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INTRODUCTION

This isn’t your usual syllabus. It is longer than most, and I did it this way because I want students to know 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 questions about it during the first class and (2) complete the form I have posted and return it preferably before the first class. If you are familiar with Adobe, you can use the bookmarks tab on the navigation bar to read through this syllabus. In Adobe, press the F4 key, and in the navigation bar that shows up, select the bookmark tab. A screen shot is below.

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 takes shape as the leasing process begins. After the leases are taken, then the small oil company looks 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 online, and the production is sold. If it is a gas well, then we may see the construction of a field 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 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 assignments will involve our fictional landowner, our fictional vice president of land, and one or more fictional oil companies. The assignments and the portfolios are listed, and the specific of the assignments are included in each portfolio. Not all of the portfolios have an written assignment included, but you are responsible for ensuring that you will complete the required assignments. We may, occasionally, 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.

Recordings
I will ask the law school if they will set up a system by which the course will be recorded each week. I’m not sure that will happen, but if I can make it happen, I will let you know. If the course is recorded, then you will be able to access the lectures probably on the day after they have occurred. Listening to the lectures doesn’t count as attendance.

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 pursue 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 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.

The Portfolios

Once you have sent me the form including your preferred email address, I will send you the portfolios. The portfolios will be sent via Adobe Send & Track, which will provide you with a notice and a link to each portfolio. You will need to have Adobe Reader or Adobe Acrobat installed on your system to access the portfolios. Adobe Reader is free, and you may sign up for Adobe Acrobat DC for a reduced price through the University. If you have problems downloading, please call or email me.

How to Use the Portfolios

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 face the following:
The centered section tells you there are three folders within the Portfolio, with the displayed one labeled “Assignments, Required Reading,” 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 file is a PDF or a word document, or, occasionally, may be a photo, a video, 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 these sections.

**Videos**

Some of the portfolios have videos included. Those are usually there to augment the discussions, and to help you understand what we are talking about. For example, in the Week One Portfolio, a video explains how to use Track Changes in Word. Many of you are probably familiar on how to do that, but I’ve found that some students have never had to do that. It’s easier and quicker to let an expert describe it, and, besides, you’ll have it as a reference for you when you do the first assignment. Other videos will show you specific aspects of the industry for those of you who have never spent time in the field.

**Slides**

I tried using slides for the first time last semester, and I’m still not comfortable with them, but I’m doing my best. On the day before the class, I expect to email the slides to the students, in PDF format, so each student can follow along without the necessity of trying to read fine print at several dozen feet.
PART TWO – THE MECHANICS OF THE COURSE

The following should 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 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 occasionally if you have forgotten some of those terms. Some helpful works are described below; most 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 strange, and I would encourage you to do some 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 referred to there.

A Note on Sources
Most of the reading materials, where relevant, have citations to the source where they were obtained, mostly through Lexis or WestLaw. If you would rather read them in the original sources, please feel free to do so. There are a number of articles which have been cited, from various seminars. To the extent those are oil and gas articles, you can find them in the readings list of the Oil, Gas, & Energy Section of the Texas State Bar, if you are a member. How to become a member is discussed below. Other articles are from my personal library and are reproduced for your use. Forms are generally from my library. You may use them, but be aware that they may be out of date and will need some revisions.

The Reading Material
I take the position that students in this course are adults. The only material that a student must read is the material 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 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 comprehensive library of research and forms for an upstream or exploration and production lawyer; if you aspire to work in this field, reading the material is a good idea. Not reading any of it will mean that a student has gotten little out of this course. There is a lot of information in the readings; I expect no one to read it all.
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 there are other word processing programs out there, but I have had problems with them. Please use no 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 to download and open the portfolios. 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 have to do is to take existing work and change the document. You will have to show the changes, and how 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 familiarizes students with some 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 presented to counsel representing upstream oil and gas companies. I expect that students will prepare and submit weekly 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 email at least two days before 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 on the submission email 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 cause the work being considered late and will have a negative impact upon the student’s grade. Failure to turn work in on time will be treated as an absence; failure to turn in an assignment at all will negatively affect 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. Mostly, 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 questions, please send me an email or call me and I’ll do my best to answer the questions. Note: some assignments 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 a course in real property, then that person should attempt to collaborate, preferably with a J.D. or LL.M. student that has had a course in oil and gas and real property. There are two 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 the early part that career, requires the ability to collaborate with colleagues; this process is difficult, but the only way to learn it is to go through it. Second, 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 value, students will need to submit their work before class, and in enough time so that I’ll look it over. That means, mostly, work will be due the Monday after a class. 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. The work will probably 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 before class, and sent back to each student, generally in Adobe format. Unfortunately for you, but not for me, I work for a living, and I might not get the comments back before class, but I will respond, usually in an abbreviated form when I can do so. The reason 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 problems for them. Submit the work by email and it will be returned by email. Please don’t submit the work in the body of an email, since that makes responses, particularly to teams, difficult, and also means that the way I save documents isn’t useful for me.

On each assignment, the following are requirements:

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. Please make sure your name appears on the first page of the assignment. A sample is below.
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 email, and not as an email. Comments will be returned in a mark-up of the Word document, generally as an Adobe PDF document, and not as a hard copy.

As I mentioned before, there is a video on Track Changes in Portfolio One. For those of you who can’t play the video below is a short discussion on how to track changes. Students should download the documents, if they are working on a form. Before working on a form, if you are using Word 2013 or later, do:

On the menu bar, select Review:

Once you have done that, select Track Changes:

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

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

Generally, 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 easier to read.

Some Additional Ideas

The following are optional, and don’t do them, but learn how. Clients, I have found, especially like most of:

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 each line is numbered consecutively.

Footers

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

**PURCHASE AND SALE AGREEMENT**
Automatic Numbering, Outline

I’d encourage you to learn how to do automatic numbering in a document. It makes revisions and deletions easy and has the virtue of forcing consistency in numbering. As a side benefit, it permits moving paragraphs around and making sure that 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 fairly useful. It takes 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 used are derived, mostly, from forms developed through 45 years of practice in the oil and gas exploration industry, and cases, articles, and other materials that I’ve gathered over the years. So far as I can determine, there does not exist a widely available compendium of forms widely in use in the oil and gas exploration and production industry, and which are readily available to persons not in the industry, other than some form books 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 at a reasonable price. The only formbook which I know 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 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 formbook that is for use by landmen (and I’ll explain who they are in class), by Gary Rippetoe; it is, unfortunately, scarce. Last time I checked, Gary’s email address is: garyrip48@aol.com, and if you want to buy the book, it is available at: 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 find 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 regarding oil and gas is R. Hemingway, Oil and Gas Law and Taxation (2013), which is in its fourth edition. Professor Hemingway does offer 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 scientific background which are useful for a minimal understanding of oil and gas, their location, migration, and the means and methods utilized to search for oil and gas, although neither work 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, 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, 5th 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 the latter work 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 useful as a place to start your research or to understand what the 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, some 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 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 and deal with Master Service Agreements, this book will become an important addendum to your library.

**Real Property Concepts**

Oil and gas law derives from, and depends heavily 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 every day, plus 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 this State has existed. The oil and gas practitioners face the need to understand title to real property, which, unfortunately for those of us who work in Texas, is confusing, contradictory, and appears, 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 40 years or more. This work is an indispensable source in understanding title law
in Texas, which results from 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 because it owns its public lands, and through 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. 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 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 problems.

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

Other Areas of Law

Besides real property law, the oil and gas practitioner must have a grasp of the concepts in the Uniform Commercial Code, particularly regarding 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.); 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. Using volatile and toxic chemicals, using equipment that is large and complex and a host of other factors have meant that accidents happen, and people’s health and 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. 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 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. That body of law and 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, and 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, most notably the agencies charged with protection of the environment, such as the Environmental Protection Agency (“EPA”), the Texas Commission on Environmental Quality (“TCEQ”), and a host of other agencies, generally referred to by their initials. Those agencies were created under a variety of statutory schemes, both federal and state, and those agencies then have promulgated regulations, and most 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, an archaeological site (whether onshore or offshore) may involve agencies not usually thought of as affecting oil and gas exploration, but those agencies have ability to proscribe oil and gas exploration activities. In some cities, city ordinances affect oil and gas activities, including 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).

**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 memorandums and private
rulings issued by the Internal Revenue Service affect business decisions every day, and, to a large extent, those pervade many 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 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 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 attended seminars regarding the Bankruptcy Act and its amendments.

If the foregoing isn’t enough, the principles of general contract law still apply, and the principles of legal drafting. Since Enron, Dynegy, and some others, it now appears that a well-rounded oil and gas lawyer should understand criminal law and procedure.

**Managing Risk, Entity Selection**

A lot of things can go wrong in drilling a well, storing production, transporting production, or processing production. When, as, and if they go wrong, it can be fairly spectacular, and, worse, property may be damaged, or worst of all, people may be injured or killed. The owners of wells, production storage facilities, transportation facilities or vehicles, gas plants, or refineries, may find themselves involved in suits or administrative proceedings that may cause substantial judgments or penalties. Rather than expose themselves to individual liability, owners use a variety of entities, corporations, both C and S, limited liability companies, partnerships, and other entities, which stop the liability at the entity level and do not reach the individual’s assets. Part of what oil and gas lawyers do is to assist owners in entity selection.

**Insurance; Liability**

Most 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 important, it reminded us all in the industry how important the issues of liability and risk management have become. Beginning in the 1990’s, the industry experimented with the concept of apportioning the risk for people, property, and pollution based upon ownership, rather than negligence or alternative to negligence, or the knock-for-knock process. The insurance industry has taken the lead in that process and has pushed companies toward 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 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 most 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, sadly, no longer in circulation, and 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 use many terms occasionally that may not be explicable to non-industry types. Ask me what I said, or ask for a translation.

What You’ll Be Doing

You will be introduced some 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 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 notices may be sent by electronic mail.

Other matters you will work on: amending an oil and gas lease, learning about farmouts and changing 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 element 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 needs of the clients, but sometimes, 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 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 jarring to read, “the officers, directors, agents, consultants, and employees of a Party.” It isn’t wrong, but it reads 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 get confused when we do that. Examples of this are: Jones Oil Company, a corporation organized under the laws of the State of Texas, “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 $1,492.26 by check. Honest. You 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. Signed is much better than executed; people understand signatures, but aren’t real sure how to execute.

Just because it is in a form doesn’t mean it is worth keeping, or worse, repeating. The term “Witnesseth” is often seen – it is a hangover from 19th century legal drafting, where lawyers were attempting to give weight to their documents by using an archaism. It derives from the time when transactions were verbal, then a scribe or a notary was commissioned to write down the terms, and the document “witnessed” the actual transaction. Useful a millennium ago, less useful now.

Develop 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 signed in multiple counterparts, each of which shall be an original and all of which taken together constitute one instrument; provided this Agreement shall be effective as to each party when he, she, or it signs at lease one counterpart of this Agreement. In making proof of this Agreement it shall not be necessary to produce or 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 (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 about 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, it probably isn’t written well. This will also help you proof your document. Later versions of Word can read the document to you, and it sometimes helps.

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 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* (3rd Edition, 2013) or the recently released 4th Edition. 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 under Law School policies that requires that a student attend 80% of the class sessions – despite excused absences. Please note: (a) this is a Law School requirement, not mine; (b) missing a class doesn’t mean that a student may 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.

Recordings

I have requested that all classes be recorded, and while I have no control over that process, I have assumed those recordings will be available soon after the class is over. If you must miss a class, check the recording, and you should be fine. Even if you watch the recording, it still is an absence.

My Attendance

I’ll try and make all the classes, but I might miss one. I’ll email or text message when I know that I can’t make class, so please check your email 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; under 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 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 if 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 under the Law School’s policies in place, which will mean that grades must be within a specified range, and, to meet the policy requirements, it might mean that the average of the exercises and assignments won’t determine your final grade. I cannot question or 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 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 applying 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 analogs 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 there are other students in the course, and they may have done work slightly better than you, or they 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+. It is made much more difficult because of the small number of J.D. students, which limits my options even further.

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 cause a penalty. I don’t consider a reasonable excuse to be that “somebody else was supposed to email 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, recognize that clients will not be overly thrilled with those excuses. That means that if you are sick, out of town, interviewing for a job, or any 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. Please understand that your attendance, your weekly work, and your participation take on a great deal of meaning; there will not be an opportunity for you to impress me with how much you crammed for the exam. There won’t be one.

Communications

Email

Students should send their work, in Word format by electronic mail to TRB@explorationlaw.com. You will be supplying me with your preferred email 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 email, since that means 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. 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 need to visit with me in person, please call, text, or email me and we’ll arrange to meet. 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 encouraged. If you have set up your laptop to play sounds or music when email arrives, or when documents are opened, either turn that feature off, mute it, or lower the volume to where it will not be an annoyance. If you want to surf the web instead of paying attention, that’s your choice – just if 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 must have a conversation, please leave the room.

Counseling Services

Counseling and Psychological Services (CAPS) can help students having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling (713) 743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus.

http://www.uh.edu/caps/outreach/lets_talk.html