
Oil & Gas Law

Class 22:

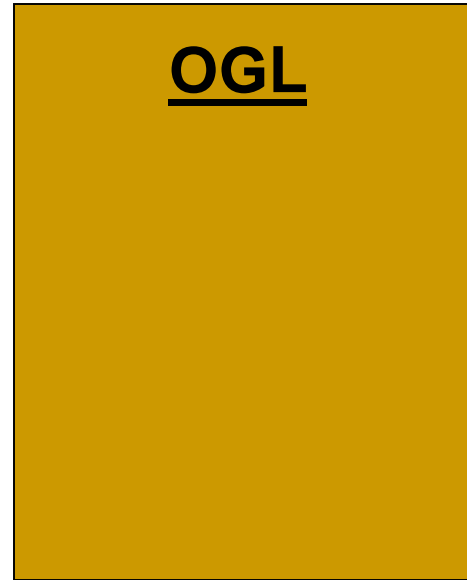
Lessee Contracts (1 of 4): Assignments of Oil & Gas Leases

New / Our *LAST* Unit !!!

- 1. RoC / Correlative Rights / Regulatory Responses
- 2. OGL
- 3. L'or Title / Conveyance Issues

Changing Focus ...

- 1 Lessor → → >1 L'or / Min / Roy Int



- 1 Lessee → → Transfer L'ee Rts / Obl.

What's Ahead ...

- **Assignments of the OGL** (CL 22)
 - ❑ 1. Drafting Considerations
 - ❑ 2. Assignor / Assignee Rts. and Obligations
 - ❑ 3. L'or Claims vs. Assignee
- Farmout Agreements (CL 23)
- Joint Operating Agreements (CL 24-25)

Assignments of OGLs – 1

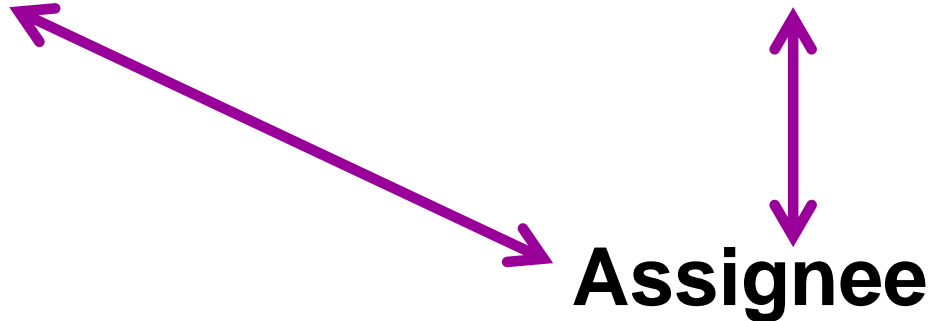
- OGL Assignments are nothing more than real property contracts
 - must comply with laws applicable to such instruments (Stat. of Frauds, recording laws, etc.)
 - State laws
 - Contracts
 - Real property
 - Federal laws
 - Securities
- Document should **clearly** express the parties' deal and their intent

Assignments of OGLs – 2

- In whole
- In part: like L'or's conveyances – many ways
 - Undivided interest in the entire tract
 - “Horizontally” – e.g.,
 - the N/2
 - E/2 SE/4
 - “Vertically” – by depth; e.g.,
 - from the bottom of XYZ formation to the top of the ABC formation
 - from the surface to 4,000'
 - “By mineral”
 - assignment of coal / uranium / gold and silver
 - while retaining the oil and gas rights
 - Cook case on p. 741
 - Limited to existing production – a “wellbore assignment”

Assignments of OGLs – 3

■ **Lessor**  **Lessee / Assignor**



■

□ Effect of the Assignment on the Lessor

- Lessor vs. Lessee
- Lessor vs. Assignee

□ Effect of the Assignment on the Lessee / Assignor

- Rights of Lessee / Assignor vs. Assignee
- Duties owed by one or the other, or both, to Lessor

□ Effect of the Assignment on the Assignee

- Duties owed to Lessor
- Duties owed to Lessee / Assignor

Assignments of OGLs – 5: Forms

- Short or long
- Simple or complex
- OGL can be assigned at any time:
 - Before drilling (t/f, in the Primary Term)
 - After drilling (either in the Primary or Secondary Terms)
- Sample pp. 933 – 934

Petropro v. Upland Resources

- “Wellbore assignment”
 - Main point is how attorney deals with a new wrinkle when little or no case law exists
- Facts
 - 1998 assignment Def. → Pltf. of OGLs, but only to the extent that such leases “cover rights in the wellbore” of the King “F” Well
 - Later: Def. drills HZ wells in shallower fn.
- ***What did the 1998 assignment convey?***
- ***Why buy a well that current producer decided isn’t “economically viable”?***

Petropro v. Upland Resources

- Accumulation of other issues covered before:
 - ❑ Allegations of trespass and conversion
 - ❑ Everyone agrees that K is unambiguous, but differing interpretations
 - ❑ Conveyance of mineral interest that “slices and dices” the mineral estate into smaller pieces
 - ❑ Complicated facts and multiple formations
 - ❑ Alleged breach of I/C
 - ❑ Rules of contract construction: “4 corners” vs. parties’ intent
 - ❑ Horizontal and vertical E&P

Sample Assignment: pp 933-934

- ¶ 1 – disclaimer of warranty
 - Why needed?
 - Why would Assignor be unwilling?
- ¶ 2 – delay rentals (if OGL is not paid-up Lease)
 - Why is ¶ 2 needed?
- Shut-in Royalty (TX OGL Sec. 9) – if the Lease is partially assigned, S-IRs are apportioned
- N3 – further assignments and continuing obligations: Shore E&P v. Exxon
 - “covenants running with the land”
- Assignment of OGL after well drilled, where OGL held by “savings clause(s)”

Assignments of OGLs: ORRs

- Often create ORR
 - CL 13 and CL 16 (pp. 298 and 409-410)
- ***Definition? Characteristics?***

OGL Assignments:

2. Rts and Obligations of A'or vs A'ee

- L'ee holds a leasehold interest, then assigns it while retaining some interest (usually ORR)
- **Issue:** determining the scope and extent of protections to protect Assignor against the acts of their Assignee (intentional or inadvertent) that could extinguish the Assignor's interest or rights [p. 940]
 - ❑ Whether ORR survives extensions / renewals
 - ❑ Can Assignor enforce the covenants of the OGL

OGL Assignments:

Rts and Obligations of A'or vs A'ee

- Reynolds-Rexwinkle & Cook: ***Facts / Issues?***
- RR: “extensions and renewals” cl.= washouts
 - L'ee / A'or retains interest / ORR in original Lease and “any extensions or renewals thereof”
- Cook: USGS “potash stipulation” that prevents Assignee from drilling well
- ***Different theories / claims in the 2 cases?***
- ***Where does “duty of fair dealing” found in R-R come from?***

OGL Assignments:

Rts and Obligations of A'or vs A'ee

- *What are pros / cons of the Cook analysis (letting the L'ee / A'or enforce an I/C)?*
- FOR:
 - Non-operating interest holders need protection
 - Extending I/C protections doesn't significantly increase A'ee's obligations (already owe to L'or)
- AGAINST:
 - I/C have to be implied into the Assignment
 - Sophisticated parties: if part of deal, they'd have said it
- *If I/C vs drainage enforced against A'ee, what about the other I/Cs? XAE, p. 950 N1; N2*

OGL Assignments:

Rights and Obligations of A'or vs A'ee

- pp. 944-945, N 2&3:
 - TX (Sunac) – construes E&R clauses narrowly
 - OK (Brannon) – construes E&R clauses broadly
 - More likely to find either a fiduciary duty, or a position of trust, or some obligation to extend or renew the Lease

OGL Assignments:

Rights and Obligations of A'or vs A'ee

■ Assume in all cases ...

□ Lessor  Lessee/Assignor  Assignee

□ Assignment from L'ee / A'or to Assignee reserves an ORR, and contains an "E&R" cl.

□ OGL A terminates; then Assignee signs a new OGL ("OGL B") w/ the Lessor

■ =====

■ Scenario 1: Does the "E&R" Clause apply?

□ OGL A has terms 1, 2 & 3

□ OGL B has terms 2, 3, 4 & 5; signed 2 days before OGL A expires

OGL Assignments:

Rights and Obligations of A'or vs A'ee

- Scenario 2: **Does the “E&R” Clause apply?**
 - ❑ OGL A: terms 1, 2 & 3
 - ❑ A'ee fails to perform obligation under OGL A, which causes OGL A to terminate
 - ❑ 3 months later, A'ee signs OGL B w/ Lessor
 - ❑ OGL B: terms 4, 5 & 6
- Scenario 3: **Does the “E&R” Clause apply?**
 - ❑ Same as Scenario 2, but A'ee started negotiating the new OGL (OGL B) w/ Lessor 2 months before A'ee's failure to perform caused OGL A to terminate

OGL Assignments:

Rights and Obligations of A'or vs A'ee

- Scenario 4: Does the “E&R” Clause apply?
 - L'or → L'ee / A'or 1 → A'ee; A'ee lets OGL 1 lapse
 - 6 mos. later: L'or → L'ee / A'or 2 → A'ee
- Scenario 4A: Does the “E&R” Clause apply?
 - Same as Scenario 4 ... but what if L'ee / A'or 2 is a wholly-owned subsidiary of A'ee?
- Scenario 5: Does the “E&R” Clause apply?
 - E/2: L'or → Ed → Al → Willy
 - W/2: L'or → Willy
 - Willy drills on W/2 (no ORR) and drains E/2

OGL Assignments:

Rights and Obligations of A'or vs A'ee

- Look at –
 - -- how closely (or not) the 2 OGLs mirror one another
 - -- when the discussions / negotiations between the Lessor and the Assignee began (incl. their actions)
 - -- how much time elapsed between the termination / expiration of OGL 1 and the commencement of OGL 2
 - -- whether or not the Assignor and Assignee have some kind of position of trust / fiduciary duty / joint cooperative relationship, to justify a higher standard on the Assignee

OGL Assignments: 3. L'or vs. A'ee

- **ISSUE 1: Free alienability** of OGL vs. who L'ee is
 - L'or can try to limit / restrict / prohibit
 - the more restrictive the prohibition, the more unmarketable the OGL → the less likely the prohibition will be enforced
 - Shields (p. 951): consent rt viewed as personal to L'or; t/f, separated from int in land = restraint on alienation
 - Would consent as condition subsequent be valid?
- **ISSUE 2: divisibility** → where **part** of the leased land **is assigned** (in 1 of the 5 ways; slide 6)
 - Are the obligations under the OGL divided?
 - Are the implied covenants under the OGL divided?

OGL Assignments: L'or vs. A'ee

- **OAG** (p. 952): *Issue?*
- **OAG**: issue of indivisibility of habendum cl.
 - ❑ P. 953, N1: “indivisibility doctrine” applies to the Habendum clause and clauses that modify it (e.g., shut-in royalty)
 - ❑ *Can “indivisibility doctrine” be changed by parties?*
 - ❑ *Can production of other minerals maintain the Lease?*
(see Cain v. Neumann, TX Civ. App. 1958)
- **BUT... Kothe**: indivisibility of I/Cs
 - ❑ Not unanimous; prevailing view is I/Cs are indivisible
 - ❑ TX: I/Cs are divisible ... *Why?* Cosden (p. 958-959 N1) and N2 criticizing the case
 - ❑ *Should all I/C be divisible? Is I/C to develop special?*
 - ❑ Issue: largely academic, due to Pugh and prop. red. cl.
 - ❑ **See p. 956: IL Ct is WRONG**

NEXT CLASS ...

■ TH April 10: Farmout Agmts

- Ch. 6, Sec. C 2-4
- pp. 961 – 962; 970 – 989
- + supplemental material – the FO Agreement form
- **BRING THE FORM TO CLASS !!!**