

# Oil & Gas Law

---

## Class 9: OGL (1 / 7) –

---

1. Surface Use
2. Substances Granted

# ADMIN: Quiz and Syllabus

- No comments on quiz until papers returned
- Comments from Class on quiz??
- =====
- Syllabus:
  - OGL – 7 classes
  - Lessor Title Matters / Conveyances – 6 classes
  - Lessee Contracts – 4 classes
  - New Dev. – 2 classes
  - Review Session
    - NOTE: *more supplemental materials in this period*

# Mineral Ownership & Surface Ownership



- Often different ... WHY ??
- A brief history:
  - CL 2: mining pre-dated O&G; impacted O&G law
  - King's exclusive power to coin money
  - King's "duty to defend the realm"
  - FROM THOSE 2 ROYAL PREROGATIVES ...  
we get:
- the severed mineral estate
- the mineral estate's priority over the surface estate

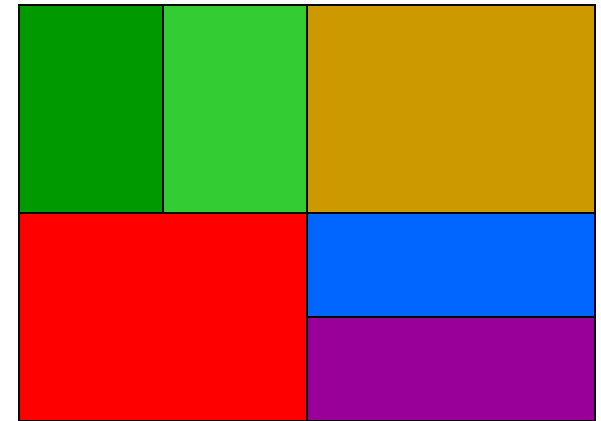
# Today ...

- ... as many separate estates as there are minerals, formations and strata ...

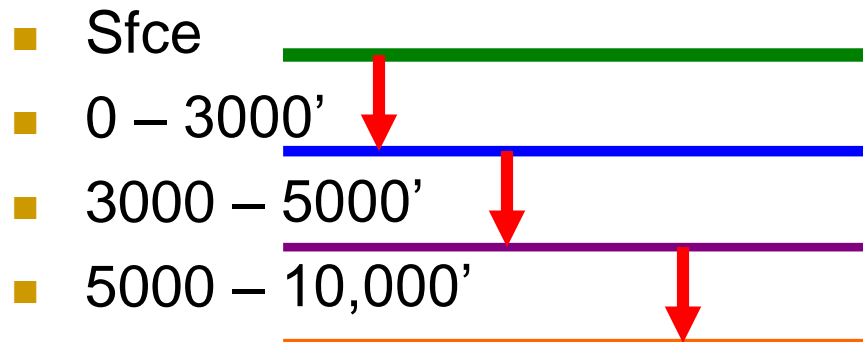


# Mineral and Surface Estates: “Slicing and Dicing the Property”

- The surface



- The mineral depths



# Mineral Owner's Use of Surface – General Rule ??? [ 3 elements ]

- **Can the mineral use all / part of the surface?**
- The mineral owner can use as much of the surface as is **REASONABLY NECESSARY and REASONABLY CONNECTED** for the exploration / development / production
  - ... at **LOCATIONS reasonably associated** with the operations
  - ... includes the right to use / consume the surface or its products (e.g., water – Sun Oil v. Whitaker; pp. 190 / 192)
- **COROLLARY:** mineral owner must have “due regard” for the surface owner’s uses / rts. (p. 185)

# Evolution of a Problem

- The olden days ...

- PA Sup. Ct. (1886)



- “To encourage ... development of ... natural resources ... trifling inconveniences to particular persons must sometimes give way to the necessities of a ... community.”

- Today ...





## 5 Limitations on Min. Owner's Use of Sfce:

( Notes on pp. 188 – 199 )

- **Reasonably necessary** to produce oil and gas
- Produce oil & gas under the subservient surface estate
- State (but especially LOCAL !!!) police power
  - Zoning regulations
  - Noise ordinances
  - Spacing rules
- Lease clauses or other restrictive covenants in OGLs or other contracts
- **“Accommodation Doctrine”**



# Accommodation Doctrine

- *IF ... surface owner can prove 2 Elements*
- 1. an “existing use” by the surface owner
- 2. established industry practices give the mineral owner alternatives in how / where the oil & gas can be produced
- *... THEN the mineral owner must “accommodate” the surface owner’s use of the surface*

# Surface Use Problems – 1

- *Who decides if a use is reasonable?*
- *What elements / factors might come into play in determining reasonableness?*
- *Can a use which was reasonable become unreasonable over time?*
  - *Grimes v. Goodman Drilling Co. (1919):* *mineral owner could locate drilling and producing equipment in the front yard of a residence*
- *Does violation of state agency rules affect whether use is reasonable or not?*

## Surface Use Problems – 2

- *If the mineral owner violates its rights, what remedies are available / appropriate for the surface owner?*
- *Conversely, if the surface owner doesn't let the mineral owner use the surface, what are the mineral owner's remedies?*

# Surface Use Problems – 3

**Can a mineral owner** who's developing minerals ...

- build a road to get to the well / mine?
- build an airplane landing strip?
- cut trees to clear a drilling location?
- build housing for its employees?
- build baseball diamond / soccer field for its employees?
- build a powerline / substation for electricity?
- build fences / gates that require the mineral owner to get out and open / close gates?

# Accommodation Doctrine – Prob.

- Surface owner has plans drawn up to build a house in same location where mineral owner wants to drill, but no construction started ...

*who can drill / build?*

- *Variations*
  - ❑ What if surface owner could build elsewhere, but mineral owner can't drill anywhere else?
  - ❑ What if the plans aren't drawn up, but it's just a rough sketch?
  - ❑ What if the surface owner hasn't gotten any building permits?

## Problem – p. 199

- O → A Blackacre, but reserves the minerals
- **What do O and A have, respectively?**
- O successor leases to Oil Co. so that Oil Co. can (1) access oil / gas ops on adjacent land, and (2) drill a SWD well for brine from Blackacre and other properties
- **Rights / liabilities among O, A and Oil Co?**

# SFCE USE / DOM. ESTATE / ACCOMMODATION DOCTRINE

- ***Consider: p. 196 N4***
- ***QUESTIONS ??***



# Land Clauses – pp. 200-203

- 6 types listed
- Of those 6, the 3 you should be most aware of are:
  - “Mother Hubbard” clause
  - “After-acquired title” clause
  - “Property reduction” clause
- We’ll deal with those 3 in 5 weeks (CL 19)

# OIL and GAS LEASE

- THE ... CENTRAL DOC IN O&G LAW
- THE ... CENTRAL FOCUS OF BAR EXAM  
O&G QUESTIONS
- =====
- “Lease” .... but it’s really not ... WHY ?
- Moving away from regulation to private, contractual relationship between 2 parties
- Initially, we’re going to **assume 1 Lessor and 1 Lessee**

# OIL and GAS LEASE

- Inherent conflict in goals and objectives
- L'or
  - ❑ Drill producing wells
  - ❑ Drill well(s) sooner rather than later
  - ❑ Receive as much \$ as possible
- L'ee
  - ❑ Drill producing wells
  - ❑ Hold the acreage for as long as possible, without drilling → **WHY?**
  - ❑ Pay as little \$ as possible

# OGL: Topic 1 – Granting Clause

## ■ ***Do these grants mean the same thing?***

❑ ***Oil and gas***

❑ ***Oil, gas and other hydrocarbons***

❑ ***=====***

❑ ***Oil, gas and minerals***

❑ ***Oil, gas and all minerals***

❑ ***Oil, gas and other minerals***

❑ ***Oil, gas and all other minerals***

# OGL: Topic 1 – Granting Clause

- ***Why does this issue even arise?***
  - ***3 reasons***
- ***What is a mineral?***



# OGL: Topic 1 – Granting Clause

## What is a Mineral?

- Wikipedia defn:
  - ... a naturally occurring solid chemical substance formed through biogeochemical processes, having characteristic chemical composition, highly ordered atomic structure, and specific physical properties.
- **DOES THIS HELP US ???**
- *Prof. Lowe: “... the state of the law with respect to defining “minerals” is highly confusing and generally unsatisfactory.”*
- **DOES THIS HELP US ???**

# OGL: Topic 1 – Granting Clause

- *Courts often address this issue, usually with contradictory results*
- ***The source of the problem: historic and economic aspects***
  - the custom of including a “mineral” clause
  - the parties’ intention(s)
  - today’s troublesome impurity is tomorrow’s “hot” and vital ingredient
    - ex: sulfur; uranium; silicon; “rare earths”



# OGI: Topic 1 – Granting Clause

## ■ Substances in dispute:

- ❑ Sulfur
- ❑ Sand & gravel
- ❑ Salt
- ❑ Limestone
- ❑ Coal and bauxite
- ❑ Granite
- ❑ Uranium
- ❑ Clay
- ❑ Iron ore

# OGL: Topic 1 – Granting Clause

- *What's the rule in TX?*

# Moser

- “ordinary and natural meaning” test
  - “mineral” = all substances within the ordinary and natural meaning of that word
  - ... whether their presence or value was known at the time of the severance
- Applies **PROSPECTIVELY ONLY** from June 1983
- TX Property Code §75.001(a)(1)
  - “Mineral” means oil, gas, uranium, sulfur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral in this state, regardless of the depth at which [it] is found.”
- **Why did the Ct. have to rule the way it did?**
  - **i.e., what led up to the Moser decision?**

# TX: An evolution of tests

- Acker v. Guinn (iron ore; 1971):
  - *“surface destruction” test*
  - *mineral = something underground*
  - *parties would’ve had no intent*
  - *flood of litigation + title uncertainty + “strained and inconsistent definitions”*
- Reed v. Wylie (a/k/a “Reed I”; coal; 1977):
  - *re-affirmed Acker*
  - *as of the date that estates were severed → parties’ intent*
  - *once owned by sfce owner, they own it to all depths*
- Reed II (coal; 1980):
  - any reasonable extraction method at severance or after
  - up to 200 ft. was surface, as a matter of law

# Oklahoma v. Butler

- Rule of contract construction:
- “ejusdem generis”
  - → general add-on at end means other things that are similar
- **What did the Ct. find?**
- Note p. 492 (bottom) vs. p. 495 N1: **Is the phrase “oil, gas and other minerals” ambiguous? Or is it clear?**

# *NEXT WEEK:*

## ■ **TU Feb. 18 (CL 10) – OGL 2 of 7**

### □ Topic 2: Term of the OGL

- Primary – Ch. 2, C1: pp. 208 – 229
- Secondary – Ch. 3, C2(a): pp. 230 – 243 (top)

## ■ **TH Feb. 20 (CL 11) – OGL 3 of 7**

### □ Topic 2: Term of the OGL (cont'd)

- Secondary – Ch. 2, C2 (b) & (c): pp. 243 – 278