

Oil & Gas Law

Class 2:

1. Land Descriptions
2. Public vs. Private Mineral Ownership
3. Ownership Theories
4. “Ad Coelum” / Rule of Capture

Correction to Syllabus !!!

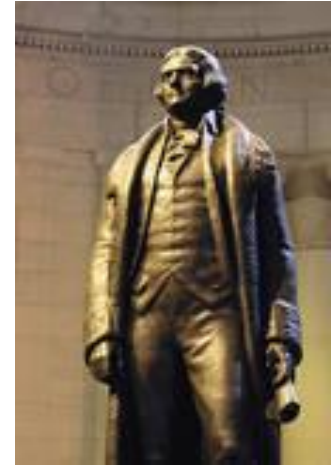
- CL 3 (next Tuesday night – Jan. 21)
- =====
- Original Syllabus: pp. 92-104
- Corrected: pp. 97-104
- =====
- 2nd part of assigned reading for that night
(pp. 140-147) unaffected by this change

Land Descriptions

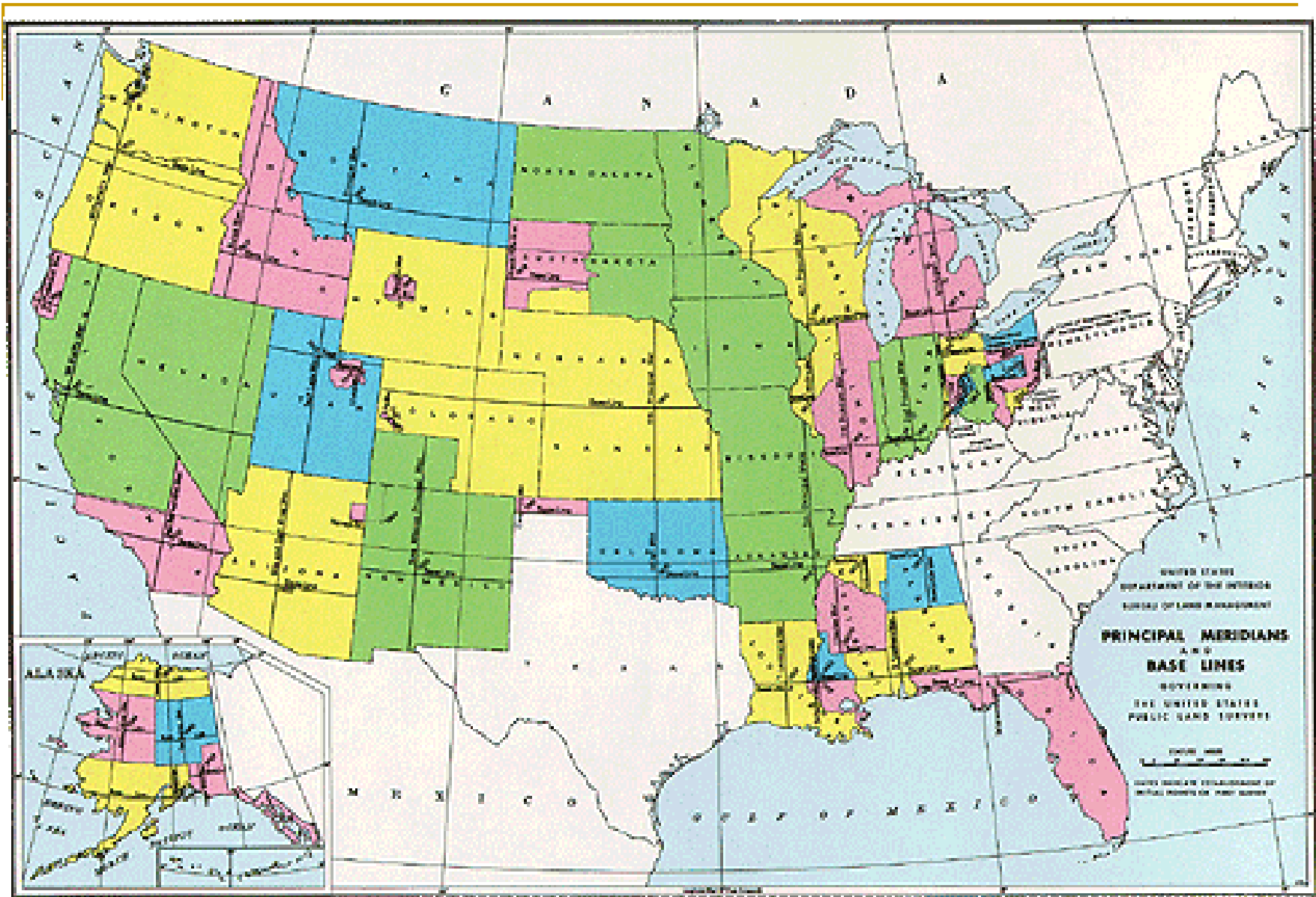
■ Surface boundaries

□ The Public Land Survey System

- Proposed by Thomas Jefferson
- Began shortly after the American Revolution



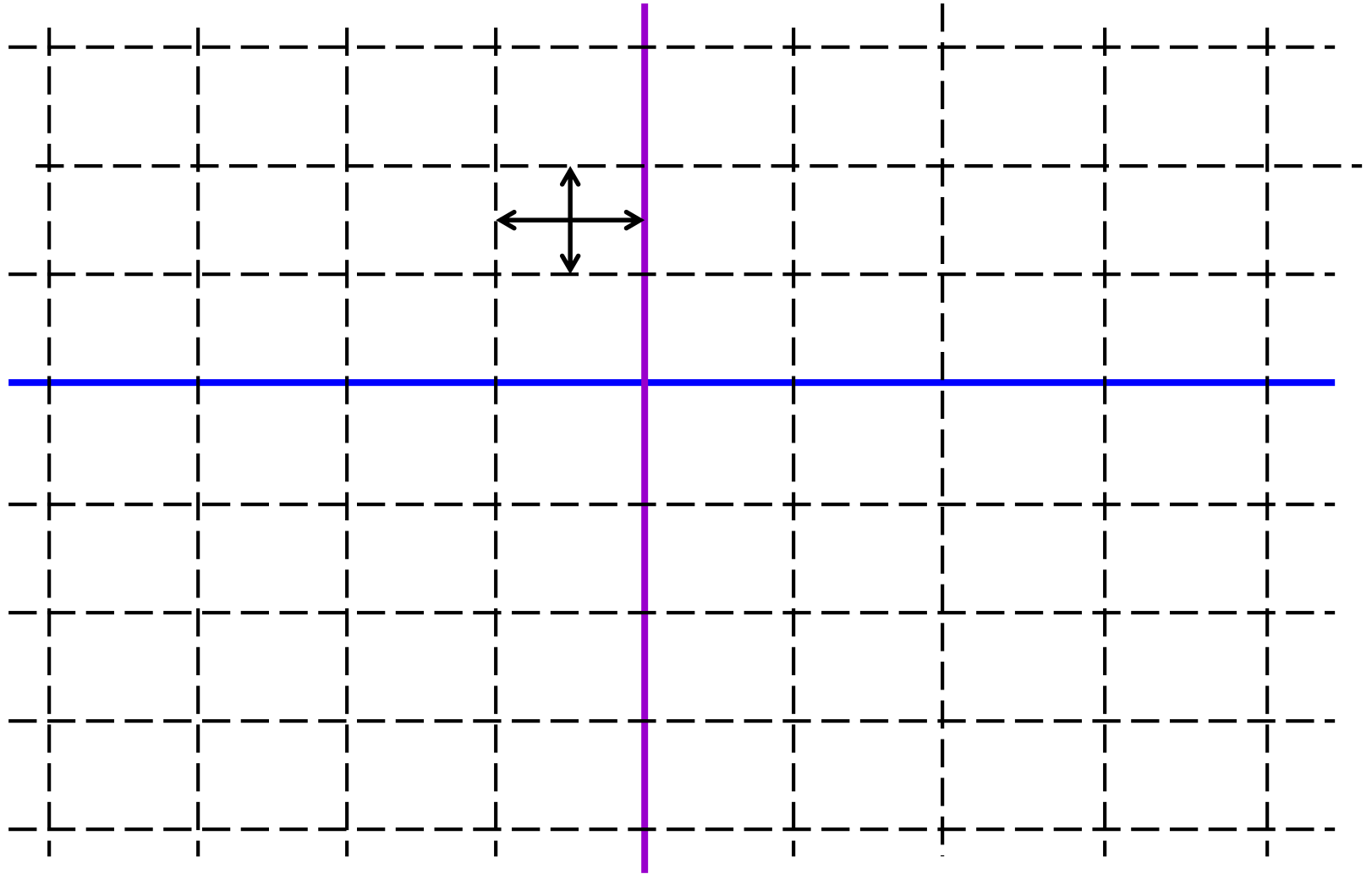
- A rectangular system of surveys, starting from the intersections of principal meridians (N-S) and base lines (E-W)
- Excludes navigable bodies of water, military reservations, national parks
- > 1.5 billion acres surveyed since the 1st statutes passed in 1785 and 1787



Real Property Concepts: Townships / Ranges / Sections

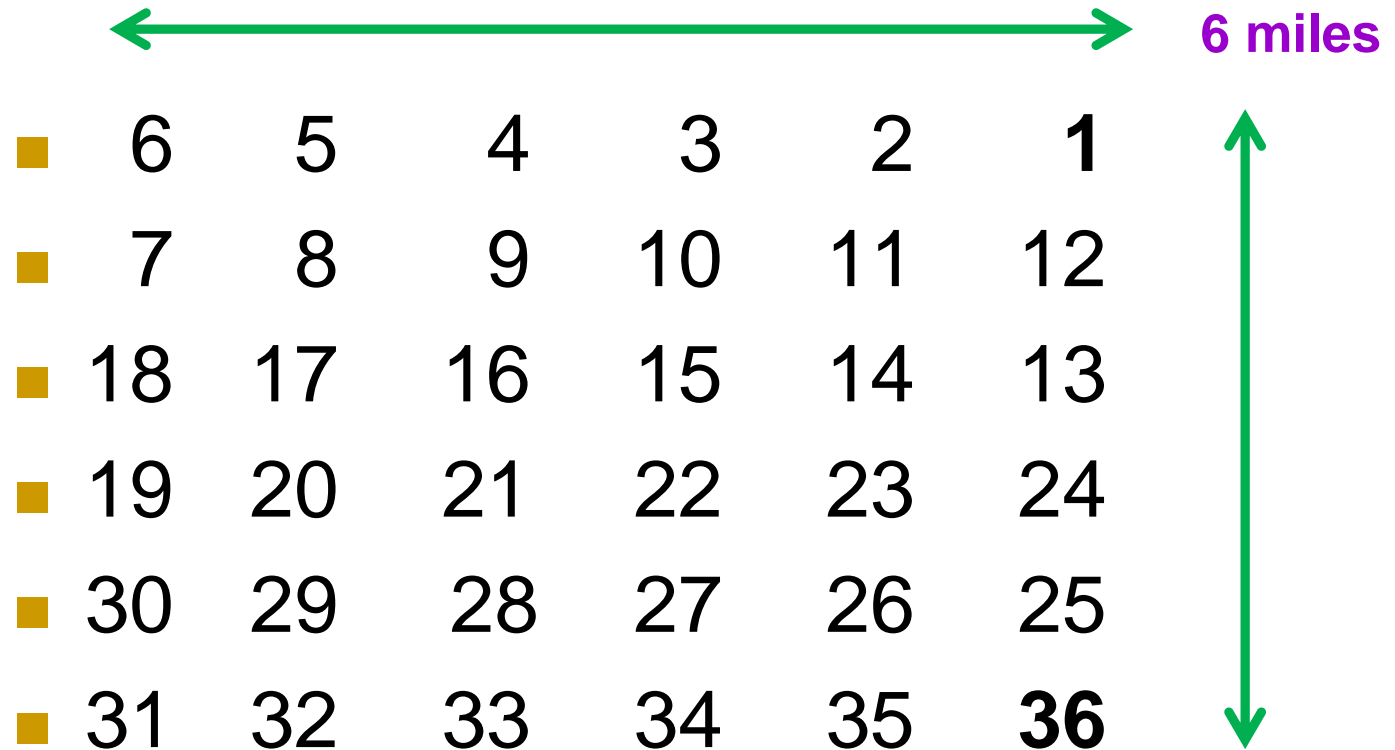
- T3N, R7W, XYZ Principal Meridian
- T24S, R13E, ABC Principal Meridian
- =====
- What's more important for our purpose is ...
- **SECTIONS**

Townships and Ranges



Sections

- This is what the section numbering looks like for any township:



Sections

- Each section is, theoretically, 1 sq. mile
- Each section is further broken down into
 - Half sections and quarter sections
 - See, e.g., p. 51
- Correction lines, lots and irregular sections
- Mapping a 3-dimensional sphere in 2 dimensions

Sections: Assume a “Normal” Sec. ...

??	E/2 NW/4 NW/4	E/2NW/4	<u>NE/4</u>			
SW/4NW/4						
<u>SW/4</u>			??			
				??		
						??
					??	

Public vs. Private Mineral Ownership

■ Public / Gov't.

- King's "Divine Right" to own everything
- Pay for government expenditures
- Provide benefits to all: the "public trust"
- Avoid wasteful exploitation
- Control resources useful as implements of war / defense

■ Private

- Promote "highest and best use"
- Increased efficiency
- Historical "accident"

Early O&G Cases

- Recall that ...
 - 1st US well: 1859 (in PA)
 - 1859 – 1899: US O&G production grew from 2,000 bbl / yr to 57.7 million bbl / yr
- Growth + \$\$ = disputes
- Early cases' geography (PA, W Va, OH, IN)
- BUT ...
- ... no body of jurisprudence or precedents to use / rely on
- **SO WHAT DID THE COURTS DO?**

Pierson v. Post

- What's happened here?
- What's the rule and rationale?
- What impact does it have on O&G law?
- “ferae naturae”



Del Monte Mining & Milling

- *What's the issue?*
 - *What's the rule?*
 - “ad coelum” rule
 - → a/k/a the “Heaven and Hell” Doctrine
 - *any exceptions?*
 - Mining: “extralateral rights” [p. 54 N1]
 - Only applies to Federal lands
 - *Is this the correct analysis?*
 - *If so, shouldn't it apply to private lands too?*
 - *If not, why did Congress pass this law?*
-

A Bit More History ...

- ... this time, about mining ... WHY?
- Mining since beginning of humans – oldest known mine is 43,000 years old
 - Prehistoric – stone, ceramics, metals for tools, weapons, conveniences of daily living
 - Prehistoric flint mines in N. France / Southern Eng.
 - Egyptians – green malachite stones
 - Romans – “hydraulic mining” (or ground sluicing)
 - Rome invaded Britain, in part, for deposits of gold, silver, tin and lead
 - Medieval Europe – copper and iron ... for what?
 - Exploration of the “New World” ... seeking what?

The Big Difference ...



Early O&G Cases

- Hard rock mining (stays in one place)
 - landowner owns all minerals under the land
- **vs.**
- Water / wild animals (flowing / running)
 - landowner owns mineral if / when they “capture” it or produce it

Ownership Theories (pp. 54-56)

- 2 Theories: **WHAT ARE THEY?**
 - “Ownership-in-Place” (O-i-P)
 - Landowner owns all substances beneath land
 - “Exclusive Right to Take” (ERT)
 - Landowner doesn’t own the substances, but possesses the exclusive right to produce and take those substances
 - Difference is one of emphasis
 - Generally same results, but important distinctions (partition, remedies, ad valorem tax laws)
 - Creates some inconsistent analyses
-

Kelly v. Ohio Oil Co.

- What's the problem here?
- What's the rule?

- RULE OF CAPTURE !!! (RoC)

Rule of Capture (“RoC”)

- **Definition: the right of a landowner to use his / her land in any way he / she wants, regardless of impact on neighbors**
 - Deceptively easy to say, but not so easily applied
- Developed at a time of relative ignorance about the nature and production of oil & gas
 - Thought to be like water (flowing) or wild animals (running); t/f, couldn't be owned until produced
 - Today – RoC endures as a fundamental principle of O&G law
 - Disregarding doctrinal differences, RoC is applied in both O-i-P and ERT states

Kelly v. Ohio Oil Co.

- How far from the property line were the wells in Kelly?
- What if they were 100' away?
- What about 200' ?

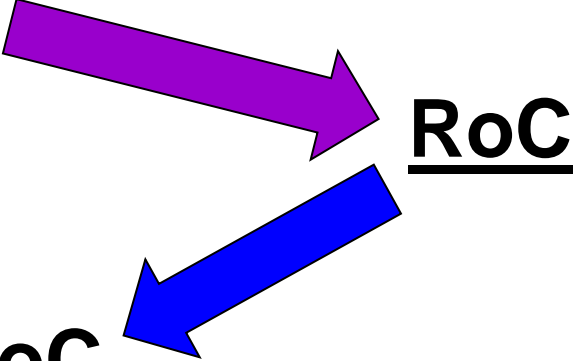
Rule of Capture

- *If your neighbor is drilling close to the property line, what's your remedy?*
 - See picture on p. 118
- So the RoC modifies the Heaven and Hell Doctrine ... *why did Courts permit this?*
- *Do you think that the RoC is still an appropriate approach today? Is it fair?*
- *How can RoC be squared with either ownership theory (O-i-P or ERT)?*

Rule of Capture

- *Should the RoC apply to groundwater?*
- *Other minerals?*

Ad Coelum and RoC: Progression

- Ad coelum
 -
 - Limits on RoC
- 
- The diagram illustrates the progression of legal concepts. A purple arrow points from the text 'Ad coelum' to the text 'RoC'. A blue arrow points from the text 'RoC' to the text 'Limits on RoC'. The text 'Ad coelum' and 'Limits on RoC' are underlined, while 'RoC' is also underlined.

RoC: Ownership of Oil and Gas ...

- ... before extraction
- ... after extraction

Champlin Exploration

- While Del Monte was “before extraction”, Champlin deals with an “after extraction” situation ...
- **What’s the situation here?**
- **What’s the rule?**
- **What’s the exception?**
- Different result in Champlin if:
 - **Western had been a mineral owner?**
 - **Champlin made no attempt to recover the oil after becoming aware of it?**
 - **The oil had been crude / unrefined, instead of refined?**
- **Does Western have a case vs. Champlin?**

Texas American Energy Corp.

- Another “after extraction” case ... *what different fact are we considering here?*
- *Why does this case even arise? Why don't they just perfect both kinds of rights?*
- Parties here stipulated that the reservoir was intact and gas couldn't escape ... *but what if the gas could / did? Is injector liable? If so, under what theory (ies)?*
- Since the extracted gas is personal property, but it's being injected into real property, consider the different kinds of issues that might arise – see N's 4, 5 and 8 (pp. 114-115)

Next Week ...

- Legal and State Regulatory responses to RoC
 - **TU: Correlative Rights and Common Law Limits**
 - Ch. 1 Sec. E (cont'd), G 2 & 3 (pp. **97** – 104; 140 – 147)
 - Supplemental Materials: 3 cases (posted)
 - **TH: Regulatory Responses (1 of 4)**
 - Ch. 4 Sec. A, B 1, and B 2 (b)
 - (pp. 609 – 617; 628 – 631; 650 – 674)
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