.com](mailto:chbrownman@aol.com).

## **3. Texts / Readings / Materials:**

- A. Textbook – Lowe, et al., *Cases and Materials on Oil and Gas Law*, 6<sup>th</sup> ed., 2013 (West Publishing)
- B. Supplementary Readings and Materials – some supplementary cases and other materials will be provided by me in class, 1-2 classes before we will be discussing them

#### **4. Student Objectives: By the end of the course, the student should ...**

- A. ...understand the concepts involved in leasing property for oil and gas exploration, development and production
- B. ...possess a basic knowledge of the oil and gas business and its essential terminology
- C. ...recognize and understand the business and legal issues found in fundamental oil and gas documents, such as leases, farmout agreements, and joint operating agreements
- D. ...recognize legal issues and legal problems within the framework of the oil & gas industry, and determine which legal principle(s) will apply
- E. ...answer, in a passing fashion, a Bar Exam question involving oil and gas

#### **5. Course Description / Course Calendar and Schedule:**

-- a detailed schedule will be provided; however, in general, the course will be divided into 6 general topic areas (the number in parentheses is the approximate number of classes that will be devoted to the topic):

- A. Introduction to Petroleum Geology, Oilfield Technology, and Exploration Methods (1 class out of 28)
- B. General Rules of Ownership, Common Law Limits, and Regulatory Responses and Restrictions (6)
- C. The Oil and Gas Lease + Lessor Conveyances (13)
- D. Operations; Lessee Contracts and Transfers (4)
- E. Recent Developments (2)
- F. Quiz and Review (2)

#### **6. Course Policies – All law school policies will be applicable to this class, supplemented as follows:**

A. Attendance – Law school policy requires attendance at 80% of classes, with an automatic drop for missing more than 5 classes. My “policy” is that because class attendance is very important, students are expected to attend class, and to strenuously avoid missing classes. (See “Class participation”, paragraph D, below.) I will be having a sign-in sheet for each class, which shall be the dispositive evidence regarding your presence in, or absence from, a given class. Each student is responsible for signing themselves in, and falsification of sign-in sheets (signing someone else in, or asking another student to sign you in) will be treated as a violation of the Code of Academic Conduct.

B. Tardy – If you are late for a class, please enter quietly and take a seat as quickly as possible, without creating a disturbance to the class. After class, you will have the opportunity to sign the attendance sheet when it is returned to me (this is your responsibility; if you forget to do so, you will be treated as having been absent).

C. Electronics – Appropriate use of computers in class is permitted.

D. Class participation – Students are expected to attend and participate in class. In my opinion, class participation is an extremely important component to you learning the material (and it makes the class more interesting and enjoyable)..

– I will be calling on students at random. Depending on class size, I would expect that each student would be called on about 5 times during the semester (roughly every 2<sup>nd</sup> or 3<sup>rd</sup> week, but I’m not bound by that). Each time you are called upon, you will be judged on the quality of your responses (assessed on a scale of “1 – 5”. At the end of the semester, these numerical scores will be aggregated, and will form five percent of your overall course grade (approximately a letter grade increment; so it could change a “B” to a “B+”). If I call on you and you are either absent or unprepared, you will receive a “0” for that evening’s participation.

E. Hours of class – We will meet from 7:30 to approximately 8:50 (could be a little earlier or a little later) each evening.

F. Make-up classes – Since we will be using our full allotment of time each evening, I don’t expect right now that we will need to schedule any make-up classes.

G. Class preparation – Students are expected to read the assigned materials in advance, so that they can engage in an informed discussion of those material in class.

H. PowerPoint Slides – I will use PPT slides in class, and I will make them available a day or two after each class. These slides are designed to give some visual structure to the class discussion, and making them available to the students is intended to make it somewhat easier on you to be able to listen and take notes on everything that is said; however, they are not complete (e.g., a question may be asked on a PPT slide, but not answered), and they are **NOT INTENDED TO BE A SUBSTITUTE FOR YOUR ATTENDANCE OR YOUR OWN OUTLINING OF THE COURSE MATERIAL.**

I. Class format – My classroom instruction will be both similar to, and different from, traditional law school teaching. It is similar in that I will use large group discussion and questioning to explore problems and cases; however, unlike other classes, the discussion will often focus more on problem-solving, and less on straight case analysis.

## **7. Grading:**

A. Besides the customary final exam, there will be 1 interim quiz that will provide an opportunity for students to demonstrate how well they are learning the material. I think this is important, for four reasons:

1. Ongoing assessment for the student – Rather than waiting until the final exam at the end of the course, interim assessments and grades provide the student with a way to see if he/she is learning the material to the extent, and in the format, that the teacher is looking for;

2. Ongoing assessment for the teacher – having interim assessments gives the teacher a method of determining if he's communicating to the students what he thinks he is;

3. Interim grades / not having to rely on an "all or nothing" final exam – reduces the pressure on the students;

4. Information and data – having interim assessments gives the student some insight into, and a sense of, how the teacher tests

B. Composition of grade

- |                        |               |
|------------------------|---------------|
| 1. Final exam          | -- 65 percent |
| 2. End-of-unit Quiz    | -- 30 percent |
| 3. Class participation | -- 5 percent  |

**DETAILED CLASS-BY-CLASS SYLLABUS**  
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**TENTATIVE COURSE CALENDAR and SCHEDULE**

(this schedule is subject to change and modification, as circumstances require)

<u>Week of</u>	<u>Dates</u>	<u>Topic(s)</u>	<u>Assigned Reading</u> (pages in Lowe, et. al.) ( <b>supp. readings</b> will be posted)
<u>Jan 13</u> Classes 1 – 2	Tues Jan 14	First class: Intro to class, teacher and subject; Intro to Geology	Ch. 1 Sec. A, B & C 1-3 (pp. 1 – 44)
	Thur Jan 16	Land Descriptions Public vs. Private Ownership of Minerals Ownership Theories Ad Coelum / Rule of Capture (“RoC”) RoC: Ownership After Extraction	Ch. 1 Sec. D & E (pp. 49 – 67; 104 – 115) <b><u>Pierson v. Post</u></b>
<u>Jan 20</u> Classes 3 – 4	Tues Jan 21	RoC: Non-Regulatory Limits (a) Correlative Rights (b) Common Law Limits	Ch. 1 Sec. E (cont’d), G 2 & 3 (pp. 92 – 104; 140 – 147) <b><u>Supplemental Materials</u></b>
	Thur Jan 23	RoC: Regulatory Response and Restrictions (1 of 4)	Ch. 4 Sec. A, B 1, and B 2 (b) (pp. 609 – 617; 628 – 631; 650 – 674)
<u>Jan 27</u> Classes 5 – 6	Tues Jan 28	RoC: Regulatory Response and Restrictions (2 of 4)	Ch. 4 Sec. B 5 (pp. 696 – 717; 733 – 746) <b><u>Supplemental Cases; AND</u></b> <b><u>RRC “Voluntary Subdivision” Rule</u></b>
	Thur Jan 30	RoC: Regulatory Response and Restrictions (3 of 4)	Ch. 4 Sec. B 6 (pp. 746 – 758; 783 – 796)
<u>Feb 3</u> Classes 7 – 8	Tues Feb 4	RoC: Regulatory Response and Restrictions (4 of 4)	Ch. 4 Sec. B 3 and Misc. (pp. 631 – 647; 674 – 685)
	Thur Feb 6	Quiz	None
<u>Feb 10</u> Classes 9 – 10	Tues Feb 11	Oil and Gas Lease (“OGL”) (1 of 7): Surface Use; Substances Granted	Ch. 2 Sec. A and B 1-3 Ch. 3 Sec. E 1 (pp. 176 – 203; 484 – 498) <b><u>Form of OGL</u></b>
	Thur Feb 13	OGL (2 of 7): Primary Term; Secondary Term 1	Ch. 2 Sec. C 1 and 2 (a) (pp. 208 – 243)

<b><u>Feb 17</u></b> Classes 11– 12	Tues Feb 18	OGL (3 of 7): Secondary Term 2	Ch. 2 Sec. C 2 (b) & (c) (pp. 243 – 278)
	Thur Feb 20	OGL (4 of 7): Pooling and Its Impacts	Ch. 2 Sec. D (pp. 279 – 296)
<b><u>Feb 24</u></b> Classes 13 – 14	Tues Feb 25	OGL (5 of 7): Royalties	Ch. 2 Sec. E 1 and 2, 5 and 6 (pp. 298 – 315; 388 – 396)
	Thur Feb 27	OGL (6 of 7): Implied Covenants 1	Ch. 2 Sec. E 3 (a) (pp. 315 – 347)
<b><u>Mar 3</u></b> Classes 15 – 16	Tues Mar 4	OGL (7 of 7): Implied Covenants 2	Ch. 2 Sec. E 3 (b) – (d) (pp. 347 – 382)
	Thur Mar 6	Lessor Title Issues (1 of 6): Mineral Interests and Royalty Interests	Ch. 3 Sec. A (pp. 397 – 429)
<b><u>Mar 10</u></b>	Tues Mar 11	<b><u>SPRING BREAK;</u></b>  <b><u>NO CLASSES THIS WEEK !!</u></b>	NONE (other than preparing for classes in week of March 17)
	Thur Mar 13		
<b><u>Mar 17</u></b> Classes 17 – 18	Tues Mar 18	Lessor Title Issues (2 of 6): Shared Ownership	Ch. 3 Sec. B (pp. 429 – 464)
	Thur Mar 20	Lessor Title Issues (3 of 6): Terminable Interests & Executory Rts.	Ch. 3 Sec. C & D (pp. 464 – 484)
<b><u>Mar 24</u></b> Classes 19 – 20	Tues Mar 25	Lessor Title Issues (4 of 6): Conveyances & Reservations 1	Ch. 3 Sec. F (pp. 511 – 546)
	Thur Mar 27	Lessor Title Issues (5 of 6): Conveyances & Reservations 2	Ch. 3 Sec. G (pp. 546 – 583)
<b><u>Mar 31</u></b> Classes 21 – 22	Tues Apr 1	Lessor Title Issues (6 of 6): Pooling	Ch. 3 Sec. H (pp. 583 – 604) <a href="#"><u>Supplemental Materials</u></a>
	Thur Apr 3	Lessee Contracts (1 of 4): OGL Assignments	Ch. 6 Sec. A (pp. 913 – 914; 923 – 960)
<b><u>Apr 7</u></b> Classes 23 – 24	Tues Apr 8	Lessee Contracts (2 of 4): Farmouts	Ch. 6 Sec. C 2 – 4 (pp. 805 – 811; (pp. 823 – 832) <a href="#"><u>Supplemental Materials</u></a>

		Thur Apr 10	Lessee Contracts (3 of 4): JOAs 1 – Op. & Non-Op. Liability	Ch. 6 Sec. E 1 and 2 (pp. 998 – 1023) <u>Supp. Cases re Exculpatory Clause</u>
<u>Apr 14</u> Classes 25 – 26		Tues Apr 15	Lessee Contracts (4 of 4): JOAs 2 – Ownership & Marketing of Production; Balancing; Pref. Rts.	Ch. 6 Sec. E 3 and 4 (pp. 1023 – 1038) <u>Supplemental Materials</u>
		Thur Apr 17	New Developments 1	<u>Supplemental Materials</u>
<u>Apr 21</u> Classes 27 – 28		Tues Apr 22	New Developments 2	<u>Supplemental Materials</u>
		Thur Apr 24	Review session	None / Bring Questions to Class
<u>Apr 28</u>		Tues Apr 29	No class; Semester ended	None
		Thur May 1	No class; Semester ended	None
		Thur May 8	<u>FINAL EXAM – 6:00 PM to 9:00 PM</u> <u>LOCATION TBA</u>	None