

# **The Texas Oil and Gas Lease**

Fall 2021

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- Date and Time: Monday evenings, 5:30-7:30
- Location: TBD
- Office Hours: By appointment.

## ***Course Materials***

- Caselaw packet (to be provided by Kuiper and Martin)
- Lease provision packet (to be provided by Kuiper and Martin)

## ***Course Specifics and Format***

This course is designed to focus on the individual terms in a modern oil and gas lease. Each week will focus on a different type of lease provision, with materials that include actual lease examples and relevant case law. The course will primarily follow a lecture and discussion format, with exercises focused on interpreting and drafting lease provisions; participation and engagement with the materials is expected. Particular emphasis will be placed on interpretation of different provisions, as well as the practical, real-world effects on both landowner and operator.

Although this class is a practical oil and gas skills class, the materials also require an understanding of property and contract law.

## ***Grading***

- 10%: Overall preparedness and class participation
- 30%: Assignments
- 60%: Final project

- **Week 1 (August 23): Intro**
  - General concepts
  - Mineral ownership in relation to the lease
    - Majority rule: Ownership of oil, gas, and minerals in place
      - *Stephens County v. Mid-Kansas Oil & Gas Co.*, 254 SW 290 (1923)
    - Minority rule: Exclusive right to take
  - Nature of an OGL
    - *Texas Co. v. Davis*, 254 SW 304 (1923)
    - *Hitzelberger v. Samedan Oil Corp.*, 948 SW2d 497 (1997)
  - Implied covenants of an oil and gas lease
    - *Amoco Production Co. v. Alexander*, 622 SW2d 563 (1981)
  - Brief overview of course
    - Example leases on Blackboard
- **Week 2 (August 30): Granting Clause**
  - Example:
    - “In consideration of a cash bonus in hand paid and the covenants herein contained, Lessor hereby *grants, leases and lets* exclusively to Lessee the following described land...”
  - Necessary components
  - Mother Hubbard clause
    - *Smith v. Allison*, 301 SW2d 608 (1957)
    - *Jones v. Colle*, 727 SW2d 262 (1987)
  - Consideration
    - Revisit *Texas Co.*
  - *Stanolind Oil & Gas Co. v. Barnhill*, 107 SW2d 746 (1937)
  - *Moser v. United States Steel Corp.*, 676 SW2d 99 (1984)
  - See also:
    - *W. T. Waggoner Estate v. Sigler Oil Co.*, 19 SW2d 27 (1929)
    - *Willingham v. Bryson*, 294 SW2d 421 (1956)
    - *Sun v. Jackson*, 783 SW2d 202 (1989)
- **September 6: Labor Day holiday**
- **Week 3 (September 13): Habendum clause/primary term**
  - Defines the extent of title (interest and duration)
  - Revisit *Hitzelberger v. Samedan Oil Corp.*
  - Delay rentals
  - Paid-up leases
  - Options to extend

- **Week 4 (September 20): Habendum Clause/Secondary Term**
  - Typically not specifically defined. “X number of years, *and for so long thereafter as oil, gas, or other minerals are produced in paying quantities.*”
  - *Watson v. Rochmill*, 155 SW2d 783 (1941)
  - *Garcia v. King*, 139 Tex. 578 (1942)
  - *Clifton v. Koontz*, 325 SW2d 684 (1959)
  - *Gulf Oil Corporation v. E. L. Reid*, 337 SW2d 267 (1960)
- **Week 5 (September 27): Royalties**
  - Proportionate reduction
  - Lessee’s right to use oil and gas
  - Flaring
  - Costs borne by royalties/cost-free provisions
  - Provisions governing at what point price is determined
  - Cases:
    - *Delta Drilling Co. v. Simmons*, 338 SW2d 143 (1960)
    - *Judice v. Mewbourne Oil Co.*, 939 SW2d 133 (1996)
    - *Heritage Resources, Inc. v. NationsBank*, 939 SW2d 118 (1997)
    - *Chesapeake Exploration, L.L.C. v. Hyder*, 483 SW3d 870 (2016)
    - *Burlington Resources Oil & Gas Co. v. Tex. Crude Energy, LLC*, No. 17-0266 Supreme Court of Texas
      - See also: *BlueStone Natural Resources II, LLC v. Nettye Engler Energy, LP*
  - ASSIGNMENT ONE (due Sunday, October 3)
- **Weeks 6 and 7 (October 4, October 11): Pooling/unitization/production units (i.e. lease-based wells)**
  - Unit sizes
  - Permit/prescribe/require language
    - RRC rules
  - Common limitations on authority
    - Limits/requirements on amount of land included
    - Prior written consent of Lessor
  - Communitization/anti-communitization
  - *Elliott v. Davis*, 553 SW2d 223 (1977)
  - *Amoco Production Co. v. Underwood*, 558 SW2d 509 (1977)
  - *Jones v. Killingsworth*, 403 SW2d 325 (1965)
  - *Opiela v. Railroad Commission of Texas* (2021)

- **Weeks 8 and 9 (October 18, October 25): Savings clauses**
  - *Humble Oil & Refining Co. v. Kunkel*, 366 SW2d 236 (1963)
  - Shut-in royalty
    - *Hydrocarbon Mgmt. v. Tracker Exploration*, 861 SW2d 427 (1993)
    - *Freeman v. Magnolia Petroleum Co.*, 171 S.W. 2d 339 (1943)
    - *Amber Oil & Gas Co. v. Bratton*, 711 SW2d 741 (1986)
    - *Brannon v. Gulf States Energy Corp.*, 562 SW2d 219 (1977)
    - Revisit *Gulf Oil Corporation v. E. L. Reid*
  - Temporary cessation of production/dry hole clause
    - *Watson v. Rochmill*, 155 SW2d 783 (1941)
    - *Rogers v. Osborn*, 261 SW2d 311 (1953)
    - *Skelly Oil Company v. Harris*, 352 SW2d 950 (1962)
    - Revisit *Gulf Oil Corporation v. E. L. Reid*
    - See also:
      - *Chandler v. Drummet*, 557 SW2d 313 (1977)
      - *Stanolind Oil and Gas Company v. Newman Brothers Drilling Company*, 305 SW2d 169 (1957)
      - *Sun Operating Partnership v. Holt*, 984 SW2d 277 (1998)
      - *Samano v. Sun Oil Co.*, 621 SW2d 580 (1981)
      - *Ridge Oil Co. v. Guinn Investments, Inc.*, 148 SW3d 143 (2004)
      - *Scarborough v. New Domain Oil & Gas Co.*, 276 SW 331 (1925)
  - Continuous development clause
    - *Community Bank of Raymore v. Chesapeake Exploration, L.L.C.*, 416 SW3d 750 (2013)
    - See also: *Parten et al v. Cannon et al*, 892 SW2d 327 (1992)
  - Force majeure
    - Revisit *Hydrocarbon Mgmt*
    - *Gilbert v. Smedley*, 612 SW2d 270 (1981)
    - *Perlman v. Pioneer Partnership*, 918 F2d 1244 (1990)
- **Week 10 (November 1): Lease termination/severance**
  - Full lease termination
    - Revisit *Texas Co. v. Davis*.
    - *Mathews v. Sun Oil Co.*, 425 SW2d 330 (1968)
  - *Hunt Production Co. v. Dickerson*, 135 SW2d 597 (1939)
  - *Kincaid v. Gulf Oil Corp.*, 675 SW2d 250 (1984)
  - Retained acreage vs. Pugh clause

- *XOG Operating, LLC v. Chesapeake Exploration Limited Partnership and Chesapeake Exploration, LLC*, 480 SW3d 22 (2015)
    - *Shown v. Getty Oil Company*, 645 SW2d 555 (1983)
  - Depth severances
    - *Friedrich v. Amoco Production Company*, 698 SW2d 748 (1985)
    - *182 El Paso Prod. Oil & Gas v. Tex. State Bank*
  - *Humphrey v. Seale*, 716 SW2d 620 (1986)
  - *Endeavor v. Discovery*, No. 15-0155 Supreme Court of Texas (2018)
  - ASSIGNMENT TWO (due Sunday, November 7)
- **Week 11 (November 8): Typical administrative clauses**
  - Restrictions on assignment
  - Warranty
  - Surface use
    - *Kenny v. Texas Gulf Sulphur Company*, 351 SW2d 612 (1961)
    - *Humble v. Williams*, 420 SW2d 133 (1967)
    - *Getty Oil Co. v. Jones* 470 SW2d 618 (1971)
  - Revisit *Moser*
  - Indemnity, tax, venue, etc.
- **Week 12 (November 15): Lease amendment and miscellaneous lease concepts/course catch-up day**
  - Life estates
    - *Swayne v. Lone Acre Oil Co.*, 86 SW 740 (1905)
  - Nonexecutive interests
    - *Montgomery v. Rittersbacher*, 424 SW2d 210 (1968)
- **Weeks 13 and 14 (November 22, November 29): Course recap; consolidation of all provisions; preparation for final project**