

# Oil & Gas Law

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## Class 20:

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### **Lessor Title Issues (5 of 6) – Conveyances & Reservations 2**

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## Up to Now ...

- ... we've dealt with conveyances of the mineral interest, the royalty interest and the surface
- ... when they have been “unencumbered” by a Lease

# Tonight ...

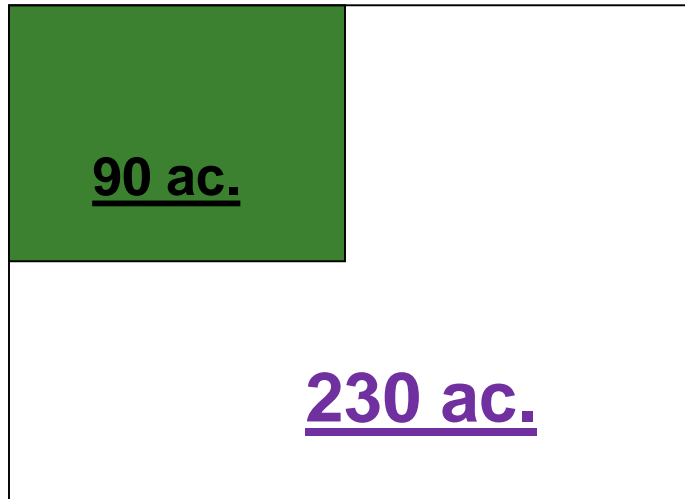
- Conveyances of Interests in Leased Lands:
  - Lands that are “subject to” an existing Lease
    - → “two grants” doctrine
  - Apportionment of royalties
  - Top leasing

## Questions ...

- Conveyance of land / mineral interest ...
- Minerals have already been leased and that OGL is still in existence ...
- =====
- *What (if anything) does the G'ee get under the current OGL?*
- *If the current OGL terminates, what (if anything) does the G'ee get under future OGLs?*

# Hoffman v. Magnolia Petroleum

- G'or conveys  $\frac{1}{2}$  interest in 90 ac. out of 320 that were previously leased



- Deed provides that the grant is “subject to” the OGL, and that Grantee gets  $\frac{1}{2}$  of rentals and royalties due to be paid under OGL terms
- ***Plaintiff's claim? Defendant's claim?***

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# Hoffman v. Magnolia Petroleum

- *What are the 2 competing principles?*
- *Why did this issue arise in this case?*
- *Does this decision make sense to you?*

# Hoffman & “Two Grants” Problem

- Approach referred to as the “two grants” theory (see p. 550 N2)
  - Arises when the “subject to” language is inconsistent with the granting language [ i.e., “competing fractions” ]
  - Ct. → is this an exception to the warranty, or is it a separate grant?

# “Subject to” Cl. / “Two Grants” Prob.

- Historical Context: Carruthers (p. 550 N1)
  - Unaccrued OGL benefits conveyed to G’ee **only by** specific assignment
    - T/F ... grant of min. int. covered by pre-existing OGL did not convey proportionate rt. in rentals and royalties
  - Reaction: “subject to” cl. and/or “covers and includes” cl. placed immediately after the granting cl. and not as an exception to warranty
- Purposes
  - Protects G’or from breach of warranty claims
  - Avoid Duhig issue (i.e., convey > what G’or owns)
  - “Clarifies” (supposedly) that G’ee receives his/her share in post-conveyance rentals and royalties



# Concord Oil

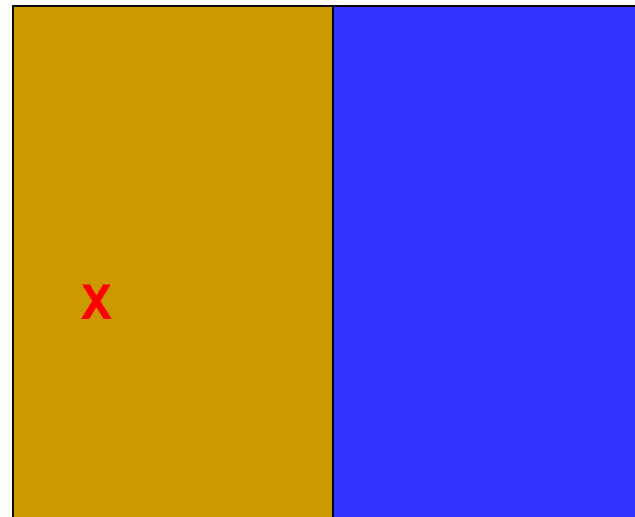
- *Did the Ct. use or not use the Hoffman approach? Why / Why not?*
- *Were 2 different estates being granted here?*
- *What's the one thing that seemingly all 9 Justices (despite the 4-1-4 split) agreed on?*
- See p. 553

# “Two Grants” Issue

- Arises when fractions are being used
  - Different fractions – which create an ambiguity (or, perhaps, merely a window of opportunity for an opportunistic client and his / her even more creative attorney)
  - Letting a fraction be “shorthand” for the Landowner’s royalty – see pp. 563-4 N4
- Can be avoided ... HOW?

# Apportionment of Royalties

- Where part of leased land is conveyed in severalty (vs. an undivided fractional interest), and then a well is drilled on part
- **What happens to:**
  - ❑ **Delay rentals?**
  - ❑ **Annual payments?**
  - ❑ **Shut-in royalties?**
  - ❑ **Production royalties?**
  - ❑ **Past payments?**



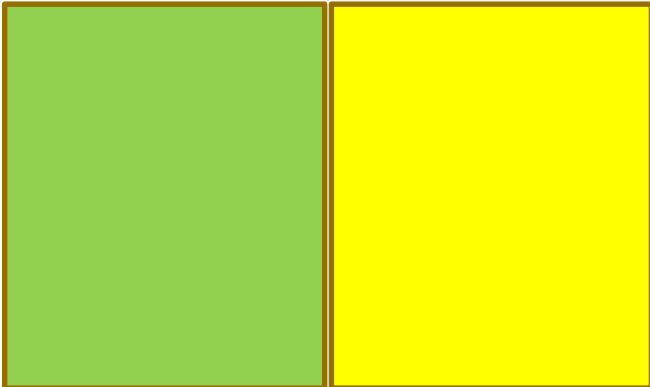
# Japhet v. McRae

- ***Court's ruling and its rationale?***
- Transfers of an undivided interest in land subject to a pre-existing OGL transfer all unaccrued OGL payments [ Hoffman ], and transfers of a divided interest in land subject to a pre-existing OGL transfer future OGL payments, but NOT royalties.
  - ***Why not? Is there a difference between rentals and royalties to justify royalties being treated differently?***

## Japhet v. McRae

- **P. 570, N 2** – despite questions about its fairness, nonapportionment rule is still the majority rule
- **P. 571, N 5** – nonapportionment rule applied to horizontal / depth subdivisions
- ***If the parties want to apportion royalties, how would you carry out and effect such a desire?***

# Apportionment of Royalties

- 1. Clearly-written K language
- 2. Entirety clauses – P. 571 N7 + Gilchrist
  - Fallen into disfavor:
    - Administrative burden on the Lessee
    - L'ee can end up paying more royalty than anticipated
  - EX: W/2: 3 owners –  $\frac{1}{4}$  (E CL.) +  $\frac{1}{4}$  +  $\frac{1}{2}$
  - 
  - **→ L'ee pays 5/4 of 1/8**
    - $\frac{1}{2}$  of  $\frac{1}{8}$  [ $\frac{1}{4}$  w/ EC]
    - $\frac{1}{4}$  of  $\frac{1}{8}$
    - $\frac{1}{2}$  of  $\frac{1}{8}$

# Top Leasing

- **WHAT IS A TOP LEASE?** [ p. 576 FN 1 ]
- **Hamman v. Bright**
  - **pp. 580-1 N2:** Hammans' argued that top lease was carved out of the L'or's possibility of reverter; t/f, could not violate RAP
  - Ct: not consistent w/ the top lease's language, but it did not rule on the argument itself
- Top leases – traditionally considered unethical; w/ rising prices and higher competition, they are becoming more common (even though perception unchanged)

# Top Leasing

## ■ Problems

- ❑ Rule Against Perpetuities
- ❑ The top lease clouds title → **pp. 581-2 N 5**
- ❑ Primary term ends, but the Lessee in the bottom lease uses the continuing operations clause to extend the bottom lease
- ❑ Many top leases now include clause that prohibits the top lease L'or (who is also the L'or in the bottom lease) from extending the bottom lease
- ❑ **pp. 582-3 N6:** possibility of tort claims



# *NEXT CLASS ...*

## ■ TH 4/3: CL 21

- L'or Title Issues (6 of 6) – Pooling
- Ch. 3, Sec. H → pp. 583 – 604
- → + NO Supplemental Materials