**People’s Gas v. Tyner**

1. **Procedural History:** Court granted a temporary injunction from which the appeal is prosecuted.
2. **Facts:** There was a gas well 200ft from Tyner’s home. People’s Gas wanted to shoot the well with nitroglycerin which fractures the porous rock This is not a safe operation as you are blowing up things that are inherently explosive. Tyner argues that People’s Gas having the nitroglycerin is a nuisance in itself. People’s Gas argues that it has an inherent unlimited right to get the gas under the Rule of Capture.
3. **Issue:** Do appellants have a right to take the gas at all?
4. **Holding:** Court held that they should be content with such flow of gas that can be obtained without shooting. It cannot be maintained that the destruction of human life is an injury, which can be compensated in damages. A private citizen may maintain an action for a public wrong if he suffers an injury peculiar to himself, and not sustained by the public in general.
5. **Rule:** The rule that the owner has the right to do as he pleases with or upon his own property is subject to many limitations and restrictions, one of which is that he must have due regard for the rights of other. It is settled that the owner of a lot may not erect and maintain a nuisance thereon, whereby his neighbors are injured. If he does so, and the injury sustained by such neighbor cannot be adequately compensated in damages, he may be enjoined.
6. **Comments:**

**United Carbon v. Campbellsville Gas Co.**

1. **Identities of the Parties:** Appellant United Carbon is the owner of a large number of natural wells scattered over Taylor and Green counties. Part of the gas it secures from these wells it sells to the Taylor-Green Gas company, which supplies the gas under a franchise to the residents of the town of Campbellsville.
2. **Procedural History:** Court entered a judgment enjoining the appellant “from decreasing the natural flowage of gas in appelle’s wells and lines of pipe by use of the compressor in evidence.” From that judgment this appeal is prosecuted.
3. **Facts:** Due to low pressure in its wells and storing it in the wells on the Chandler lease, from which later it was draws as needed to supply the town.Appellee entered into active and effective competition with the appellant in the supply of natural gas to the residents of Campbellsville. Appellant installed on its Chandler lease a compressor which can be operated as not only to sustain or increase the pressure in the service mains bu also by suction to increase materially the flow of natural gas from the wells to which it may be coupled. Appellee insists that the working of this compressor has materially reduced the flow of gas from all the wells in this gas field, and especially from the gas wells, which it owns. It also hints that the primary purpose of the appellant in installing this compressor was to destroy the appellee’s competition by ruining its wells. For these reasons the appellee brought suit to enjoin the appellant from using the compressor.
4. **Holding:** Record failed to show any sinister purpose on the part of the appellant in the use of the compressor. The compressor was built because of the sinking pressure in the gas field which made the service unsatisfactory. Compressors have been user in that territory for a long time, and the dearth of legal contest over their use is somewhat persuasive of the prevalent idea of the lawfulness and the reasonableness of their use.
5. **Rule:** The owner of a gas well has no right to waste the product of that well at least in such a fashion as to injure the wells of his neighbor; that he has the right to use without stint for any legitimate purpose the natural flow from his well; but whether he has the right to stimulate that natural flow for a legitimate purpose is neither discussed nor decided.
6. **Judgment: R**eversed with instructions to dismiss appellee’s petition. . Lower court erred in granting the injunction it did.
7. **Comments:**

**Philips Petroleum Co. v. American Trading and Production Corp.**

1. **Procedural History:** Prior suit between the Railroad Commission of Texas and appellee American Trading, over denial of RC to AT of a special permit to drill and produce a gas well. AT appealed from the RC’s order denying the permit to the DC of Travis County and obtained a trial court injunction enjoining enforcement of the order and any interference with the drilling or production of the well from which judgment the TRC, PPC appealed. AT drilled completed and produced the well in question. Court of Civil Appeals upheld the order of the TRC denying the permit to AT and it reversed and render the trial court’s judgment.
2. **Facts:** Gas and distillate was produced from the well throughout the period of litigation, from Jan 1959, until the mandate of the COA was filed and the well was shut-in by the TRC on July 30, 1950. Since Philips was the only purchaser of gas and distillate in the field during the time the well was being produced, it took the production from such well without discrimination, and placed the proceeds in suspense pending final determination of the prior litigation.
3. **Issue:** Who is entitled to receive the monetary proceeds (94,246.16) derived from the sale of oil and gas produced from a well drilled in violation of a valid order of the TRC prohibiting the drilling and production of such well.
4. **Holding:** American Trading in drilling and producing the Heidelberg well under the color of authority of the TRC permit which had been issued pursuant to a trial court injunction from which an appeal had been taken, knowingly assumed the risk that the trial court’s injunction might be dissolved and the TRC’s order be reinstated. It is sufficient to state a cause of action against the one taking and to require a trial of the issues on the merits.
5. **Rule:** Commission has the duty in cases where it has been determined that a common reservoir exists in which numerous parties share certain rights and interests, to promulgate field rules and orders applicable to such common reservoir are entitled to take from the common reservoir or share in the proceeds from such production.
6. **Judgment:** Judgment of trial court reversed and this cause is remanded with instructions that appellees’ exceptions be overruled and that the case proceed to trial on the merits.
7. **Comments:**

**Wroski v. Sun Oil Co.**

1. **Identities of the Parties:** Ps owned 200 acres of land and the attendant mineral rights located in St. Clair County. Wronskis own an 8-acre tract (Tract 7) and a 40-acre tract (Tract 13). The D leases property from H.H Winn (Tract 9) and from HH Winn, Et al (Tract 12).
2. **Procedural History:** After bench trial the court found that D had intentionally and illegally overproduced 150k barrels of oil and that 50k barrels of this oil had been drained from Ps property. Court held that this overproduction and drainage constituted tortious breaches of D’s contractual obligations under the oil and gas leases entered into with Ps, as well as violating P’s common-law rights to the oil beneath their property. Court refused to rescind the leases but awarded compensatory and exemplary damages.
3. **Facts:** The properties overlie the Columbus Section 3 Saline – Niagaran Formation Pool and Tracts 2,6,7 have producing oil wells. Tracts 6 and 7 are under lease to D. D has drilled several wells on these tracts in compliance with the uniform well spacing pattern. Three wells were operating during the effective date of the proration order and were subject to its terms. Ps contend that D illegally overproduce more than 180k barrels of oil from the three wells, and that the illegally overproduced oil was drained from beneath Ps land. They sought rescission from the beginning of their oil and gas leases.
4. **Holding:** Production in the C3 filed was restricted to 73 barrels per day. Purpose behind proration is that the order itself, if obeyed, will protect landowners from drainage and allow each to produce their fair share. A secret violation allows the violator to take more than his fair share and leaves the other landowners unable to protect their rights unless they also violate the proration order. Any violation of a proration order constitutes conversion of oil from the pool, and subjects the violator to liability to all owners of interests in the pool for conversion of the illegally obtained.
5. **Rule:** Principle that each owner of the surface is entitled only to his equitable and ratable share of the recoverable oil and gas energy in the common pool in the proportion which the recoverable reserves underlying his land bears to the recoverable reserves in the pool. It places limits on the proper application of rule of capture.
6. **Judgment:** The finding that D is liable to Ps for the conversion of 50k barrels of oil is. Affirmed.
7. **Comments:**

* Ab initio – from the beginning
* Proration order - Whenever the department limits the total amount of oil or gas which may be produced from any pool to an amount less than that which the pool could produce if no restrictions were imposed (whether incidental to, or without, a limitation of the total amount of oil which may be produced in the state) the department shall prorate the allowable production for the pool among the producers in the pool on a reasonable basis, so that each producer will have opportunity to produce or receive his or her just and equitable share, subject to the reasonable necessities for the prevention of waste, giving where reasonable, under the circumstances, to each pool with small wells of settled production, allowable production which prevents the premature abandonment of wells in the pool.
* Wronski is not entitled to any recoverable damage claim that was produced up to the amount proration order even if it came from their own tracts.

**Browning Oil Company, Inc. v. Luecke**

1. **Identities of the Parties:** Lessee BO drilled the two horizontal wells at issue after it had pooled three tracts owned by the Lessors Lueckes into a larger unit that combined the Luecke tracts with other tracts in the area.
2. **Procedural History:** Appellate court upheld the trial court’s findings that the Ps were not validly pooled. The lessee still held valid leases on the Ps mineral estate, so D was not a trespasser when it drilled underneath the P tracts. However, the allocation of royalties to the Ps from production from two horizontal wells that traversed under their tracts and extended under other tracts could not be done using the formula in the pooling clause of the leases; the pooling was not valid. Thus, the Court had to determine how the common law would allocate royalties from a horizontal well that traversed under several different tracts from which it drained.
3. **Facts:** Lueckes executed three oil and gas leases with HEC, which later assigned its interest to BOC. Lueckes collectively own 100% of the minerals under tracts 1 & 3 and Jimmie Luecke owns 50% of the minerals under tract 2.
4. **Holding:** The better remedy is to allow the offended lessors to recover royalties as specified in the lease, compelling a determination of what production can be attributed to their tracts with reasonable probability. The Lueckes are entitled to the royalties for which they contracted, no more and no less.
5. **Rule:** If land has not been properly pooled, royalty on production cannot be allocated among the lessors and nonparticipating royalty interests in no-well site tracts. Although the Ls tracts are drillsite tracts, they cannot claim royalties for total production when they have no legal claim to oil and gas recovered from other lessors’ drillsite tracts.
6. **Judgment:** Trial court’s dismissal of Browning’s counterclaim and its ruling that lessees failed to comply with the pooling provisions in the leases are affirmed. The failure rendered the purported pooled units invalid with regard to the Luecke’s tracts. Lueckes were entitled to royalties on the oil and gas produced from their land, but were not entitled to royalties on production that was recovered from lands they do not own. The charge to the jury failed to provide jurors the proper grounds and correct principles of law for calculating the royalties due the Lueckes under these circumstances and was fatally defective. In the interest of justice, they remanded to trial court for a new trial on damages consistent with the opinion.
7. **Comments:**

* Pooling Clause: most leases grant lessees the right to combine adjacent acreage owned by different lessors to facilitate the efficient drilling and production, under a provision in their lease.

**Ohio Oil Co. v. State of Indiana**

1. **Facts:** State of Indiana enacted a statute that made it illegal for anyone to flare gas or allow oil to flow out on the ground for more than to days after the discovery of a new well. P asserted that the D had drilled and was operating 5 oil wells that were flaring the natural gas produced as by-product. By allowing the gas to escape in violation of the Indiana statute, the wells were reducing the pressure of the reservoir and thereby diminishing the ability to recover the maximum amount of natural as for use by the citizens of the state. P asked for an order from the court that the D no longer be allowed to flare gas in the production of oil. D admitted to drilling the oil wells and went on to explain that they were drilled in good faith, in order to produce oil, not gas; that the D was not in the business of producing gas; and that the gas was of no value to the D.
2. **Issue:** Does the peculiar character of the substances, oil and gas, which are here involved, the manner in which are here involved, the manner in which they are held in their natural reservoirs, the method by which and the time when they may be reduced to actual possession or become the property of a particular person, cause them to be exceptions to the general principles applicable to other mineral deposits, and hence subject them to different rules.
3. **Holding:** The statute does not amount to a taking of private property, when it Is but a regulation by the statute of Indiana of a subject which especially comes within its lawful authority. It is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others.
4. **Judgment: Affirmed.**
5. **Comments:**

* Gas flare: alternatively known as a flare stack, is a gas combustion device used in industrial plants such as petroleum refineries, chemical plants, natural gas processing plants as well as at oil or gas production sites having oil wells, gas wells, offshore oil and gas rigs and landfills.
* Bore: make (a hole) in something, especially with a revolving tool.

**Champlin Refining Co. v. Corporation Commission of State of Oklahoma**

1. **Identities of the Parties:** Refining company seeks to enjoin the commission from enforcing certain provision of chapter 25 of the Laws of OK on the ground that they are repugnant to the due process and equal protection clauses of the 14th Amendment and the commerce clause.
2. **Procedural History:** Court found that at all times covered by orders involved there was a serious potential overproduction throughout the US and particularly in the flush and semi-flush pools in Seminole and OK fields.
3. **Facts:** P is engaged in OK in the business of producing and refining crude oil and transporting and marketing it and its products in intrastate and interstate commerce. It has oil and gas leases in both the Greater Seminole and the OK City fields. In each field it has 9 wells. It owns a refinery with a daily capacity of 15k barrels of crude and there produces gas and other products. Plaintiff at the time of the trial was limited by the proration orders to about 6% of the total production of its wells in that field.
4. **Holding:** None of the proration orders here involved were made for the purpose of fixing prices. The fact that the commission never limited production below market demand and the great and long continued downward trend of prices contemporaneously with the enforcement of proration strongly support the finding that the orders assailed have not had that effect. It was necessary to enforce proportional taking from each well and lease therein, and that, upon the testimony of operators a comprehensive plan of curtailment and proration conforming to the rules prescribed in the act was adopted by commission.
5. **Rule:** Landowners do not have absolute title to the gas and oil that may permeate below the surface. Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may be able to reduce to possession including that coming from land belonging to others, but the right to take and thus acquire ownership is subject to the reasonable exertion of the power of the state to prevent unnecessary loss, destruction or waste. The power extends to the taker’s unreasonable and wasteful use of natural gas pressure available for lifting the oil to the surface, and the unreasonable and wasteful depletion of a common supply of gas and oil to the injury to others entitled to resort to and take from the same pool.
6. **Judgment: Commission won.**
7. **Comments:**

**Railroad Commission of Texas v. Rowan & Nichols Oil Co.**

1. **Facts:** oil company claimed to be avictim of illegalities in the method of distributing the total allowable production among the different classes of oil producers.
2. **Holding:** “Nothing in the Constitution warrants a rejection of the Railroad Commission’s expert conclusions. Nor, on the basis of intrinsic skills and equipment, are the federal courts qualified to set their independent judgment on such matters against that of the chosen state authorities. For its own good reasons Texas vested authority over these difficult and delicate problems in its Railroad Commission. Presumably that body, as the permanent representative of the state’s regulatory relation to the oil industry equipped to deal with its ever-changing aspects, possesses an insight and aptitude which can hardly be matched by judges who are called upon to intervene at fitful intervals.”
3. **Rule:** A state’s interest in the conservation and exploitation of a primary natural resource is not to be achieved through assumption by the federal courts of powers plainly outside their province and no less plainly beyond their special competence.
4. **Judgment: Decree vacated and the case is remanded to the district court for dismissal of the complaint.**
5. **Comments:**

**Atlantic Refining Co. v. Railroad Commission of Texas**

1. **Procedural History:** Judgment was entered for appellee railroad commission of Texas.
2. **Facts:** Appellants brought suit, to annul an order of the Railroad Commission of Texas prorating gas and condensate production from the Normanna, brought Gas Field Suit. It allows the production of gas, including the liquid content, thereof, or the condensate, from a well drilled Bright & Schiff, a partnership, on a lot. Appellant, Atlantic, is not seeking to collect damages from Bright & Schiff but are seeking to have an order of the TRC declared invalid. The enforcement of which will necessarily result in the drainage of gas from their leases to Bright & Schiff.
3. **Holding:** Court held that the proration formula promulgated by the TRC was invalid. The TRC is authorized to make the rules regulating the production of oil and gas, while such rules are subject to review by the courts, a court can only pass on the validity of a rule or order when properly presented it for review. The responsibility rests with the Commission to devise some rule of proration whch will conserve the gas in the field in question and at the same time be fair and just to all parties without depriving any of them of his property. Appellant at two hearings protested the adoption of the proration formula for production in said field on the basis of 1/3 per well and 2/3 according to the amount of acreage. “we feel compelled to hold , under the facts of this case, that the 1/3-2/3 proration formula promulgated by the Railroad Commission for the Normana Field is invalid. The order allows a well on a .3-acre tract to produce gas at a rate many times greater per acre than a well on a 320- acre tract is allowed to produce, and we find no substantial evidence in the record justifying such a wide discrepancy in the rate of production. Viewing all the facts in the light of the substantial evidence rule, we think the 1/3-2/3 proration formula is an unreasonable basis upon which to prorate the gas production from this field. It does not come close to compelling ratable production; neither does it afford each producer his fair share of the gas from reservoir.”
4. **Judgment: Judgment of trial court is reversed and this cause is remanded with instructions to enter judgment declaring the proration order of the commission invalid and granting the injunction preventing the enforcement thereof.**
5. **Comments:**

**Pickens v. Railroad Commission of Texas**

1. **Facts:** Pickens and others contend that the order of March 4 was unreasonable and not supported by substantial evidence, and resulted in uncompensated drainage and losses to them.Pickens argues that since there is an average of 77 acre-feet of producing sand below each average surface acre, the 50-50 formula is weighed overwhelmingly in favor of surface acres as contrasted to acre-feet of producing sand. Hence the areas of thickest sands are not being allowed to produce in proportion to the reserves in place. Pickens relied on the testimony of HJ Gruy a consulting petroleum engineer and geologist. He showed that Ps will ultimately recover substantially less under the 50-50 formula than they would if the formula used were based 100% on the number of acre-feet under each tract. Expert testimony for appellees said the net drainage was not away from the Pickens but was toward them because of (1) difference in pressure (2) force of the water pushing the oil updip. He said that the 50-50 formula gave the owners an equal opportunity to produce their in-place reserves.
2. **Issue:** Validity of the order of the TRC prorating the production allowable of oil from the fairway (James Line) Field in Anderson and Henderson counties, Texas.Whether the order which the Commission entered, when tested by the usual rules, is or is not reasonably supported by substantial evidence.
3. **Holding:** Court held that despite the fact that the application of the order has resulted in economic loss to some does not warrant a finding that there has been a deprivation of property without due process of law.There was no evidence of any purpose or design on the part of the Comissioners to adopt any formula, which would force Pickens or anyone else to pool his or her production. It is a valid exercise of the police power of the Commission to protect correlative rights under our statutes. Trial court did not err in admitting the evidence complained of.
4. **Judgment: Trial court affirmed and the proration order in question is valid.**
5. **Comments:**

**Gulf Land Co. v. Atlantic Refining Co.**

1. **Identities of the Parties:**
2. **Procedural History:**
3. **Facts:**
4. **Issue:**
5. **Holding:**
6. **Rule:**
7. **Judgment:**
8. **Comments:**

**Nash v. Shell Petroleum Corporation**

1. **Facts:** Appellees contend that the exception applies only to subdivisions antedating the original promulgation of the rule. Commission did not have the power to limit it to subdivisions antedating the rule. Commission’s rules must bear some reasonably appropriate relation to the objective implicit in the expressly delegated powers in this instance the conservation of oil (or gas) a natural resource of the state. It is contended that such reasonable basis of classification lies in the fact that all land in the state is potentially oil producing and therefore all transfers of title subsequently to the rule’s promulgation, are as a matter of law, made with constructive knowledge of the rule and its application to the title if and when oil is ever discovered under the land involved.
2. **Issue:** Whether or not Nash and Turner were entitled as a matter of law to drill one well on the tract.
3. **Holding:** Does not apply to subdivisions that occurred when area was known to contain oil (but does apply to land in or in proximity of proven oil and gas area.
4. **Rule: t**he question of intent is not material. The effect of the act of segregation as applied to the particular fact situation is the controlling factor. On the other hand, if the purpose of the subdivision be in fact to circumvent the spacing rule, the voluntary segregation rule would no doubt be applied regardless of the situation other
5. **Judgment: Reversed and rendered for appellants.**
6. **Comments:**

**Shell Petroleum Corp v. Railroad Commission**

1. **Facts:** Railroad commission granted a well permit on March 17, 1938 to drill a well on a narrow strip of land in Gregg County, Texas containing a .835 of an acre, as an exception to Rule 37 to prevent confiscation of property. Shell protested the granting of the permit and brought suit to set it aside. Shell had leased 227 acres of land from Douglas believing he owned the entire acreage. Douglas had actually acquired through adverse possession a small strip of land that he had fenced in a long the western edge of his tract. Thus, Douglas owned 227.835 acres of which leased to Shell 227 acres. The strip passed to Whitehead, who applied for the well permit on it. Shell argued hat the strip was a VSD and should not have been granted permit.
2. **Holding:** But where lands are leased expressly for the purpose of oil development, an entirely different situation is presented. In the latter instance, whether the lease be in proven territory or not, the conservation laws become applicable to the subsequent development thereof; and the rights of the parties become referable to the rules and regulations of the Commission governing the development of the property which the lessor himself contemplated and which he required of the lessee. Under these circumstances, application of the provisions of the rule, as a conservation measure, is as essential in a given area before the discovery of oil as it would be after such discovery.
3. **Comments:**

**Benz – Stoddard v. Aluminum Co. of America**

1. **Procedural History:** Court of Civil Appeals held that Petitioner was entitled to an opportunity to recover the equivalent of her share in the ten reservoirs beneath her tract – not the specific minerals – and that since under the proration order in effect at the time the permit was granted she could recover more than enough gas to make up her equivalent in all ten reservoirs.
2. **Facts:** This is a suit brought by Aluminum Company of America to cancel a Railroad Commission order granting a Rule 37 exception permit to prevent confiscation of the minerals underlying Claire Benz-Stoddard's .115-acre town lot. The trial court sustained special exceptions to the petition and, when Aluminum Company refused to amend, dismissed on the ground that the petition did not state a cause of action for cancellation. The Court of Civil Appeals reversed and remanded. 357 S.W.2d 809. Claire Benz-Stoddard and the Railroad Commission are petitioners.
3. **Issue:** Where a tract land overlies several vertically separated gas reservoirs, shall the Railroad Commission,, in applying the exception to Rule 37, treat the several reservoirs separately or as one?
4. **Holding:** Court held that Commission was correct in treating them separately and therefore the facts alleged by respondent do not state a cause of action for cancellation of the permit allowing multiple completions.
5. **Rule:** We hold, therefore, that since the Commission is authorized to treat each completion in a separate reservoir as a separate well, it may grant multiple completions in each reservoir in which it finds there will be confiscation.
6. **Judgment: Reverse the judgment of the COA and affirm that of the trial court dismissing respondent’s cause of action.**
7. **Comments:**

* Proration order for the field that would not disproportionately and give them more than their fair share.

**Exxon Corp v. Railroad Commission of Texas**

1. **Identities of the Parties:** Direct appeal involving a Railroad Commission order which grants appellee BTA a permit to drill at a requested location under the Commission’s Statewide Spacing Rule 37.
2. **Procedural History:** District Court held that BTA Oil Producers was entitled to a permit to drill at a requested location under Rule 37.
3. **Facts:** BTA is the owner of a lease on a 673 acre tract in the Deavonian Field. The Devonian field has been classified by the Railroad Commission as an oil field with an associated gas cap. The amount of allowable gas production is controlled in direct relation to the amount of oil production. Devonian field contained 4 \ oil wells and 2 wells classified as gas wells. Gas wells are the Exxon Herd Gas Unit No.1 and the BTA Wedge Gas Unit No.2. Wedge was originally drilled as a test well to the Ellenberger Formation, which lies considerably deeper than the Devonian Field. Ellenberger was discovered to be non-productive, BTA completed Wedge No.2 in the Montoya reservoir, but the reservoir is nearing depletion. BTA therefore applied to the Commission for a permit to plug back and recomplete the Wedge No.2 in the Devonian Field. Although BTA argued the well was within an acceptable distance from the Exxon well and to prevent waste, the Commission based it solely on the waste argument.

* **BTA argues** that Wedge No.1. is incapable of producing the Lower Devonian Oil. BTA’s expert witness testified that, although the oil could be recovered by drilling a completely new well at a regular location, BTA could not economically justify such drilling.
* **Exxon argues,** that a Rule 37 exception may only be granted upon a showing on unusual reservoir conditions. It is a longstanding rule of law that in Texas the unusual reservoir conditions must be shown before a Rule 37 permit may be granted to prevent waste.

1. **Issue:** Whether BTA Oil Producers was entitled to a permit under the Rule 37 waste exception, taking into consideration economic factors arising from the presence of an existing well bore at the requested location
2. **Holding:** Court held that an appropriate test is whether the existing well was drilled and completed in the original formation legitimately and in good faith, and not as a subterfuge to bolster a later Rule 37 exception. A reasonable basis for the establishment of a spacing rule is the idea that the resulting unit size is an area from which the oil may be economically and efficiently produced. The adoption of the spacing rule represents an economic decision that the density of development should be regulated and restricted, at least in part to prevent physical or economic waste from the drilling of wells which are not reasonably necessary to drain a reservoir adequately. Court said that Exxon’s argument regarding BTA large recovery of natural gas from the Devonian Field thereby increasing the drainage or the possibility of drainage of gas from Exxon’s Herd No. 2. The commission has classified the entire Devonian Field as one, therefore, both oil and gas, or all hydrocarbons may be produced from BTA’s well subject to existing allowables. Exxon could have the Upper and Lower Devonian classified as separate fields, and should request such a classification change from the Commission.
3. **Judgment: Judgment of the district court is affirmed.**
4. **Comments:**

**Ryan Consolidated Petroleum Corp. v. Pickens**

1. **Identities of the Parties:** Suit brought by Ryan Consolidated as P for equitable relief from the confiscation of oil and gas by Pickens & Coffield as Ds.
2. **Procedural History:** Ds won a take nothing judgment in the trial court which has been affirmed by the Court of Civil Appeals.
3. **Facts:** Pickes and Coffield hold an oil and gas lease upon one half and Ryan holds an oil and gas lease upon the other half of a tract consisting of 4 lots in the Hawkins townsite. 4 lots were subdivided after Rule 37 became applicable. Pickens secured a permit and drilled a well upon their 1 half. The RC denied Ryan a permit to drill on its 1 half of the original tract, and Ryan now seeks in this suit an equitable share of the oil produced from the Pickens & Coffield well, based upon its proportionate ownership of the entire tract. Permit was granted for the purpose of preventing confiscation and physical waste. Picken’s expert testified that in order to best protect the drilling pattern of the field, to prevent waste and maximum drainage efficiency and maximum production from the well throughout its future life, the well, in his opinion, should be located on Lot 11. Ryan’s expert testified that the best location for the well would be on Lot 13 owned by Ryan.

* **Ryan argues,** that the application for permit filed by Pickens clearly involved all four lots, and that since Pickens have utilized Ryan’s 2 lots in securing the drilling permit for a well on the 4 lots, in sustaining such permit in the courts, Pickens is judicially estopped to deny the right of Ryan to share in the production from such well.
* **Record shows** that Ryan and TRC were fully advised that the Pickens application was NOT for a well on the four lots and the proceedings before the Commission and the courts show that Pickens had consistently refused to make an agreement with petitioner pooling Lots 10, 11, with Lots 12, 13 but insisted that one well to which the 4 lots as they existed before subdivision were entitled should properly be drilled on 10 & 11.

1. **Issue:** Whether or not Ryan is entitled to equitable relief from te confiscation of oil and gas by Pickens.
2. **Holding:** Pickens is entitled to keep 7/8ths of the oil produced from the well and the Holmes Heirs or their assigns were entitled to have delivered to them the 1/8th of all the oil produced from said well, all in accordance with the express terms of the lease dated October 18, 1940. Ryan’s position is inconsistent with the law of capture. TRC is without the power from the legislature or by decisions of this Court to do anything more than declare illegal the drilling of wells which are prohibited by Rule 37. TRC cannot change the law of Texas. TRC has not been given power to determine property rights as between litigants. Legislature of Texas has not seen fit to enact legislation which would authorize the TRC to adopt and promulgate rules which would have the effect of rendering ineffective the rule of capture recognized in all of the decisions in the state. Pickens had the exclusive right to drill a well thereon and to produce and take all the oil and gas that was produced as a result of proper drilling operations, and since the conservation statutes and the regulations of the Commission have not abolished the ownership of oil in place nor the right of capture, Pickens has the vested right to produce, store and remove from said lots.
3. **Rule:** When Pickens & Coffield secured the leasehold rights in Lots 10 and 11 they were charged by law with notice of the fact that they could not drill a well thereon except to pprevent waste or by reason of the preference right as the first lessee of Lots 10 and 11 of the four lots involved, or by reason of a finding by the Railroad Commission that the best location for the one well to prevent confiscation was one of their lots.
4. **Judgment: Pickens motion for rehearing is granted and the judgments of the trial court and the Court of Civil Appeals are affirmed.**
5. **Dissent:** Constitutionality of Rule 37 is put into question in that Ryan is deprived of its property without due process of law. Pickens should be required in equity to account for the oil and gas they are producing which they do not own and which is the property of Ryan.
6. **Comments:**

**Carson v. Railroad Commission of Texas**

1. **Procedural History:** An appeal from a judgment of the trial court upholding an order of the TRC favorable to BTA. Court of Appeals in an unpublished opinion affirmed the judgment of the trial court.
2. **Facts:** Petitioners, Carsons, own 13/64 of a 1/8 royalty interest in several contiguous tracts subject to a number of oil and gas leases. Of the 97 interest owners in the pooled unit, petitioners are the only ones who refused to ratify a voluntary pooling agreement proposed by BTA, the working interest owner, and a respondent therein.

**BTA argues** that 102.013 of MIPA controls in this case and that it made an offer in compliance with the section.

**Carson argues,** that 102.013 applies only to an owner who demands that he be permitted to muscle in to an existing unit, and that it does not apply to royalty owners in Carson’s position. In a letter sent to Carson which contained the offer stated that Carson was required to sign the ratification agreement in order to share in the proceeds of the well and that “ we cannot issue a division order to you until we have received your executed ratification.” BTA placed the condition on the offer even though there was no question concerning Carson’s title to the royalty interest and no impediment to the issuance of division orders.

1. **Issue:** Whether the offer made by BTA to Carson was fair and reasonable? If so, the TRC was correct in ordering the unit to be force-pooled. If not, the TRC did not have jurisdiction of BTA’s application for forced pooling and should have dismissed the application.
2. **Holding:** Court held that it was neither logical nor rational to interpret MIPA to allow an operator in BTA’s position to drill and complete a producing well, and then to obtain a forced pooling order which would substantially reduce its royalty obligation to interest owners, based only on an initial demand that the royalty owners join in a proposed “voluntary” unit and a subsequent refusal to negotiate. The Court agreed that the offer must be one which takes into consideration those relevant facts, existing at the time of the offer, which would be considered important by a reasonable person in entering into a voluntary agreement concerning oil and gas properties. The proposal made by BTA was not a “fair and reasonable” offer.
3. **Judgment: Reversed the judgments of the court of appeals and the trial court and remand the cause to the TRC with instructions to dismiss BTA’s application for want of jurisdiction.**
4. **Comments:**

**Dobson v. Arkansas Oil and Gas Commission**

1. **Procedural History:** Court below upheld the Commission’s decision to unitize the McKamie – Patton field and accordingly decreed that the appellant’s royalties should be computed on the basis of the unitization order rather than on the basis of the oil and gas actually withdrawn from their lands.
2. **Facts:** Discovery well in this field was completed as a producer in 1940. During the next years drilling operations throughout the field established the character and boundaries of the producing formation. By 1947, the operators were attempting to achieve field-wide unitization on a voluntary basis. In October of 1948, the operators who had unsuccessfully attempted to unitize the field by voluntary action applied to the Commission for an order compelling unitization. The grievance is that the royalties from the oil well on their drilling unit would, at least up to the date of trial, greatly exceed the sums allotted to them under unitization. Appellants seek to obtain more than their “just and equitable share” by levying a toll upon oil and gas that pass through Wheat Unit No.1 only because the operator of the unitized field has selected it as an output well.
3. **Issue:** Whether our statutes empower the Oil and Gas commission to compel the unitization of an entire oil and gas field.
4. **Holding:** Court held that the appellant’s royalties should be based on that part of the production from Wheat Unit No.1 that is determined by the Commission to constitute a withdrawal from the tracts making up the drilling unit in which the appellants have an interest. All other royalties on minerals passing through Wheat Unit No.1 should be paid into the common fund that is to be distributed among the royalty owners bound by the unitization agreement. Court limits holdout allowable to no more than their just and equitable share. If joined unitization could have received higher allowable. Royalties in excess of holdouts allowable will be paid into the common fund and shared by the unit to help cover cost of unitization. Creates a **disincentive** to hold out.
5. **Judgment: Decree is reversed and the cause remanded for the determination of the amount of the appellant’s royalties. Up to the entry of the final decree these royalties will be computed under the Commission’s order restricting the production of the unit to 250 bpd. Thereafter, the commission after notice and a hearing may vary this allowance in order to provide the appellants with no more or less than their fair share of the pool, but without imposing upon them any part of the cost of the reinjection operations.**
6. **Comments:**

* An area is said to be unitized when various ownerships are treated as a unit in the production of oil and gas. In the usual case the owners of several small contiguous tracts, totaling perhaps 40 acres, agree that a single well shall be drilled in the unitized area and that all the owners shall share proportionately in the oil and gas, regardless of whose land happens to be the situs of the well.

**California Co. v. Britt**

1. **Identities of the Parties:** Claim for drainage by owners of an unsigned, fractional mineral interest, against the operator of a voluntary unitization of an oil field, using a pressure maintenance program.
2. **Procedural History:** Britt brought this action in the Chancery Court against California Co. They sought an accounting and damages for a willful and malicious trespass upon an unleashed fractional mineral interest owned by Ps, resulting in the alleged wrongful displacement of oil from their property.
3. **Facts:** Britt owned a 20-acre tract of land. He conveyed ½ of the minerals to certain individuals, and in 1942 deeded ¼ of the minerals to another person. This ½ mineral interest is under lease to California, and the ¼ to Sun Oil Company, and are committed to the Brookhaven unit. In 1944 Perry executed an oil, gas and mineral lease to Sun, covering his ¼ mineral interest in the 20 acre tract and in other land. This lease was for a primary ten years and expired in June 1954. In 1952 the board promulgated special field rules for the Brookhaven Field. They defined the field as consisting of 24 sections of land, and that a pressure maintenance program was in operation to effect the greatest recovery of oil and gas from the Tuscaloosa pool. It concluded the unitized area of the field should be developed, produced, and operated as a single unit without regard to the boundaries established by land, mineral, and lease ownerships.
4. **Holding:** Court held that the Britts had no contractual rights in the unitization. The Board’s rule excluded any unsigned interests from the Brookhaven unit. And finally, under the law of capture complainants have no claim in tort against California. The Britt’s claim also fails to fall within the ambit of any additional equitable considerations developed in the cases dealing with secondary recovery operations. Evidence of drainage alone is not sufficient to support a cause of action. The foregoing authorities require the application here of competing and controlling factors. The law of capture negates a valid claim. There are no contractual relations between the parties. Appellees with the burden of proof fail to show that they were offered an unreasonable, unfair, and unequal participation in the unit along with other owners. California was not obligated indefinitely, unfair, to continue offering them a participation as non-unitized mineral owners.
5. **Rule:** The owner of land acquires title to the oil or gas, which he produces from wells on his land, through part of the oil or gas may have migrated from adjoining lands. He may thus appropriate the oil and gas that have flowed from adjacent lands without the consent of the owner of those lands and without incurring liability to him for drainage.
6. **Judgment: Reversed and judgment rendered for appellant.**
7. **Comments:**

**Baumgartner v. Gulf Oil Corp.**

1. **Identities of the Parties:** P sued for the value of oil claimed to have been displaced and swept from land under lease to him by D into its water flood unit recovery wells.
2. **Procedural History:** Trial court applied the common law doctrine of willful trespass, and entered judgment against the D in the amount of $89k for the value of the oil drained from section 16 without the deduction of any development or operating costs necessary to produce tat oil. D perfected an appeal to this court.
3. **Facts:** P was the holder of an oil and gas lease granted by the State of Nebraska. P acquired the lease and allowed it to lapse. D is the owner of the Kenmac J Sand Unit. Except for Kenmac there would have been no recovery of secondary oil. Commission approved the unit agreement, which provided for the secondary recovery of the oil by water flooding. It was signed by all of the working interest owners in the field except the P, and by the owners of more than 80% of the royalty interests, including the Ps lessor. When P refused to join the unit, Section 16 was excluded from it and Ps lessor withdrew its consent. Kermac offsets P lease on the E and N. Law has been amended to provide for compulsory unitization upon the approval of 75% the production owners and those required to pay 75% of the development costs.
4. **Holding:** No claim for the oil which naturally migrated from Section16 by reason of the offsetting wells to the North and the East, because this is governed by the LOC. He may thus appropriate the oil and gas that have flowed from adjacent lands without the consent of the owner of those lands and without incurring liability to him for drainage. P was offered this opportunity on a fair and equitable basis. As an oil operator, he was fully cognizant of the fact that unless the other operators in the field were willing to abandon the half barrels of recoverable oil, they would either be forced to meet his demand for an unreasonable return at their expense, or go ahead with the project without him and incur possible liability for sweeping oil from under his leased land in the process. Evidence is also conclusive that P could not have recovered secondary oil except for Kenmac. The most that P should have a right to recover is what he can prove by a preponderance of the evidence he could have obtained through his own efforts if he had drilled, developed, and operated his property outside the unitization project; that is as if no unitization had occurred.

Claim for trespass, said water flooding made oil migrate away from his land; trial court awarded 89k b/c bad trespasser [receive total value of oil in place that was lost]; court reversed, not trespass; entitled to receive value of oil profitably produced [value of oil – production cost])

* + - If RRC authorizes secondary recovery, operator is NOT liable for willful (bad faith) trespass to owners who refused to join
    - To hold otherwise would discourage secondary recovery

1. **Judgment: Judgment herein is reversed the cause remanded to the DC for retrial under the rule of damages enunciated above. Costs are taxed to the P-Appellee**
2. **Comments:**

* Water flooding: the controlled introduction of water into an oil producing stratum or oil reservoir for the purpose of recovering oil which cannot be produced by normal primary methods. Water is injected into selected wells to create pressure to force the oil toward producing wells. In this instance water was injected on the north into wells 1,2, and on the south into wells 3 and 3. These wells forced the oil
* Possibly damages

**Railroad Commission of Texas v. Manziel**

1. **Procedural History:** Direct appeal is the result of a suit filed by the appellees Manziels to set aside and cancel an order of the Railroad Commission permitting the appellants Whelan Brothers to drill and inject water in their Eldridge #11 well located at an irregular spacing on the Whelan brother’s Vickie Lynn Unit 206 feet south of the boundary of the Manziel Estate-Mathis lease in the field.
2. **Facts:** Manziels attacked the Commission’s order on the grounds that it would cause waste, that it would result in the confiscation of the Manziel’s property, that the permit was not necessary to protect the correlative rights f the Whelan’s’ and that the order was in violation of the Commission’s own rules. Field has NOT been unitized as a whole but the Whelan’s have unitized all of the properties of which they are lessees, however, no unitization agreement has been made between the parties. Manziels assert that the Commission may not authorize, or the Whelans carry out, a trespass by injected water that will result in the premature destruction of their producing Mathis well.
3. **Issue:** Whether a trespass is committed when secondary recovery waters from an authorized secondary recovery project cross lease lines.
4. **Holding:** Court held that when the Commission authorizes secondary recovery projects, a trespass does not occur when the injected, secondary recovery forces move across lease lines, and the operations are not subject to an injunction on that basis. Court held that Article 6029 had no application to authorized, secondary recovery projects and that the provisions of article 6008b control in such circumstances. Court held that the TRC’s order should be upheld on the ground that there is substantial evidence that the exception here in question is necessary to protect the correlative rights of the Whelan Brother’s Vickie Lynn Unit and to prevent drainage from such unit across lease lines to the Manziel Estate’s Hollandsworth leases, and particularly the Mathis lease.
5. **Judgment: Judgment of the trial court is reversed and judgment is here rendered that the permanent injunctions granted by the trial court against the Railroad Commission of Texas and the Whelan’s be dissolved, and that that Manziels take nothing.**
6. **Comments:**

**Only nuisance**

**Tidewater Oil Co. v. Jackson**

1. **Procedural History:** An appeal from a judgment for the P in a diversity suit for damages, brought by a Kansas oil and gas leaseholder against an adjoining leaseholder for the wrongful water flooding of his lease.
2. **Facts:** Appellant is the owner of a number of leases in the field on which it drilled about 90 producing wells. Some of the leases adjoined on the south and the east, the non-productive and un-developed Barrier tract on which appellee later acquire the lease in suit. Tidewater notified JBs of their intention to water flood their properties adjacent to the Barrier lease, and proposed a co-operative water flood project, the cost to be shared proportionately, according to acreage ownership in the project. Js declined to join the venture. The water injected into the TW input wells soon flooded 8 of the Js wells and they complained to the Kansas Corporation Commission alleging that TW had unlawfully flooded their wells, causing irreparable harm. Commission entered its cease and desist order and the water flooding was abated, pending a hearing before the commission on the merits.
3. **Issue:** By what standards of tort liability shall Tidewaters conduct be judged i.e. trespass, nuisance, negligence, strict liability, or unreasonable use or disregard of another’s property?
4. **Holding:** Court held that the Kansas court spoke and it will not punish a common law wrongdoer for a legalized trespass or nuisance. Court frames rule in a way that sounds like nuisance (can’t operate in a way that will cause substantial injury to property) Damages: Operating profit they would have received had there been no nuisance. Net profit from oil unable to recover due to secondary recovery.
5. **Judgment:** Judgment for punitive damages is reversed.
6. **Comments:**

**Sounds like a nuisance claim.**

**Railroad Commission of Texas v. Flour Bluff Oil Corp.**

1. **Identities of the Parties:** suit was filed by appellees FBOC against the TRC to enjoin the enforcement of an order of the Commission prohibiting the production of any oil or gas from any well the FBOF located in Nueces County.
2. **Procedural History:** appeal from a judgment awarding appellees a permanent injunction against the enforcement of such order.
3. **Facts:** Appellees are flaring enormous quantities of sweet gas, which is produced along with the oil from oil wells, as well as gas from wells which is injected into oil wells for the purpose of aiding in lifting the oil therefrom.
4. **Issue:** Whether the shut down order will cause more waste than it prevents.

* **Holding:** Court held the TRC is an expert body has had under study the problem of preventing waste of gas since as early as January 1946. Court held that they did not feel the Commission’s judgment exercised in the public interest and as to matters about which it has special knowledge, should be overturned upon the showing made by appellees. : RRC can issue no flair rule to prevent waste, even if it would be reasonable/productive for operator to flare the gas

1. **Judgment: Reversed and injunction dissolved.**
2. **Comments:**

**Stradley v. Magnolia Petroleum Co.**

1. **Procedural History:** Stradleys, appellants, instituted this suit in district court against the Magnolia and Southwest, appellees, to recover title and possession to said section of land together with the improvements laced thereon, to remove the cloud cast on their title by the lease executed to the Magnolia by SW to recover the rental value and damages for the water which they claimed was a part of the land and covered by the conveyance to them and which they asserted had been covered by the conveyance to them and the development of the oil on the land.

**They** also sought an injunction to restrain the appellees from appropriating water obtained from the well and also from using the property as they had been doing therefore and sought to recover actual and exemplary adamages against the appellees as trespassers.

1. **Facts:** Southwest sold and conveyed to Wilburn Hawk. Hawk and his wife conveyed said section of land to Alice Stradler by a proper deed which contained the same exception and reservation expressed in the identical language found in the deed from the SW Oil and Development to Wilbur Hawk. SW Oil and Development Company leased and let to the Magnolia Petroleum Company for a period of ten years for the purpose of investigating, prospecting, drilling, mining, and operating for and producing oil and gas and all other minerals. On or about October 8, 1940 it had ten producing oil wells on said section of land.
2. **Holding:** There is no claim that appellants were innocent purchasers. It is conceded that they both had constructive and actual knowledge of the reservations in the deeds through which they deraign their title. There is nothing in the record that indicates that the Magnolia acted wrongfully or maliciously in entering upon and developing their mineral lease covering the section, hence, there was no issue of exemplary damages. Magnolia had the right to use the amount of water reasonably necessary for the development and enjoyment of the oil discovered on the lease.
3. **Judgment: Affirmed.**
4. **Comments:**

**Brown v. Lundell**

1. **Identities of the Parties:** petitioners, Brown, are the owners and operators of a producing oil and gas lease on lands owned by the respondent, lessor, Lundell. Respondents in this suit allege that Brown disposed of the salt water produced from their well into an open pit and negligently allowed the same to percolate and seep into the subsurface stratum so as to pollute the underground water supply, thus permanently impairing the value of the land.
2. **Procedural History:** jury found that Brown was negligent in permitting the salt water to escape from the disposal pit and in failing to protect the fresh water stratum and that such negligence was the proximate cause of the pollution complained of. The jury further found that the pollution is permanent. Judgment on the verdict was rendered in favor of lessor in the amount of the difference between the before and after values. Court of Civil Appeals has affirmed.
3. **Facts: Brown argues** that he breached no duty to the lessor. He insists that he had the right to produce and necessarily separate the oil from the water and dispose of the salt water in the earthen pit without incurring the burdensome expense of furnishing and using steel tanks or drilling a deep input well.
4. **Issue:** Whether Brown was negligent in the way and manner in which he disposed of the salt water, while the questions as to what was the custom, whether Brown had complied therewith and whether the custom itself was negligent, are only evidentiary as to the negligence of the operator.
5. **Holding: Cou**rt held that the petitioner himself testified that if he had thought seriously about the possibility of pollution he would have tried to devise another system of disposal. He knew or should have known of the amount of water that was being placed in the pit and of its salt content. He knew that no salt deposits had ever been removed from the pit.
6. **Rule:** If the lessee negligently and unnecessarily damages the lessor’s land, either surface or subsurface, his liability to the lessor is no different from what it would be under the same circumstances to an adjoining landowner. Lessor has granted and leased to the lessee only so much of his land as will be reasonably necessary to effectuate the purpose of the lease, and to be used in a non-negligent manner.
7. **Judgment: Affirmed.**
8. **Comments:**

**Jones v. Getty Oil Co.**

1. **Identities of the Parties:** appellant John Jones, brought this suit seeking an injunction to prevent appellee Getty Oil from maintaining said pumping units and to obtain permanent or temporary damages.
2. **Procedural History:** Jury found that it was not reasonably necessary for Getty to erect its pumping units at such excess height, which would cause permanent damage to Jones’ land, resulting in a reduction of the cash market value of same by $117,475.00.
3. **Facts:** Jones purchased the surface only. He owns no interest in the oil, gas or other minerals in said land. The mineral lease under which Getty claims is dated January 15, 1948 and comprises the west one-half of Section 3. Getty owns only 120 acres of such leasehold with the remainder being operated by Amerada Petroleum. Jones purchased his interest in this section and there was an oil well equipped with a rod beam-pumping unit located near the NW corner of such section. Jones is a farmer with cotton being the primary crop raised on this land. Jones drilled seven water wells for the irrigation of his crops thus making same much more productive. In 1963 he installed a self-propelled irrigation system. Since the oil wells did not flow properly so they created the pumping units.
4. **Issue:** Unique question of the right of the mineral lessee to use the vertical space over the land for the erection of pumping units to such height that they prevent the Landowner from irrigating much of his land by an automatic sprinkler system in use at the time the oil wells were drilled.
5. **Holding:** Oil and gas lease gave Getty the dominant estate. It thus had the right to use as much of the premises, and in such a manner, as was reasonably necessary to comply with the terms of the lease and to effectuate its purposes. Getty drilled its wells in 2 weeks and had graciously waited until the crops were harvested to commence drilling. Trial court erred in holding that there was no evidence to support the jury finding that it was not reasonably necessary to install such pumping units this height above the ground. Getty had the absolute right to use so much of the land as was reasonably necessary to carry out the purpose of the lease.
6. **Judgment: Reversed and the cause is remanded for a new trial.**
7. **Comments:**

* **Getty Oil Co. v. Jones**: Lessee’s methods of drilling must be reasonable based on what are usual, customary and reasonable practices in the industry under like circumstances then the owner of the servient estate must yield.

**Sun Oil Co. v. Whitaker**

1. **Procedural History:** Sun sought a permanent injunction enjoining the defendants from interfering with its production of not more than 100,000 gallons of fresh water per day, through an existing supply well, from the Ogallala formation underlying Whitaker’s tract of land for use in producing the oil. By cross-action Whitaker sought to enjoin Sun from producing and using the fresh water to produce the oil. Whitaker also sought to recover actual damages for the water theretofore used and for crops destroyed, and as well, exemplary damages. Judgment was rendered that Sun take nothing by its suit, that Whitaker recover the sum of $12,598.03 for actual and exemplary damages, and that Sun be permanently enjoined from producing and using the fresh water for its water flood program. The court of Civil Appeals affirmed.
2. **Facts:** Earnest Whitaker is the owner of the surface estate and Sun Oil Company is the owner of a mineral leasehold estate in a 267-acre tract of land in Hockley County. Sun acquired its lease on the property on April 5, 1946 from L.D. Gann. Then the owners of the fee title subject to an outstanding non-participating one-sixteenth free royalty in the west ½ of the tract. The surface estate was conveyed by Gann and his wife to Whitaker on January 2, 1948. Conveyance to Whitaker was subject to Sun’s lease, which has been kept alive beyond the primary term of five years by production from eight oil wells, which are producing from the San Andres formation. Sun obtained permission from the San Andres in furtherance of a pressure maintenance program. Whitaker and his son-in-law used water from the Ogallala formation for cultivating the land as an irrigated farm.
3. **Rule**: oil and gas lessee’s estate is the dominant estate and the lessee has an implied grant, absent an express provision for payment, of free use of such part and so much of the premises as is reasonably necessary to effectuate the purposes of the lease having due regard for the rights of the owner of the surface.
4. **Holding:** Mineral owner can use as much water as reasonably necessary for purposes of drilling; can’t be forced to look for alternatives *off the premises*. Limits accommodation doctrine from Getty Oil to not force them to go off the property. TX Sup. Ct. relies on implied right of mineral owner to use as much of the water in question as may be reasonably necessary to produce the oil from its oil wells. The mineral estate is dominant, so we’re not going to destroy/modify the dominance so much that every lessee in TX has to look for alternatives all over the area. All they should have to look at are alternatives *on the tract* (impractical to force oil industry to look at an unlimited slew of alternatives)

* Texas Water Code §27.0511 : RRC can force lessee to go off the premises to find an alternative if it is economically & technically feasible. However, the alternative must be something other than fresh water.

1. **Judgment:** Judgments of the courts below are reversed and judgment is hereby rendered granting Sun’s application for permanent injunction enjoining Whitaker from interfering with its production of not more than 100,000 gallons of fresh water per day, thgourh, its supply well, from the Ogallala formation underlying the Whitaker-Gann lease tract for use in producing oil and denying all relief sought by Whitaker except that Whitaker recover the sum of $431 which had been tendered into the registry of the court.
2. **Comments:**

**Anderson & Kerr Drilling Co. v. Bruhlmeyer**

1. **Facts: Appellees** take the position that the clause of exception or reservation contained in the deed from NJ Johnson and wife, excepted or reserved as a matter of law a fee simple title in said GRs in and under the land conveyed by the deed. **Appellants** contend that the meaning of the said clause of exception or reservation is sufficiently uncertain or indefinite to require or permit the court to construe the language used in the instrument with any light that may be shed thereon by a full consideration of the entire transaction as shown by the attending facts.
2. **Issue:** Did the clause of exception and reservation contained in the deed from N.J. Johnson and wife, M.E. Johnson, to JR Cother except and reserve as a matter of law, a fee simple title in said grantors in and to an undivided one-half interest in all oil and gas in and under the land conveyed by said deed, or is such provision so ambiguous, or so lacking in definiteness, that its meaning requires proof and explanation?
3. **Holding:** Court held that the absence of a coma between minerals and paint rock did not cause ambiguity or such uncertainty in the meaning of the reservation as will permit the consideration of extrinsic evidence in construing the deed. The court inserted the comma, in order to ascertain from the words used the intention of the parties. Court was unable to find any reasonable basis for a distinction between the reservation under consideration in the instant case and reservations which were construed in the previous decisions.
4. **Comments:**

* Of the same kind, class, or nature.In [statutory construction](http://thelawdictionary.org/statutory-construction/), the "[ejusdem generis](http://thelawdictionary.org/ejusdem-generis/) rule" is that where general words follow an enumeration of persons or things, by words of a [particular](http://thelawdictionary.org/particular/) and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.

**Acker v. Guinn**

1. **Procedural History:** Declaratory judgment action brought by P, Acker, against R , Guinn. Both parties filed motions for SJ, and the trial court sustained P’s motion. The court of Civil Appeals concluded that the deed conveyed no interest in the iron ore. It accordingly reversed the judgment of the trial court and rendered judgment in R’s favor.
2. **Facts:** P who holds under the GE, claims that the conveyance included an interest in the iron ore. R who holds under the GR insists that it did not. Form of the deed in the present case had been widely used in Texas for many years. The ore is a mineral with commercial value, but its production will destroy the surface over large areas wherever the deposits are mined.
3. **Issue:** Whether an interest in the iron ore passed to the GE under a deed executed in 1941 and purporting to convey ‘an undivided ½ interest in and to all of the oil, gas and other minerals in and under, and that may be produced from a tract of 86 ½ acres in Cherokee County.
4. **Holding:** Court held that no interest in the ore passed by the deed. A grant or reservation of minerals by the fee owner affects a horizontal severance and the creation of two separate and distinct estates: an estate in the surface, and an estate in the minerals. The parties to a mineral lease or deed usually think of the mineral estate as including valuable substances that are removed from the ground b means of wells or mine shafts. This estate is dominant, of course, and its owner is entitled to make reasonable use of the surface for the production of his minerals. It not ordinarily contemplated, however, that the utility of the surface for agricultural or grazing purposes will be destroyed or substantially impaired.
5. **Rule:** A grant or reservation of ‘minerals’ or ‘mineral rights’ should not be construed to include a substance that must be removed by methods that will in effect, consume or deplete the surface estate.
6. **Judgment: Affirmed.**
7. **Comments:**

**Reed v. Wylie**

1. **Identities of the Parties:** Reed surface estate owner. Wylie mineral estate owner.
2. **Procedural History:** First appeal of this case, the record contained no facts as to the depth of the lignite. The cause was remanded for a new trial to ascertain those facts. After the first remand of the cause, the GRs in the instrument in question, pleaded facts regarding a mutual mistake of the parties to the instrument; and they prayed for a reformation of the instrument. Upon the second trial, after a development of the facts set out below, the trial court entered a SJ which held 1) that as a matter of law, lignite was “at the surface” and was not reserved as a mineral, and 2) that as a matter of law, the GRs were not entitled to reformation. Court of Civil Appeals reversed that judgment on both grounds. There is but one judgment of the court of CA, and that was that the judgment of the trial court be reversed and the cause remanded for a new trial.
3. **Facts:** In 1949, at a time when they owned the surface and ¾ of the mineral estate, executed a lease to others expressly granting the right to the lessees to extract coal and lignite from the land in question by strip mining. It was recognized that at least part of the surface would be destroyed and the Wylies were to be paid $50 per acre for the portion of the land destroyed or rendered useless. In 1950, after the above strip-mining lease, the Wylies conveyed the subject tract to the predecessors in the title of Reed by the instrument in question. As stated, it conveyed the land in question but “reserved to the Wylies an undivided interest in “all oil, gas and other minerals.” So at least the Wylies, having executed the strip mining lease in 1949, contemplated that the lignite would be strip-mined.

**Wylie contends** that the surface means the top of the ground.

**Reed contends** that the surface means more than that, that there is some depth to the surface of the earth.

1. **Issue:** 1)Whether the reservation included an interest in lignite. 2) what this court meant by “the surface”?
2. **Holding:** Court held that lignite was at the surface. Under the instrument in question, it was owned by Reed, the owner of the surface estate. Surface owner must prove that as of the date of the instrument being construed, if the substance near the surface had been extracted, that extraction would necessarily have consumed or depleted the land surface. Court held that the test now is whether any reasonable method, including such a method as of the date of this opinion of removal of the lignite, coal or iron will consume, deplete or destroy the surface. An outcropping in a creekbed on the particular tract and another outcropping within half a mile; that is, the substance was at the surface in the reasonably immediate vicinity. The same would be true if the substance had been near the surface. A deposit which is within 200 feet of the surface is “near surface” as a matter of law.
3. **Rule:** If the surface owner satisfies the tests set out above, and established ownership of the substance at or near the surface, he or she owns the lignite, iron, or coal beneath such land at whatever depth it may be found.

* If in the reasonable immediate vicinity the mineral deposit is at or near the surface and any reasonable method of removal will consume, deplete, or destroy the surface owner.

1. Are there deposits in the “reasonably immediate vicinity”
2. Are there deposits “at or near” the surface;
3. Must the deposits “conform generally to the contour of the earth’s surface” as suggested by Acker; and
4. What is a “reasonable” method of recover?
5. **Judgment:** Trial court correctly held that as a matter of law, lignite was “at the surface” of the land, was part of the surface estate, and was not reserved by the GR as “oil, gas and other minerals.” It was error to render SJ on the issue of reformation. This Court disagreed with the holding and the opinion of the court (as opposed to its judgment) on the ownership of the lignite if the deed is not reformed. Affirmed the holding in Reed.
6. **Comments:**

* **Lignite**, often referred to as brown coal, is a soft brown combustible sedimentary rock formed from naturally compressed peat. It is considered the lowest rank of coal due to its relatively low heat content.

**Moser v. US Steel Corp.**

1. **Identities of the Parties:** Suit to quiet title to an interest in uranium ore.
2. **Procedural History:** Trial court awarded title to the D mineral owners, and the court of appeals affirmed the trial court judgment. Jury found that there would have been no substantial surface destruction at the time the deed was executed. The trial court accordingly held the uranium was a part of the mineral estate retained by the Gefferts in the 1949 deed.
3. **Facts:** Mosers, Ps, and Gefferts, Ds, own neighboring tracts of land in Live Oak County. Prior to 1949, the boundary between Mosers’ land and that of the Gefferts was a winding road. In 1949, the road was straightened and, as a result, no longer represented the true boundary between the two ranches. New road separated a 6.77-acre tract of the Geffert ranch on the Moser side of the road and a 6.42-acre tract of the Moser ranch on the Geffert side of the road. To avoid crossing the highway to reach their tracts, the Mosers’ predecessors in title and the Gefferts executed similar deeds conveying the surface estates of the isolated tracts to the other party. Substantial quantities of uranium were discovered in the 6.77-acre tract. The Mosers, as surface owners of the 6.77-acre tract, sued the Gefferts to establish ownership of the uranium. The Gefferts, as owners of the mineral estate under the tract counterclaimed to establish that uranium is one of the “other minerals” reserved from the conveyance of the surface.
4. **Issue:** Whether uranium is included in a reservation or conveyance of “oil, gas, and other minerals.”
5. **Holding:** Court held that title to uranium is held by the owner of the mineral estate as a matter of law (Gefferts). The mineral owner, as the owner of the dominant estate, has the right to make any use of the surface which is necessarily and reasonably incident to the removal of the minerals.
6. **Rule:** A severance of minerals in an oil, gas and other minerals clause includes all substances within the ordinary and natural meaning of the word, whether their presence or value is known at the time of severance.
7. **Judgment: Judgment of the courts below is AFFIRMED. Gefferts are the owners of the uranium in the 6.77-acre tract.**
8. **Comments:**

**Phillips Petroleum Co. v. Cowden**

1. **Procedural History:** District Court found that appellees owned the minerals in their respective tracts with the exclusive right to use the surface thereof for the purpose of conducting seismograph exploration and with the exclusive power to permit or deny others such right; that Paul Moss as the Surface owner had no right to permit seismograph exploration of the land. Judgment was entered for $53,640.00 apportioned on an acreage basis among the appellees.
2. **Facts:** Cowdens, appellants and plaintiffs, are the owners of the mineral estate in the lands in dispute (31 & 32). Paul Moss is the owner of the surface estate under whom appellants claim legal authority to conduct the kind of survey which was made. 5 out of the 34 days spent on the survey were spent on 31, 32. **Appellants contend** that the uncontradicted testimony of expert geophysicists was that the seismograms were so poor in quality that they were unreliable and essentially worthless, and thus the results of the alleged trespass proved to be of no value to appellants.
3. **Issue:** Whether there is any cause of action at all that might be asserted against these appellants, and if so whether it may be asserted by the owners of the mineral rights in the present situation? It must then be determined what the correct measure of damages is and whether the findings of the trial court are sufficient to establish the amount of the liability.
4. **Holding:** Court held that in the present instance no mere lease of the mineral rights is involved but rather a separate and perpetual mineral estate. Court said that the original owners of the entire estate, the appellees, granted to Moss ‘the surface only’ of the land and thus under no circumstance could he have a legitimate interest in investigating the extent of the mineral estate. Appellants invaded some legally protected rights of the appellees. Texas the mineral owner may sue the ‘geophysical trespasser’ only in trespass and not for conversion of either the information or of the right to obtain it. Texas belongs to minority states that permit a landowner to waive the trespass and sue in assumpsit for the reasonable value of the use and occupation. Appellees may properly be compensated only for the use of that part of their property that was ‘occupied’ by the exploration, and, since this recovery is in effect in assumpsit, it must be irrelevant whether they or others owned contiguous property as to which information was also revealed if no trespass was committed as to it.
5. **Judgment: Judgment of the trial court is reversed.** Case remanded for a determination of the number of acres occupied by the trespass and the compensation that should be allowed therefore. Trial court must establish what areas might reasonably be included in an agreement regarding such an exploration, considering that just as the trespasser may be held to pay only a reasonable per acre price for the rights he had invaded, regardless of how much the mineral owner claims he would have charged, so compensation need be paid only for the area reasonably regarded as ‘occupied’ by the survey.
6. **Comments:**

* On remand, the trial court found found that the parties would have contracted for a sesismic lease on all 2,682 acres, and this decision was upheld in a second appeal.

**Kennedy v. General Geophysical Co.**

1. **Procedural History:** In the trial before the Court, without a jury, judgment was rendered in favor of appellees and that appellant take nothing by his suit. Court found that neither appellees nor their agents or employees went upon or ‘shot’ any part of appellant’s land. There was no evidence that appellant suffered any physical damage too his land by reason of the explorations at the point of shooting near his land, and that neither General nor his agents acted with malice or were prompted by malice in making the explorations complained of by appellant.
2. **Facts:** Action was brought by appellant CW Kennedy for the recovery of damages alleged to have been sustained by him by reason of the acts of appellees, General Geophysical in securing information as to the presence or absence of oil, gas or other minerals in and under a tract of 339 acres of land belonging to him in Houston, County, Texas, and for an alleged trespass in the form of vibrations caused by explosions of dynamite in conducting geophysical operations in close proximity to appellant’s land.

**-** Appellant was the owner of 339 acres of land in the vicinity of these operations, an agent of appellee, requested appellant’s permission to conduct geophysical operations on his land, and he was informed by appellant that he could neither ‘shoot’ his land or the land along the road adjoining his land.

1. **Holding: Court held that the** trial court found ample evidence that appellees were in no way negligent in their operations; that on no occasion did General set up a receiving set so near appellant’s land that a straight line drawn on the surface of the ground from the one shot-point from which waves were to be received by the receiving set crossed any part of P’s land. Neither appellees nor their agents acted with malice or were prompted by malice. Appellant was therefore, not entitled to exemplary damages, since exemplary or punitive damages may only be recovered in an action of trespass where actual damage has been sustained.
2. **Judgment: Affirmed.**
3. **Comments:**

**Villareal v. Grant Geophysical, Inc.**

1. **Procedural History:** After completion of the survey, Villarreals filed suit against Grant and Millenium, alleging that both companies acquired data from the mineral estates without first obtaining their permission to conduct seismic testing on their mineral estates. Villarreals filed claims for geophysical teespass, assumpsit in lieu of geophysical trespass, and unjust enrichment. Trial Court granted SJ in favor of Grant and Millennium on all of the Villarreal’s claims. Villarreals now appeal.
2. **Facts:** Appellants Juan and Maria Villarreal own mineral estates in Starr County. Appellees, Grant and Millenium conduct seismic surveys in Texas using three-dimensional technology. Grant and Millenium conducted 2D surveys in Zapata, Jim Hogg, and Star counties, collectively. Tri-County survey covered approximately 300 square miles, and included within its borders property owned by the Villarreals. While conducting this survey, Grant obtained permission to conduct survey operations from over 2100 surface and mineral estate owners, paying almost $4M in permit fees. Grant admits that despite its efforts, it was unable to obtain permission from everyone within the survey, it did not obtain permission from the Villarreals. Grant never trespassed on the surface estate above the Villarreal mineral estate. Grant contends it never intentionally obtained unpermitted data from the subsurface of the Villarreal's property.

* **Villarreal’s argue** that the TC erred in granting Grant and Millenium SJ motion on geophysical trespass and recovery under assumpsit. Trespass under Texas law does not have to be committed in person, but may be caused by allowing or causing something to cross a boundary.
* **Villarreal’s argue** that Grant and Millennium took undue advantage of them by intentionally acquiring seismic data of their mineral estate. In addition, they claim that Grant and Millenium then profited from this unpermitted data at the expense of the Villarreals.

1. **Holding:** Court held that there was NO trespass since neither Grant nor Millenium physically invaded or injured the surface estate lying above the Villarreal’s mineral estate. **Court** said that G and M did not wrongfully secure a benefit nor did they passively receive one, which would be unconscionable to retain. Unjust enrichment is NOT a proper remedy merely because it might appear expedient or generally fair that some recompense be afforded for an unfortunate loss to the claimant or because the other person received a windfall.
2. **Judgment**: SJ motion Affirmed granting summary judgment in favor of Grant and Millennium.
3. **Comments:**

**Coastal Oil & Gas Corp. v. Garza Energy Trust**

1. **Identities of the Parties:**
2. **Procedural History:**
3. **Facts:** Respondents, Salinas, own the minerals in a 784-acre tract of land in Hidalgo County called Share 13, which they and their ancestors have occupied for over a century. Petitioner, Coastal Oil & Gas Corp. has been the lessee of the minerals in Share 13 and an adjacent tract, Share 15. Coastal was also the lessee of the minerals in Share 12 until it acquired the mineral estate in that 163-acre tract in 1995. A natural gas reservoir, the Vicksburg T formation, lies between 11,688 and 12,610 feet bellow these tracts.
4. **Issue:** Whether subsurface hydraulic fracturing of a natural gas well that extends into another’s property is a trespass for which the value of gas drained as a result may be recovered as damages.
5. **Holding:** Court held that the Rule of Capture bars recovery of damages.
6. **Rule:**
7. **Judgment:** Reversed and remand the case to trial court for further proceedings.
8. **Comments:**

**Law v. Heck Oil Co.**

1. **Facts:** P is the owner in fee of an undivided 1/768 interest in the oil and gas underlying a tract of 131 ½ acres of land. Heck Oil Co. holds leases for development purposes on the remaining oil and gas interests in the said land, having failed to obtain a lease from P, it undertook to drill a well without his consent, after it gave assurance to him that account would be made for his full proportionate share of the mineral production, if any, without deduction for expense of development or operation.

**Company argues** that the position P takes is inequitable and unjust. He does not come into equity with clean hands and that the owner of such a small interest who is unable to obtain an exorbitant price which he has placed of his interest, ought not to be permitted to prevent development which is desired by all his co-owners and which the lessee is willing and ready to undertake. Company urged that it ought to be permitted to proceed with development in order to prevent drainage.

1. **Holding:** Courts will determine what are his rights. There is no evidence, opinion or otherwise, that oil and gas underlying the land in question is now being drained away through said wells, or that such drainage will likely occur through other neighboring wells now drilling. Action of the circuit court in perpetuating the injunction is approved, but the conditions, which will relieve the restraint, should be enlarged. Minority rule; It is waste for a cotenant (or a cotenant's lessee) to drill for oil and gas without the consent of the other owners. The rationale is the traditional view that any action that changes the nature or character of jointly owned land is waste, even if the action improves it. For example, the cotenant who wishes to drill may be enjoined from development or held liable for damages as a trespasser, unless she can show that development was necessary to protect against drainage.
2. **Rule:** Oil and gas in place is a real estate and an unqualified owner of real estate or an interest therein is entitled to have it remain in such condition as he sees fit. Subject, of course, to the right of a cotenant to compel partition or sale as provided by statute and to protect from dissipation through drainage by operators on other land, estates in oil and gas.
3. **Judgment: Affirmed.**
4. **Comments:**

**Prairie Oil & Gas Co. v. Allen**

1. **Procedural History:** action originally brought in the state court by Lizzie Allen against the Prairie Oil & Gas Company, hereinafter called Prairie Company, to recover damages for alleged conversion of a quantity of petroleum oil. It was properly removed to the federal court. Thereafter, Skelly Company on motion of Prairie Company was made a party D.
2. **Facts:**

* **On May 9, 1911** - Good Land Co. conveyed to JC Trout 40 acres reserving nine-lengths of all oil and gas and minerals in and under the surface, with the right to enter upon said 40 acres and use so much of the surface for mining and marketing the production thereof. In 1912 Trout conveyed the deed to this 40 acres to Lizzie Allen, who thereby became the owner of the remaining 1/10 undivided mineral interest. Good Land Co. signed a lease with Kay-Wagoner on the 40-acre tract which was subsequently assigned to Skelly Oil. Prairie Company signed a contract with Skelly Oil to sell the oil produced from the tract.
* **On June 17, 1920** – Skelly Company commenced the drilling of an oil well thereon and completed the same July 12, 1920, as a producing oil well. Thereafter it drilled 2 additional wells. The reasonable and necessary expenditures of Skelly Company in the development amounted to $153, 880.40. Skelly Company continued to operate from February 1, 1922 to the date of the trial and incurred and paid the necessary expenses of such operation.
* **On August 4, 1920** Skelly company contracted with Prairie Company to sell the latter the oil produced from well No.1 and from wells that might thereafter be drilled on the land and in pursuance thereof a divisional order was executed by the Good Land Company
* **On February 25, 1921, Lizzie Allen** procured W.Croom to write a letter to Skelly Company, in which he stated that Allen owned 1/10 of the oil&gas rights in this land, that she had never received any payment for or statement concerning her share of proceeds, and that he desired Skelly Company to advise him its interpretation of the rights of Lizzie Allen in the premises.
* **On February 26,** Skelly Company replied thereto by letter which it stated that Allen was being credited with 1/10 of the gross proceeds of oil sold from the premises and charged with 1/10 of the cost of the drilling of the wells and equipping and operating the property. As soon as Well No.3 was completed it would furnish a statement to her of the cost of the wells and the amount received for oil sold.
* **On March 16. 1921,** Skelly Company mailed to Allen a statement setting forth the expenses of development and operation of the property and the amounts received for oil sold therefrom, and thereafter continued from time to time to mail her similar statements.
* **On May 7, 1921,** Allen notified Skelly in writing that she objected to its taking oil and gas from the land.
* **On May 12, 1921,** Allen made demand in writing upon Prairie Company to surrender and deliver to her 1/10 of all the oil, which had been produced from this land and received by it. Prairie Company refused demand.
* **Lizzie Allen argues** that since she did NOT join in the lease it was void as to her and that the Skelly Company, in going upon the land in question and developing and producing oil therefrom, was a trespasser.

1. **Issue:** What is the proper basis of accounting between Skelly Company and Allen?
2. **Holding:** No doubt that the deed from Good Land Company to JC Trout legally and effectually severed a 9/10 of the interest in the oil, gas and minerals in and under the land from the other 1/10 of the oil and surface rights conveyed to Trout. Good Land and Trout became the owners of the oil, and gas as tenants in common. Upon the conveyance by Trout to Allen, Good Land and Allen became tenants in common. Under the provision of the deed to Trout, Good Land retained the ownership of 9/10 of the oil, gas and mineral in and under the land, and much of the surface thereof as might be reasonably necessary for operating, drilling, mining and marketing the same. Having reserved the right to use the surface, Good Land, being a tenant in common with Allen, would have had the right to develop the land for oil, gas, and minerals without her consent.

* Court held that Skelly Company was NOT a trespasser as against Allen, but that the lease to it was valid, and that upon entry it became a tenant in common with Allen during the continuation of the lease and occupied the same relation to Lizzie Allen and the property as the Good Land Company would have occupied, had it entered and developed and operated the property for oil and gas.
* Lizzie Allen is entitled to an accounting from Skelly Company for the market value of the oil produced less the reasonable and necessary expense of developing, extracting and marketing the same. Royalty paid by Skelly Company to the Good Land Company is NOT a part of the cost of production and should not be included in the same.

1. **Rule:** Tenants in common are the owners of the substance of the estate. They may make such reasonable use of the common property as is necessary to enjoy the benefit and value of such ownership. Since an estate of a cotenant in a mine or oil well can only be enjoyed by removing the products thereof, the taking of minerals from a mine and the extraction of oil from an oil well are the use and not destruction of the estate. A tenant in common without the consent of his cotenant has the right to develop and operate the common property for oil and gas and for that purpose may drill wells and erect necessary plants. He must not, however, exclude his cotenant from exercising the same rights and privileges.
2. **Judgment: Judgment of lower court is therefore reversed, and the case remanded with instructions to grant the Prairie and Skelly Companies a new trial.**
3. **Comments:** Majority Rule; The 90% tenant in common of the mineral interest in Oklahoma lands leased its interest to an oil company. After the oil company drilled successfully, Allen, the owner of the surface and remaining 10% mineral interest, sued the purchaser of production and the lessee. Allen contended that she was entitled to one-tenth of all production from the land, arguing that the oil company had no right to develop without her permission - that it was a trespasser to her interest. The court rejected Allen's argument that development without her permission was trespass. The court held that any tenant in common (or the tenant's lessee) has the right to remove minerals from the jointly-owned property because the only way to enjoy an interest in minerals is by developing them. Development is use of the interest, not destruction of it. On that basis, the court required an accounting to Allen for her share of the production less her proportionate share of the costs of operating, after all drilling and completion costs had been recovered. It also noted that Allen would have had no liability if the well had been a dry hole or had never produced enough to permit the operator to recover all costs.

**Texas Pacific Coal & Oil Co. v. Kirtley**

1. **Procedural History:** On the trial before the court, the trial court concluded that appellees (as unleased cotenants) were NOT estopped from claiming their interest in the minerals because there was no evidence of any injury to appellant, or that appellant had changed its position for the worse on account of the execution of the division order above referred to, and gave judgment in favor of appellees, for the sum of $22,053 which was ¼ of all the oil produced from said land within two years prior to the filing of P’s petition less the amount of royalty paid appellees on the same oil, and less ¼ of the cost of producing said oil within that period; and further awarded appellees a recovery of an undivided ¼ interest in the minerals in the premises covered by their said conveyance.
2. **Facts:** SR Hill and his wife owned a 139-acre tract of land. Hills conveyed by deed to Kirtley (appellees) an undivided ¼ interest in all oil, gas and other minerals in and under the 139 acres. Hills negotiated a lease with Texas Pacific & Oil Co. Lease covered the entire premises and was for a term of three years. Appellees were not a party to the lease, and informed Hill and Texas that they would not sign the lease. Texas & Pacific had both actual and constructive notice that Kirtleys owned ¼ interest.

* **On November 1916,** appellant drilled a dry hole on the tract at a cost of about $66k. Appellant then drilled a Well No.2 on said premises, of about $71k. Another well was then drilled on these same premises, which also produced oil and gas.
* When the first producing well was completed in 1920, and the oil was run into pipe lines, the appellee Kirtley executed to Texas Pacific a division order dated July 16, 1920, in which it was stipulated that they owned ¼ of the 1/8 royalty (or a 1/32) in the oil produced from said lands and that Texas Pacific should credit them with this share of the proceeds from the sale of the oil.

1. **Holding:** Court held that appellees the option of ratifying the lease executed by the Hills and take their proportion of the royalty and cast upon appellants the burden of paying all the expenses. By accepting their proportionate part of the royalties provided for in the lease, and by the execution of written instruments agreeing that they claimed as royalty owners under said lease, appellees made themselves in effect parties hereto and thereby bound themselves, and as they bound themselves so must they stand bound.
2. **Judgment: Judgment of the trial court is reversed and rendered that the appellees, take nothing and that judgment be rendered in favor of appellants with costs both in this court and the court below. Motion for rehearing should be overruled.**
3. **Comments:**

* **Division Order**: is an instrument which sets forth the proportional ownership in produced hydrocarbons, including crude oil, natural gas, and NGL's. Sometimes the **Division Order** is referred to as a **division** of interest. More often than not, a single well or lease will have multiple owners.

**Humble Oil & Refining Co. v. Kishi**

1. **Procedural History:** In a suit by Kishi against Humble Oil for damages sustained by him, the district court awarded him nominal damages in the sum of $1 only, holding that the amount of damages sustained by him was uncertain and unsusceptible of proof. On appeal from this judgment the Court of Civil Appeals held that he was under the facts entitled to recover the actual damages occasioned by reason of the wrongful entry and ouster which was the value to him of his ¾ undivided leasehold interest, but that proof of the market value of the entire leasehold interest was NOT in law sufficient upon which to base the amount of recover.
2. **Facts:** Kishi is the owner of all the surface and ¾ undivided interest in the oil and mineral rights, and Isaac Lang, owner of the remaining ¼ interest in the oil and mineral rights of 50 acres of land in Orange county executed to Humble Oil the lease granting to it the exclusive right to enter upon said land and drill oil wells and take therefrom the oil. Lease was of date December 23, 1919 but was not signed and acknowledged by Lang until January 29, 1920 and was thereafter delivered to said Humble Oil. By its provisions, it was to remain in force for no longer period of time than 3 years from its date, unless within said three years drilling was commenced. No drilling was begun within the time provided, and the lease expired. After the expiration of this lease in January 1923 oil was found on an adjoining tract of land in a well drilled near this 50 acres. On January 23, 1923 Humble Oil entered upon the 50 acres of land, and began drilling an oil well thereon, claiming the executive right to the leasehold interest therein.

* Humble Oil claimed that the lease had not expired, and that under its terms it did not expire until 3 years after it was signed and acknowledged by the Langs. Kishi protested against the entry and that he would hold Humble Oil responsible for any damages that might accrue to him. Lang, however, consented to the entry under the claim made.
* Humble Oil remained in possession under this entry until it completed drilling the well, which resulted in the failure to find oil, and it relinquished possession on May 10, 1923.
* Leasehold interest in the 50-acre tract was of the market value of $1000 per acre. After Humble Oil relinquished possession the leasehold interest had NO value by reason of the failure to find oil in this tract.

1. **Holding:** Court held that Humble Oil wrongfully claimed to own the right over the protest of Kishi, and excluding him therefrom, was clearly a trespass and ousted. The right had a market value of $50,000 being $1000 per acre. Had Lang not consented and joined Kishi in a suit to recover their damages for the wrongful entry, the measure of their damages would have been the market value of the leasehold interest, which is here shown to be $1k per acre. Lang would have been entitled to ¼ and Kishi to ¾ of the amount recovered. Court said that in this case ¾ of the market value of the leasehold interest was the measure of the damages which Kishi was in law entitled to recover, and that proof of the market value was in law sufficient upon which to determine the amount of judgment in his favor.
2. **Rule:** Oil in place under the land is real estate. The exclusive right to enter upon the land, drill wells thereon, and remove therefrom the oil to exhaustion, paying therefore a portion of the oil when extracted or the equivalent of such portion, is a property right, which the law protects.
3. **Judgment: Judgment of Court of Civil Appeals be reversed, and that the judgment of the district court be so reformed as to allow K.Kishi judgment against Humble Oil for the sum of $37,500 with legal interest, and as so reformed that the judgment of the district court be affirmed.**
4. **Comments:**

**Humble Oil & Refining Co. v. Kishi**

1. **Facts:** Humble Oil insists that the holding made in the original opinion denied for a cotenant the right to the use and enjoyment of the land owned in cotenancy. Court said that the company had no right to deprive Kishi of the value of his property by making the unwarranted claim that the lease theretofore executed by him gave it the right of entry, and its entry under this claim was wrongful. The wrongful act destroyed the value of Kishi’s property and the company should be required to respond in damages for the injury resulting from it lawful act.
2. **Holding:** Court held that the recommendation made in their opinion that the judgment of the court of Civil Appeals be reversed was erroneous. Both the trial court and and Court of Civil Appeals found that the leasehold value of the land was $1000 per acre. A ¾ undivided in the leasehold estate may or may not have been ¾ of $1k per acre. Trial Court could have inferred that an undivided ¾ interest was ¾ of $1k per acre and had the trial court so found, would have been binding on the appellate court.
3. **Judgment: Judgment heretofore rendered be set aside and that the judgment of the court of civil appeals reversing and remanding the cause be affirmed with direction that the district court ascertain the amount of damages under the measure herein indicated and render judgment accordingly.**
4. **Comments:**

**Byrom v. Pendley**

1. **Facts:** Byrom owned an undisputed 11/24th leasehold working interest in a tract of land in Eastland County, Texas. In November 1976, Paul Pendley acquired an oil and gas lease covering the remaining 12/24th interest. Approximately 6 months later, Byrom obtained a lease from Pendley’s lessors covering this same remaining 12/24th mineral interest.

* Because of insufficient property description in the Pendley lease, **Pendley filed suit in June 1977** to reform the lease to correctly describe the covered property. Byrom intervened in that suit, seeking to have the Pendley lease declared void and removed as a cloud from Byrom’s title. While the suit was pending, Byrom drilled the Byrom-Everett No.1 Well on the property in dispute. Well was completed as oil well and began operating with the proceeds attributable to Pendley’s alleged 12/24th leasehold interest placed in escrow. Pendley ultimately prevailed in his June 1977 property tile suit, thereby validating his 12/24 leasehold interest and invalidating Byrom’s lease covering that interest.
* **Byrom then filed this lawsuit against Pendley**, seeking a declaration that he was entitled to recover from the funds held in escrow ½ of the costs of drilling and operating the well. After a non-jury trial, the district court rendered judgment for Byrom, holding that Byrom had the right to drill the well and to produce oil and gas from the property.
* **Court of Appeals reversed and rendered judgment for Pendley,** holding that Byrom was a bad-faith trespasser as a matter of law. Its decision hinged on the undisputed fact that Byrom drilled the well in question while asserting in then pending litigation that Pendley’s ½ leasehold interest was invalid.
* **Byrom contends** that although he lost his claim to the 12/24th mineral interest, he nevertheless had the right to drill and produce a well on the strength of his undisputed 11/24 leasehold interests.
* **Pendley argues** that Byrom became a trespasser as to Pendley’s 12/24th leasehold interest solely by denying the validity of the Pendley lease. They relied on Kishi case.

1. **Issue:** Whether Byrom, a cotenant who drilled a producing well while denying, in a pending lawsuit, the validity of cotenant Paul Pendley’s interest Is a bad-faith trespasser as a matter of law.
2. **Holding:** Court held that the Kishi decision was not applicable because this case did not involve a wrongful claim by a lessee against his lessor after termination of the right to enter. Court held that Byrom had the legal right, as a cotenant of Pendley, to proceed to drill and produce oil and gas from the land, subject only to his duty to account to Pendley for Pendley’s proportionate part of the value of the oil and gas produced, less Pendley’s proportionate part of the drilling and operating expenses.
3. **Rule:** A cotenant has the right to extract minerals from common property without first obtaining the consent of the cotenants; however, he must account to them on the basis of the value of any minerals taken, less the necessary and reasonable costs of production and marketing.
4. **Comment:**

**Moseley v. Hearrell**

1. **Procedural History:** Court of Civil Appeals ruled that the joint ownership of the property and the parol operating agreement between Wood and Mrs. Hearrell created a mining partnership, and that when Moseley purchased Wood’s interest he thereby became a partner in the venture. The court was further of the opinion that Moseley, as a member of the firm, was NOT entitled to dissolve the partnership and compel partition of the property without showing equitable grounds therefore.
2. **Facts:** RN Wood originally owned the mineral interest in the tract of land in question. His interest was encumbered with a covenant that no more than one oil well would ever be drilled on the land. A firm of attorneys held an overriding royalty of 14/128 interest in the minerals. Wood conveyed to Ms. Hearrell an undivided 49/128 interest in the minerals. Afterwards a well was drilled and brought in as an oil producer. Wood and Mrs. Hearrell then entered into an oral understanding, by the terms of which Mrs. Hearrell was allowed to operate the well during the joint ownership of herself and Wood. Such understanding was not to extend beyond the period of such joint ownership. Thereafter Wood conveyed all of his remaining interest to the, P, JAR Moseley. Moseley had knowledge of the previously existing oral agreement between Wood and Mrs. Hearrell at the time he purchased Wood’s remaining interest in the property.

* **It would be inequitable to Mrs. Hearrell to compel partition of the property** because she would be financially unable to buy in the property at a receiver’s sale, and that if here interest should be sold by the receiver it would not being its full value and in addition she would compelled to pay a large Federal Income Tax out of her receipts from the sale.

1. **Holding:** Court held that it sometimes may be inequitable to one or more of the joint owners if another co-owner is permitted to enforce partition of the jointly owned property; but this is one of the consequences which one assumes when he becomes a co-tenant in land. If he does not provide against it by contract, he may expect his cotenant to exercise his statutory right to of partition at will.
2. **Rule:** Any joint owner or claimant of any real estate may compel a partition thereof between the other joint owners or claimants thereof in the manner provided in this chapter. No requirement for the showing of equitable grounds as a prerequisite to the exercise of the right, nor is there any provision that the right may be defeated by the showing of inequities.
3. **Judgment: Judgment of the Court of Civil of Appeals is reversed, and that of the trial court is affirmed.**
4. **Comments:**

* Receivership is an alternative to a foreclosure proceeding (where a lender takes ownership of the project) or a bankruptcy proceeding (a trustee takes control of the project).

**Henderson v. Chesley**

1. **Facts:** appellants own the fee to the land and have used it for many years for grazing and agricultural purposes. They own the fee by purchase, and also own a ½ undivided interest in the aforesaid minerals, acquired as an incident to the fee-simple title. Appellees own an undivided ½ interest in and to the mineral rights; they and their predecessor in title having acquired this interest many years prior to appellant’s purchase of the fee.

* **By two suits,** one in 1906 and the other in 1920, appellees and their predecessor in title have established against appellants their undivided 1/3 interest In this mineral rights in and to the land, in each of these suits appellants have been decreed the owners of the fee, except as to this interest of appellees.
* **Appellant contends** that since no exploration has been made, the extent, value, and location of the minerals in the land cannot be ascertained and are therefore incapable of partition in kind.
* **Appellant contends,** that the interests or estates of the parties hereto are not of equal dignity and therefore cannot be partitioned. They say that since they own fee and a ½ undivided interest in the minerals, constituting an estate already severed from the fee, the estates sought to be partitioned are not on equal parity nor of equal dignity.

1. **Issue:** Whether or not under the facts of this case, appellees are authorized to compel a statutory partition in kind of the aforesaid mineral rights.
2. **Holding:** Court favors partition in kind, rather than a sale with partition of the proceeds. Since there has been no development or exploration for minerals of any kind, in, on, or under the land in question, we think that the court should assume for the purpose of partition that each acre of the land contains an equal amount of minerals, and partition by dividing the surface. Second argument – a life estate, or an estate for any term of years, is NOT of equal dignity, in the sense contended for by appellants, with a fee-simple estate; yet our courts have always held that they constituted such an interest in land that partition could be compelled.

* **The test is that** the interests of the joint owners generally extend to the whole tract of land, which interests are capable of being severed from the fee or other estates, and with a present right of the owners to a joint possession.
* **NO evidence in he record** disclosing that a division of the surface for a partition of the mineral rights would in the least interfere with appellants in the use of these improvements; nor does the record disclose any fact or circumstance rendering difficult a partition because of these improvements; nor does it show that these improvements could not be taken into consideration and protected by the commissioners appointed to make the decision.

1. **Judgment: Affirmed.**
2. **Comments:**

**Fortney v. Tope**

1. **Facts:** Fortneys, Ps, are the owners of an undivided 1/3 interest in a tract and Topes, Ds, own the other 2/3. Ds insist that partition will result in great prejudice to the owners. The land is valuable for oil and gas; that the surface rights are of little value compared therewith. Mr. Fortney testified that in his judgment the 40 acres were worth $20,000. At the time of the hearing in August, 1932, there were three producing wells near this land, two of them distant about 330 feet and the other about 500 feet.

* **Ps objection to the sale, rests largely upon the claim** that they are without funds to protect their interests and Ds doubtless would procure the interest of the Ps at a mere pittance.

1. **Holding: Court held that** a much greater injustice might be done if the parcel allotted them be found to have no oil thereon and the remainder be productive. This 40 acres lies in the oil and gas field of that part of the estate, and it seems clear that on a sale buyers will be present and the Ps be assured a reasonable price for their interest in the property.
2. **Rule:** Where it is known that the land bears oil and gas, following a similar rule applicable to solid minerals, it is generally held that there can be no partition of the land by metes and bounds; that partition must be made by sale and division of the proceeds. And the same rule has been applied to partition of oil and gas leases.
3. **Judgment: Decree adjudging the Ps to be the owners of an undivided 1/3 interest in the land is affirmed. Provision for its partition is reversed, and one may be here entered providing for a sale and remand to the circuit court to make provision therefore. No costs will be allowed.**
4. **Comments:**

**Broughton v. Humble Oil & Refining Co.**

1. **Identities of the Parties:** Appellants Herbert Broughton and Lillian Broughton will be referred to as plaintiffs. Luckel is the intervener. Appellees Hanscom, WW Barnes and Humble Oil & Refining Company are Ds.
2. **Procedural History:** Action in trespass to try title brought by Herbert Broughton, against Madie Hanscom, WW Barnes and Humble Oil. Court entered a judgment for Ds for the minerals, notwithstanding the verdict, holding that the execution of the lease by Hanscom to Barnes, after Broughton had entered upon and taken possession of the lad, but before the expiration of the full 10-year period, interrupted the adverse possession of the Ps in so far as minerals are concerned.

* Court and jury found that their peaceable and adverse possession continued thereafter until the full period of 10-years was completed. Possession was NOT interrupted by adverse suit to recover the estate. Therefore, it was not interrupted at all.

1. **Facts:** Broughton sued for recovery of title and possession of a fifteen-acre tract of land in Galveston County. D, Madie Hanscom, was the record owner in 1924 when Ps, Broughton, asserted they fenced the land and began to mature a limitation title.

* In 1930, Hanscom executed an oil, gas and mineral lease to D WW Barnes. Hanscom retained 1/8 royalty.
* In 1930, Barnes assigned this mineral lease to D Humble Oil Refining Company, retaining an overriding royalty of 1/48.
* Broughton executed and oil and gas lease to intervener, FL Luckel
* Ds contend that the delivery and record of the oil&gas lease placed upon Ps a further duty with respect to their use of the land, and that Ps failed “to exercise that degree of hostile, adverse and exclusive dominion over the severed mineral estate, which was required.
* Humble Oil sought, to recover its expenditures incurred in drilling a well upon the property and producing, saving, and marketing the oil therefrom.

1. **Holding:** Court held that Hanscom did not have either actual or constructive possession of the property at the time she executed the lease. She was unable, therefore, to deliver either character of possession to her lessee. She was never in actual possession of the land. Her constructive possession, by reason of being the owner of record title, ceased when P took possession under a claim adverse to hers. Ds had notice that Ps were in possession of all the land –surface and subsoil.

* **Humble Oil argument –** expenditures were made after the suit was filed, and with notice of the Broughtons claim as reflected by his pleadings. It sought and followed the advice of counsel who acted largely upon certain ex parte affidavits furnished him. Jury found that the company did not act in good faith.

1. **Judgment:** Reversed. Judgment here rendered in favor of Ps and interverner against all Ds for title and possession of the land sued for, and in favor of Ps and intervener Luckel, as their interests appear, against Humble Oil for the sum of $14,594.16.
2. **Comments:**

**Diederich v. Ware**

1. **Identities of the Parties:** E.C. Ware (appellee) owner of surface and adversely possessed mineral estate. Diedrich (appellant) bases his claim upon an 1859 deed which severed the oil rights from the surface.
2. **Procedural History: Trial court adjudged that** the appellee had acquired title to the oil by adverse possession through two wells which were sunk on the property by the surface owners in 1924 and which have been in open, notorious, and continuous operation ever since. Appellant bases his claim upon an 1859 recorded deed, which severed the oil rights from the surface.

* **Trial court** found that the mineral owner’s (appellant’s) predecessors in title had actual and timely notice that oil was being taken from this tract under an adverse possession claim and made no effort within the 15-year statutory period to assert their rights.
* **Trial court found** that the requirements had been met and quieted title to the oil under the entire 56-acre tract in the appellee EC Ware.

1. **Facts:** Appellant, Diederich, seeks a declaration of the rights of himself and others to royalties from 2 producing wells on a 56-acre tract, the surface rights to which are owned by the appellee E.C. Ware.

* Old oil deed of 1859 appears valid, and as result issue #2 is presented.

1. **Issue:** Whether oil rights granted by an 1859 deed can be acquired through adverse possession by the owner of the surface of the land by the drilling and operation of 2 oil wells in a corner of a 56-acre tract.

**-** May the holder of a mineral deed granting to him the exclusive privilege of taking oil from a tract of land be divested of his rights under the deed through adverse possession, if subsequent to the severance of the mineral from the surface right, the surface owner or his successor in title permits others to sink oil wells on the property and to operate them under a lease for 32 years paying royalties to the surface owner and his successors in title?

1. **Holding:** Factors to establish adverse possession of mineral estate are: exclusive, actual, peaceable, open and notorious, continuous and hostile possession of the minerals under a claim of right for the statutory period. Court held that appellant’s predecessor in title, Gray-Mellon Oil had actual notice as early as 1925 that oil was being taken from the GW Webb tract mentioned in their mineral deed in which the 1859 deed was considered. That notice as well as the open and notorious operation of the two wells since that time, was sufficient to cause limitation to run against the mineral owners claiming any interest in the oil under this tract by virtue of the 1859 mineral deed where such interest is derived from the Gray-Mellon Oil Company. Court concluded that the 2 oil wells for the statutory period cut off the right of anyone else to drill for or extract oil on the 56-acre tract.
2. **Rule:** After severance of the mineral rights from the surface rights it is possible for the surface owner, or even a person having no interest in the surface, to acquire title to the minerals by adverse possession. Presumption prevails that the owner and holder of the surface is trustee of the minerals for the use and benefit of the owner of the mineral rights. Surface owner may repudiate the trust and claim adversely to the mineral holder.
3. **Dissent:** No possession of fugacious minerals until there are brought to the surface.
4. **Judgment: Affirmed.**
5. **Comments:**

**Natural Gasline Co. of America v. Pool**

1. **Identities of the Parties:** Plaintiffs, in the trial court, are the respondents in this Court, are successors of Sneed’s interests in all three leases and they contend that the leases terminated due to cessation of production. Pool brought suit to quiet title, for trespass, conversion, and fraud, and for actual and exemplary damages. Ds in the trial court, who are the petitioners in this Court, are Natural Gas Pipeline Company (lessees). They are the current owners and operators of the leases.
2. **Procedural History:** Two separate suits were brought in the same trial court by the same lessors against the same Ds. First suit involved 2 leases; the second suit involved a third lease. **In both suits,** the trial court granted motions for partial summary judgment in favor of the lessors, declaring in the partial summary judgment that the leases had terminated due to one or more cessations of production from said land.

* **In *Pool 1*,** which gave a verdict largely favorable to the lessees, and it found that the lessees had produced gas in good faith after August 1964 and failed to find that the lessees had produced gas after 1964 as a result of fraud. TC declared that the 2 leases had terminated.
* **In *Pool 2***, rendered a verdict that was entirely favorable to the lessors. Jury found that the lessees had acted in bad faith in producing gas after August 1964. That they produced gas after that date as a result of fraud, that the lessors were not guilty of laches and that the lessees had not acquired title by adverse possession.
* **Lessees appealed both judgments.**
* **COA *Pool 1*,** Leases had terminated due to cessation of production, and that lessees could not establish adverse possession even if they were trespassers because they had not given notice of repudiation of the lessor’s title. Laches was not a defense, lessors were not entitled to attorneys’ fees
* **COA *Pool 2,*** held that the lease had terminated due to cessation of production, laches was unavailable as a defense, the lessors’ execution of division orders did not revive the lease, the lessees did not establish adverse possession because there was no notice to the lessors that the lessees repudiated the lease.
* **COA** concluded in these cases that the lessee’s continuation of oil and gas operations and possession of the minerals after the leases terminated, was NOT adverse because NO notice of repudiation had been given to lessors.

1. **Facts:**

* **In *Pool 1*,** 2 leases were executed by J.T. Sneed and his wife in 1926 and 1936. In a separate agreement, the leases were consolidated as to a portion of the lands they covered for purposes of natural gas exploration and production. 1926 lease at issue in Pool 1 provided it would remain in effect for “10 years” and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee. The 1936 lease similarly provided that it would remain in effect “so long as natural gas is produced.”

- A well, known as JT Sneed #1 well was drilled on the consolidated acreage, and it produced gas until a replacement well was drilled in 1994. There were periods of time when there was no production from J.T. Sneed #1.

* **In *Pool 2*,** the lease was executed in 1937. 2 producing wells were drilled on the acreage covered by the lease. There was no actual production from either of these wells, which ranged from 30 to 153 days. Another well was drilled on the Pool 2 lease in 1996, and it has produced in paying quantities without interruption.
* **Lessees contend** that the leases did not terminate because there has been production in paying quantities at all times, notwithstanding the periods of non-production, or that production was restored within a reasonable period of time under the temporary cessation of production doctrine. In the alternative, lessees, contend that the lessors’ claims are barred by laches, or that the lessees obtained a fee simple determinable in each of the mineral estates by adverse possession.
* **Lessors retained a royalty interest ONLY.**

1. **Issue:** Whether lessees’ possession was adverse? Parties were NOT co-tenants, lessor only retained a royalty interest and possibility of reverter.
2. **Holding: Court held** that actual notice of repudiation was NOT required, instead, notice can be inferred, or there can be constructive notice. Lessors did not assert a claim for at least 14 years with regard to the *Pool 1* leases, and for at least 29 years with regard to the *Pool 2* lease. Court said that that was a strong circumstance tending to authorize an inference of notice of adverse possession. There is also uncontroverted evidence that the lessees’ long-continued possession was “open, notorious, exclusive, and inconsistent with the existence” of title to all the minerals in the lessors. It was not the leases that the lessees must have been adverse to, but the lessor’s fee title to all the minerals after the leases allegedly terminated. An oil and gas lease contemplates that the mineral estate itself may be permanently and irrevocably depleted by removing and exhausting the minerals. An oil and gas lessee that holds over continues to physically remove and dispose of the very valuable, non-renewable minerals for its own account. Such actions are by their nature hostile to the lessor’s ownership of all the minerals in place once the lease expires and the mineral estate reverts to the lessor in its entirety.

* **Once the leases terminated,** lessees had no right to explore for, produce, or sell any of the oil and gas, much less one hundred percent of all that was produced. Those rights reverted to the lessors. Therefore, it was the lessors that had the exclusive right to all the proceeds from production, subject only to an equitable accounting to the former lessees for the actual costs of production.
* **Act of drilling wells,** is an act hostile to the lessors’ exclusive right to explore for and remove the valuable minerals as well as the lessors’ exclusive right to make the decision whether to drill and therefore impact the speculative value of the mineral estate if the well were unsuccessful.

1. **Rule:** In Texas, it has long been recognized that an oil and gas lease is not a “lease” in the traditional sense of a lease of the surface of real property. Lessor is a GR and grants a fee simple determinable interest to the lessee, who is actually a GE. Lessee/GE acquires ownership of all the minerals in place that the lessor/GR owned and purported to lease, subject to the possibility of reverter in the lessor/GR. Lessee’s/ GE’s is “determinable” because it may terminate and revert entirely to the lessor/GR upon the occurrence of events that the lease specifies will cause termination of the estate. When an oil and gas lease reserves only a royalty interest, the lessee acquires title to all of the oil and gas in place, and the lessor owns only a PR and has the right to receive royalties.
2. **Judgment:** The COA erred in failing to hold that the lessees in these two cases acquired fee simple determinable mineral estates by adverse possession. They reversed the COA judgments and render judgment for the lessees.
3. **Comments:**

**Youngman v. Shular**

1. **Procedural History:** Trial court applied the ‘open mine’ doctrine and awarded the royalties to the widow. That judgment was affirmed by the Court of Civil Appeals.
2. **Facts:**

* **On October 29, 1936**, Rem B. Love and Elizabeth Love (Shular) were husband and wife and on that day executed an oil and gas lease to the Texas Company upon their homestead, consisting 112.1 acres of land.
* **In May 1944,** Rem B. Love died intestate, leaving as survivors his wife, Elizabeth Love, and five daughters. At the time of Rem B. Love’s death no oil wells had been drilled on their homestead, but in 1946 the TC acting under the above lease, drilled an oil well upon this homestead, and has since that time drilled 4 more producing wells upon the lease.
* **Texas Company,** has been paying ½ of the 1/8 royalty provided for in the lease to Elizabeth Shular who still occupied the land as her homestead. The other half of the 1/8 has been paid to Keenedy Milburn under an assignment by Rem B. Love and wife, prior to Rem’s death.
* **Margaret Youngman and 2 of the other daughters of the Loves,** brought this suit for an accounting by the TX, and for a declaratory judgment to the effect that they as remaindermen are entitled to the royalty from these wells allowing Mrs. Shular only an interest in the royalty.

1. **Issue:** Whether the execution of the oil and gas lease during the lifetime of Rem B. Love requires the court to apply the ‘open mine’ doctrine and award to the surviving widow, whose claim thereto arises out homestead right, the royalty from wells drilled after her husband’s death, or whether such royalty will be preserved for the remaindermen, the widow being awarded only interest thereon.
2. **Holding:** CPA correctly pointed out that the question was one of the first impression in this state and that decisions from other jurisdictions in which the question had been considered were unanimous in applying the ‘open mine doctrine’ in this and analogous fact situations. In determining whether the doctrine applies, one holding in virtue of a homestead right is regarded as a life tenant.
3. **Judgment: Affirmed.**
4. **Comments:**

**Consumer Gas Trust Company v. Littler**

1. **Facts:** Appellee sued appellant to secure the cancellation and the quieting of his title against a gas and oil contract, the substance of which follows: it was entered into October 15, 1896, by appellee and his wife as first party, and one Walley, assignor of appellant, as second party, his heirs and assigns, in consideration of $1 in hand paid, sold to the second party, his heirs and assigns, all the oil and gas under certain described lands in Grant county, “together with the right to enter upon said lands at all times for the purpose of drilling and operating for oil or gas…”.

* **On October 15, 1901,** the P refused to continue the contract in force, or receive any further payments therefore, but declared the contract then terminated and forfeited; that neither D nor its assignor has ever drilled a well on said premises, nor has gas or oil ever been found thereon. Prayer for cancellation and quieting title etc.
* **D alleges** that the payments of the annual sum stipulated to be $40 on or before the 15th in each year, and an offer to pay for the year commencing on that date, that first party had a right to terminate the contract and intended to do so at that time; and that second party had been at all times ready to pay the same.
* **No time is fixed for the beginning of the operations, nor for the completion of a well, nor any express provision that appellant shall ever drill a well.**
* There is NOTHING in the subject-matter of the contract to limiting power of the parties to enter into such mutual obligations as they liked.
* Fundamental purpose of both parties was the exploration for gas and oil on the premises

1. **Issue:** Whether annual payments (of $40 in the case below) can hold a lease in effect indefinitely?
2. **Holding:** Real intention of the parties was that the gas company or its assigns should, with diligence, and within a reasonable time, enter upon the premises and drill a well, and thereby test the existence or nonexistence and continuance of the fluids in paying quantity. Engagements are equally binding on the contracting parties. They must be equally fair and just in performance, and one will not be permitted to cause the other to suffer from an act, which he himself induced. Appellee chose the latter (what would be equivalent to such of his intention, or what would be equivalent to such notice, refuse to assent to or accept a consideration for a postponement beyond a reasonable time). Up to October 15, 1901 appellee held no ground of complaint. He had consented to the delay, and had received a satisfactory consideration for it. Therefore this suit, commenced 15 days later, cannot be sustained. Appellee could not go on as the pleadings show through a term of years, without complaint or apparent dissatisfaction and successfully claim forfeiture without such reasonable notice as would afford appellant a fair chance to discharge his obligation. The refusal of appellee on October 15, 1901 to accept the annual payment for another year was notice that further delay in commencing operations was not approved, but we cannot say as a matter of law that it was sufficient notice under the circumstances.
3. **Judgment:** judgment reversed with instructions to sustain the demurrer to the second and third paragraphs of the complaint.
4. **Comments:**

**Baldwin v. Blue Stem Oil Co.**

1. **Identities of the Parties: Ps** commenced this action to cancel oil and gas leases given by them to W.S. Thomson on certain property in Greenwood County.
2. **Procedural History:** Judgment was rendered in favor of Ps on their motion for judgment on the pleadings, and Ds appealed.
3. **Facts:** D became the owners of the leases by regular assignments from W.S. Thomson. 2 leases were given, dated on January 17, 1916.

* No well had been completed under either lease on January 17, 1919, and none was commenced until about December 7, 1918.
* **D’s Excuses –**

1. Ds dependent on H2O from rainfall that collected in ponds and creeks in the vicinity of the lands described, that until November 7. 1918, rain did not fall in a quantity sufficient to supply H2O for drilling;
2. They immediately thereafter began preparations for drilling a well, but on account of excessive rainfall the roads became muddy so that fuel for the engine and casing for the well could not be transported over the public roads;
3. That a blizzard intervened, which prevented the Ds from carrying on their work; and that their employees became sick and were compelled to cease work and thereby interfered with the drilling of the well.

* **Ds argue,** that the leases should not be forfeited by reason of the failure to complete a well before January 17, 1919. Leases provided that they should remain in force for 3 years from their date, and that they should terminate in one year if no well had was completed within that year.

1. **Holding:** Court held that the leases terminated absolutely at the end of the three years from their date, unless a well was drilled producing oil or gas. The leases did not contemplate that any circumstance or condition should excuse the lessee from performing the conditions of the leases on his part. By their terms ample time was given in which to drill a well. Lessee was compelled to take notice of the climatic conditions and of the topography of the country in the vicinity of the lands; he was likewise compelled to take notice of the powers of the government over coal and iron industries. Lessee with knowledge of these things contracted positively that he would do certain work within a certain time, and that, after that time his rights in the premises should cease, unless gas or oil should be produced from the land by the lessee. Neither was produced. This is an action to cancel leases that by their terms had expired on account of the lessee’s nonperformance of their conditions.
2. **Judgment: No errors appear and the judgment is affirmed**
3. **Comments:**

**Stanolind Oil & Gas Co. v. Barnhill**

1. **Identities of the Parties:** Appellees, JR Barnhill and wife. Appellants Stanolind and Batson.
2. **Procedural History:** Appeal from a judgment of the district court of Potter County in favor of the appellees, who were Ds in that court. Suit was filed by appellants, Stanolind Oil & Gas and JA Batson, each claiming to own a ½ interest in an oil and gas lease on 160 acres of land. Stanolind claiming to own the entire lease on the remaining portion of the tract of 960 acres. Trial judge cancelled this lease. Lessees appealed, arguing that they had not abandoned the lease, and the lessor’s remedy, if any, was one for damages, not for cancellation.
3. **Facts:** Lease was executed by appellees, JR Barnhill, to JA Batson, and the interest claimed by Stanolind & Gas Company duly assigned to it by the latter. It was dated February 4, 1930, was to continue for a term of 5 years and as much longer as oil or gas or either of them should be produced from the land by the lessee. Sum of $10k was paid as cash as consideration for the lease, and it contained further provisions for the payment of rentals in the sum of $1 per acre if no well were commenced on the land before February 4, 1931, and like payments annually in the absence of drilling operations.

* **Appellants commenced the drilling of a well on the land December 23, 1930,** discovered gas and completed the drilling March 31, 1931, at a depth of 3,370 feet after plugging back from the total depth drilled of 3,498 feet. Tests showed a potential production of more than 7M feet of sour gas per day and a pressure of 410 pounds.
* **No delay rentals were paid,** and on May 11, 1932, appellees executed and filed in the office of the county clerk an affidavit setting this fact.
* **On May 26, 1932,** appellants caused to be filed in the same office an affidavit in substance that the lease was in good standing. Appellants expended about $25k in drilling the well, in addition to the $10k paid to appellees for the lease.
* **No demand for sour gas,** and no market for it, especially from small, isolated wells such as the one involved here until 1935.
* **On the 9th of October 1935,** appellant Stanolind made a contract with Philips Petroleum Company to begin the delivery of gas from the well on December 31, 1935, but before the latter date, appellees notified Philips and appellants that the lease had terminated and the Phillips then declined to take the product of the well until the status of the lease was definitely determined.

1. **Issue:** Whether or not they have produced oil or gas in paying quantities as contemplated in the lease within the time provided by the lease itself.
2. **Holding:** Court held that appellants knew that the locality was generally considered sour gas territory. Court held that appellants went to an expense of $25k in drilling the well that was drilled. Even after the market was available, the value of its production did not exceed $8.97 per day, thus showing that the expense of drilling other wells would not only have been impracticable but a wild and foolish venture. Lessee’s estate consisting of a determinable fee, determinable upon their failure to produce oil or gas in paying quantities within such term, came to an end on February 4, 1935 as found by the trial court, after which they did not possess any interest whatever in the land. The lease did not exist. The term had closed, and the interest they procured by the lease was gone. It is not a question of forfeiture for failure to continue to develop the land, nor does it rest upon any other contingency. Appellants did NOT contract for a term, which would depend upon the possibility of procuring a market for the product at some date subsequent to its express date of expiration. The lease did not provide that it should remain in force and effect for five years, and as long thereafter as there may be prospects of a market for the product, and it is not the duty of the courts to make contracts for parties but only to construe such contracts as they make for themselves.
3. **Rule:** Law implies the obligation of a lessee to continue the development and production of the product with reasonable diligence, and a breach of his duties in that respect will not authorize the forfeiture of the lease as would be the result of a breach of a condition subsequent, such obligation being a covenant. When a well has been drilled upon the property and oil or gas in paying quantities once produced therefrom, the failure of the lessee further to develop the property is, under the holdings of the courts, a breach of an implied covenant, the usual remedy for which is an action for damages. It is only in extraordinary circumstances, where there can be no other adequate relief, that a court of equity will entertain an action to cancel the lease on such ground.
4. **Judgment: Affirmed.**
5. **Comments:**

**Garcia v. King**

1. **Identities of the Parties:** Suit involves the construction of an oil and gas mining lease. Lease was to run for a period of ten years “and so long thereafter as oil, gas, or other minerals is produced from said land.”
2. **Procedural History: Lessors** filed this suit against the lessees to cancel the lease and remove it as a cloud from their title to the land. Court found that the undisputed evidence showed that the lease expired by its own terms at the end of the primary term because neither oil nor gas was then being “produced,” within the meaning of the lease. Upon appeal, the COA reversed the judgment of the trial court and rendered judgment for the Ds, holding that the term “produced” did not mean “produced in paying quantities”.
3. **Facts:** Lease in question covered 7,5000 acres of land. From 1925 to 1929 the land was under a lease that required the payment of an annual rental of $13,284.00, regardless of the amount of oil produced. Lessees were unable to pay this annual rental. Litigation ensued and a settlement was reached by the terms of which lessees paid the lessors $3500.00 in cash, and agreed to pay them $2500.00 out of the 1/8 of production, and the 10-year paid-up lease with a 1/8 royalty now in question was executed.

* **At the time this lease was executed, there were 112** producing wells on the land. Wells yielded large quantities of oil, from which lessors were paid royalties running into thousand of dollars annually. All production was from a shallow reservoir, less than 200 feet deep.
* **In the spring of 1936,** 47 wells were still producing. At that time production ceased temporarily because a gas well that was furnishing fuel for pumping played out. Thereupon the lessees abandoned the shallow wells and decided to explore for oil in deeper sands. Deep tests were unsuccessful, and the lessees began drilling shallow wells again.
* **At the expiration of the primary term on February 6, 1939,** 6 shallow wells were being operated. Before that time, on November 15, 1938, lessees had entered into a contract with one Juarez whereby Juarez was to operate the lease and receive as his compensation the entire 7/8 belonging to the lessees.
* **Contract continued until July 16, 1939.** During this period a total of 195 barrels of oil were produced, averaging a total of 24 barrels per month. After deducting the lessors’ royalty of $19.11, a total of $135.70 was received by Juarez for his 7/8 of the oil, or $16.96 which was barely adequate to pay for his labor in operating the wells. Out of this compensation, Juarez had to pay other fees.
* **During these 8 months,** the lessee received nothing at all from the lease, and continued to pay the annual taxes thereon. In addition, they had to make numerous trips at their own expense to the leased premises. Lessors received only about 8 cents per day as royalty from the lease.
* **It is clear that production was not in paying quantities when the primary term expired.** However there is evidence tending to show that production was increased after the termination of the Juarez contract, and that before the time of the trial production was obtained in paying quantities.

1. **Issue:** Whether sufficient oil was produced from the land after the expiration of the primary period to keep the lease in force. What is meant by the term “produced”, as used in the lease?

* **P contends,** that the term “produced” means the same thing as “produced in paying quantities,”
* **D contends,** that the terms of the contract are met if enough oil is produced to be susceptible of division.

1. **Holding:** Court held that all of the producing wells on the lease at the time of the termination of the primary period were NOT producing enough oil or gas to pay a profit over and above the cost of operating the wells. So far as the lessees, were concerned, the object in providing for a continuation of the lease for an indefinite time after the expiration of the primary period, was to allow the lessees to reap the full fruits of the investments made by them in developing the property. Obviously, if the lease could no longer be operated as a profit, there were no fruits for them to reap. Lessors should NOT be required to suffer a continuation of the lease after the expiration of the primary period merely for speculation purposes on the part of the lessees. Since the lease was no longer yielding a profit to the lessees at the termination of the primary period, the object sought to be accomplished by the continuation thereof had ceased, and the lease had terminated.
2. **Rule:** Produce – means something more than mere discovery of a trace of oil or gas, or the discovery thereof in quantics so small as to render operation of the well unprofitable. Such a well would be of NO benefit to either party.
3. **Comments:**

**Clifton v. Koontz**

1. **Identities of the Parties:** Suit brought by petitioners, Lillie M. Clifton, individually and as executrix of the estate of her husband, JH Clifton, deceased. She seeks the cancellation of an oil, gas, and mineral lease on the theory that after the expiration of its 10-year primary term, the lease terminated due to cessation of production.
2. **Procedural History:** Judgment of the trial court entered after a trial before the court, without the aid of a jury, contains the court’s findings of fact upon the basic questions. Courts found that the existing gas well had at all material times continuously produced gas in paying quantities. Accordingly, the oil and gas lease was held to be in full force and effect, thus denying petitioners’ prayer for judgment that the lease had terminated. Judgment of COA must be sustained (denying termination of the lease).
3. **Facts:** Lease was executed in 1940. It covers 2 –tracts, of land encompassing 350 acres owned by the Cliftons.

* **In 1949,** during the primary term, a well was drilled which produced both oil and gas but very little oil. TRC classified the well as associated (with oil) gas well. Other than its acidization in 1950, no other drilling or reworking operations were carried on during the intervening years until September 12, 1956, when it was successfully reworked by “sandfracting.” This date was subsequent to the filing of the present case.
* **Ps contend,** that the well had ceased to produce in paying quantities upon the showing that for the period of time from June 1955 through September 1956, the income from the lease was $3,250.00 and that the total expense of operations during the same period was $3,466.16, - thus a loss of $216.16 for the 16-months period selected by Ps.
* Undisputed that reworking operations were commenced on September 12, 1956, and that such operations resulted in an 1800 percent increase of production. Reworking operations having thus been commenced on September 12,1956, the evidence that there was a small operating loss for the period of time from July 1956, through September, 1956, is not controlling in determining whether or not there had been a cessation of production in paying quantities through July 12, 1956, a date of 60 days prior to the beginning of reworking operations.
* Ps argue that it is settled under Texas law, that after the primary term, the ordinary oil and gas lease absolutely terminates when its income no longer exceeds the cost of its operation, and that since the operations showed a loss for the months of April and May 1956, the lease terminated.

1. **Issue:** Was there production in paying quantities from the existing well through July 12, 1956? Evidence, as contended for by the Ps, as to profit or loss subsequent to July 12, 1956, is immaterial in determining whether or not there was production in paying quantities through that date.
2. **Holding:** Court held that the Garcia case indicated that the term “paying quantities” when used in the extension clause of an oil lease habendum clause, means production in quantities sufficient to yield a return in excess of operating costs, and marketing cost, even though drilling and equipment costs may never be repaid and the undertaking considered as a whole may ultimately result in a loss. The underlying reason for this definition appears to be that when a lessee is making a profit over the actual cash he must expend to produce the lease, he is entitled to continue operating in order to recover the expense of drilling and equipping, although he may never make a profit on the over-all operation. Depreciation is nothing more than an accounting charge of money spent in purchasing tangible property, and if the investment itself is not to be considered, as is held by this Court, then neither is depreciation. The entire income attributable to the contractual working interest created by the original lease is to be considered.
3. **Judgment: Affirmed.**
4. **Comments:**

**Watson v. Rochmill**

1. **Procedural History:** In January 1935, a market was found for oil such as could be produced from the well, and production was resumed. This was continued until lessors filed this suit in April 1937, for a judgment declaring the lease terminated and for removal of cloud from the title thereto. Trial court instructed a verdict in favor of D, and this judgment was affirmed by the Court of Civil Appeals.
2. **Facts:**

* Lease provided in part that the lease shall remain in force for a term of three years from May 25, 1925 and as long thereafter as oil or gas, or either of them is produced.
* A well was brought in on said land in 1925, which produced oil until May 21, 1932. Oil was of low gravity. The well produced about one barrel of oil to ten barrels of salt water. On the last date, tubing became stopped up and was not cleaned out. Oil could have been produced from the well, but due to the depression and the low gravity of the oil there was no market that would justify the operation of the well.
* As a result, no oil was produced from the well from May 21, 1932, until January 1935. However, during this interval lessee kept a watchman on the premises and paid the taxes on the leasehold interest claimed by him.
* In December 1933, he cleaned out and acidized and swabbed the well. The well was again acidized in July 1934. At some time during this interval, lessee erected a new derrick over the well and installed a pump.
* There was testimony to the effect that lessee expended over $8k in the work and repairs.
* **Lessee argues,** that lessors by standing by and permitting lessee to produce oil from the premises from 1935 to 1937, and to otherwise develop and improve the lease at lessee’s expense, thereby recognized the continued existence of the lease and are therefore estopped to plead the termination thereof.

1. **Issue:** Question of the lapsation of an oil and gas mining lease after the expiration of the primary term because of the failure to produce oil from primary term because of the failure to produce oil from the leased premises.
2. **Holding:** Court held that the cessation of production was not merely a temporary one. There was no production for a period of two years and seven months. The cessation of production for this long period of time was not brought about nor induced by any mechanical breakdown or other condition in connection therewith. The demoralized condition of the oil market and the low gravity of the oil in no way prevented the operation of the well by the leases for whatever oil it would produce. These conditions may have rendered it unprofitable to operate the well, but were NOT contracted against and consequently did not prevent a lapsation of the lease as a matter of law.
3. **Rule: Under the terms of the lease,** there is only a temporary cessation of production due to sudden stoppage of the well or some mechanical breakdown of the equipment used in connection therewith, or the like. Under such circumstances, there are authorities, which hold that the lessee is entitled to a reasonable time in which to remedy the defect and resume production.
4. **Judgment: In favor of Ps. Reversed.**
5. **Comments:**

**Natural Gas Pipeline Co. of America v. Pool**

1. **Issue:** Whether the leases terminated due to cessation of production.

* Nothing in the Court’s reasoning indicates how the lessor should know that these activities differ from those undertaken while the lease was in effect. Without actual notice of cessation, and thus no notice of termination, the lessor would not be aware that the adverse possession period had begun.
* **Temporary Cessation of Production Doctrine (TCOP)** : this doctrine presumes that the mechanical problems, reworking operations, or other similar events would inevitably interrupt production from time to time. It presupposes that the parties did not intend for such occurrences, which are incidental to normal oil and gas operations, to terminate the lease. Doctrine gives lessees a reasonable period of time in which to remedy the defect and resume production.
* **Two-pronged test** for determining whether a cessation of production falls under the TCOP doctrine and thus is legally excused from the automatic termination rule.

1. **The first prong-** focuses solely on the cause of cessation. Historically, under this prong, the lessee is required to prove that the cessation was due to a “sudden stoppage of the well or some mechanical breakdown of the equipment used in connection therewith
2. **Second prong-** focuses on whether, under the circumstances, the lessee exercised diligence to remedy the defect and resumed protection within a reasonable period of time.

* When evaluating whether a cessation is temporary, courts should first consider the cause of the cessation, which may include evidence of mechanical breakdown, litigation, or economic feasibility. The court should then consider other factors to determine the lessee’s diligence in resuming production, such as the length of the cessation and the lessee’s good faith.
* To protect lessors we should place restrictions on what constitutes a valid excuse for temporary non-production. These protections already exist as implied covenants in existing leases and include the implied covenants to (1): develop the premises, (2) protect the leasehold, and (3) manage and administer the lease.

1. **Comments:**

**Ridge Oil Co. v. Guinn Investments, Inc.**

1. **Procedural History: Guinn filed this suit against Ridge, on March 8**, 1998, 5 days after the effective date of the new leases o the Ridge tract. Within a month after this suit was filed, Ridge proceeded to obtain leases from some of the mineral interest owners of the Guinn tract, although BR was not among these lessors. One lease was signed by a Guinn tract mineral interest owner on March 25, 1998, and three other Guinn tract mineral interest owners signed leases on April 1, 1998.

* **Trial court** granted SJ for Ridge, terminating the lease. Court of Civil Appeals reversed holding that the TCOP doctrine applied and that the cessation of production was temporary. This court also held that Ridge’s surrender of its old lease and the taking of new leases from the lessors on the Ridge did not terminate the 1937 lease as to Guinn. Thus, Guinn’s lease was kept alive. Ridge appealed Guinn’s victory.

1. **Facts:** In 1937 an oil and gas lease was signed on 320 acres comprised of two adjoining 160-acre tracts. Through various assignments, Ridge Oil became the lessee of one of the 160-acre lots and Guinn became the lessee on the other. Over time, the two lots came to have different lessors also, but the lease remained in effect on the entire 320 acres.

* **At one time there was a producing well** on each of the 160-acre tracts, but the well on the Guinn tract was plugged and abandoned in 1950. Two wells on the Ridge tract continued to produce from 1937 onwards. In 1997, Ridge offered to purchase Guinn’s interest on the adjoining lease, but Guinn declined the offer.
* **Ridge then,** told its pumper to cut off the electricity to the 2 producing wells on the Ridge tract and to perform no other activities on the premises until further notice. Electricity to the well was cut off on December 1, 1997, and the wells ceased to produce on that date.
* **About six weeks later in January 1998,** Ridge wrote a letter to each of the ME owners of the Ridge tract. It explained that the production on the Ridge tract held the 1937lease as to that tract as well as the Guinn tract and asserted that it would be very difficult to obtain an assignment of the part of the lease covering the Guinn tract because the heirs of the original lessors were “scattered across the nation.”
* **For purposes of summary judgment, Ridge did not dispute that this last statement, characterizing the owners of the leasehold interest was false.** Letters then set forth Ridge’s plan to terminate the lease and obtain new leases on both the Guinn and Ridge tracts.
* **Each of the mineral interest owners of the Ridge, tract accepted the offer** and executed new leases as of March 3, 1998. On that same date, Ridge instructed its pumper to reconnect the electricity to the wells and the wells resumed production on that date.
* **On February 17, 1998,** Ridge approached the owner of the largest percentage of the mineral estate on the Guinn tract, Burlington Resources, who owned a 5/6 interest in the ME. Ridge offered to lease Burlington’s interest, but Burlington declined.
* **On February 27, 1998,** 79 –days after Ridge shut its wells in, Guinn obtained a drilling permit from the TRC to drill a well on the Guinn tract. The only other evidence of activity was that Guinn attempted to pay surface damages to gain entry to drill and drove a wooden stake into the ground marking the proposed well site.

1. **Holding:** Court held that Ridge’s surrender the old lease and took new leases from the lessors on the Ridge tract, the old lease terminated permanently. Court did not need to address whether the TCOP doctrine applied. Nonetheless, the court proceeded quite deliberately to express its views on the matter, stating that the central “question before us today, is whether there was a temporary cessation of production under the facts of this case.”
2. **Comments:**

**Freeman v. Magnolia Petroleum Co.**

1. **Identities of the Parties: suit** by petitioners to cancel an oil and gas lease of date April 7, 1930 covering 7499 acres of land in Sherman and Hansford Counties. Respondents are the assignees of one Mager, original lessee.
2. **Facts: On December 22, 1939,** Respondents completed a well on the lease. It yielded gas in large quantities, but none of it was ever sold or used off the leased premises. No other well was thereafter drilled or attempted to be drilled on the land.

* **Respondents insist,** that by reason of their discovery of gas they acquired title to all minerals underlying the leased land, which could terminate only by their intentional abandonment of the land. In support of this contention, they refer to the last paragraph of the contract.

1. **Issue:** Whether gas was being produced from the land at the close of the primary term so as to continue the lease in force.
2. **Holding:** Court held that since the $50 royalty was not paid on or before April 7, 1940, and gas was not being produced from the premises on that date, and the lease terminated for nonproduction. They only have themselves to blame. The lease lapsed as a matter of law when they failed to pay and it could not be revived by their attempt to perform the condition more than four months after the contract said it should be performed.

* Court overruled the proposition on the last paragraph. It must be held to contemplate a discovery and production of gas in paying quantities in order to thereby vest title to the minerals in respondents.

1. **Judgment: Reversed, and judgment is here rendered for petitioners.**
2. **Comments:**

**Gulf Oil Corp. v. Reid**

1. **Procedural History:** Suit was filed by lessor Reid seeking to have the court decree that the lease terminated as to his undivided 1/8 interest in the minerals, and for an accounting. Trial court held the mineral lease to be in full force and effect. The Court of Civil Appeals reversed and remanded.
2. **Facts: On December 9, 1943,** E.L. Reid owned an undivided 1/8 mineral interest, executed to Gulf Oil Corporation an oil and gas lease for a primary term of 5 years.

* **Gulf began drilling a well,** a few days before the expiration of the primary term and continued drilling operations up to and including **January 18, 1949,** subsequent to the end of the primary term when the well in question was completed.
* **On February 19, 1949,** Gulf tendered the “shut-in” royalty payment to Reid, which was rejected by him.
* **On June 7, 1949,** Gulf contracted with a pipeline company for the sale and purchase of the gas.
* **On November 22, 1949,** the gathering lines had been laid and connected, and thereafter until the date of the trial of this case the well has continued to produce in paying quantities.
* **Gulf seeks to invoke the application of the,** “60-day cease-to-produce clause” and says that since the well did in fact produce gas in substantial quantities and was subsequently “shut-in” it therefore ceased to produce.

1. **Issue:** Whether the so called “shut-in” royalty payment, tendered after a well capable of producing gas only in paying quantities had been capped, was so timely made as to extend the term of an oil and gas lease after the expiration of the primary term.
2. **Holding:** Court held that there was no production from the well during the term of the lease as extended by drilling operations; the “shut-in” royalty was not paid so as to bring about constructive or contractual production, and no provision of the lease can be construed to furnish a further extension of the primary term or to make the tender of royalty in this case timely. Court said term “operations” cannot be extended to include a search on the part of lessee for a market or to secure a purchaser. The conclusion that there was no production, therefore, no cessation of production and no abandonment, then in this case it necessarily follows that there was a gap between the completion of the well and production, and the lease terminated.
3. **Judgment: COA** erred in remanding the case for the determination of the fact question of diligence.
4. **Comments:**

**Vernon v. Union Oil Co. of California**

1. **Procedural History:** Trial judge entered a judgment for the lessee, notwithstanding the verdict, on the ground that the evidence showed as a matter of law that the well was “producing gas only.”
2. **Facts: Primary term of the lease ended on December 5, 1956.** Lessee completed a well, which had a potential daily yield of 25 million cubic feet of gas and about 312 barrels of liquid condensate. The well was shut in and not actually produced until March 1957. Lessor asserted that the lease terminated in December 1956 because the lessee had no right to shut-in a well, which was capable of producing liquid condensate in paying quantities.

* **Lessee contends that** producing means no more than bringing to the surface and that the process whereby the liquid condensate comes into being is a manufacturing process, and not a production process.
* **Lessor contends,** that ‘producing’ encompasses all steps necessary to prepare the gas for market.
* **Lessee contends, ‘gas’** comprehends all substances, which exist in a gaseous state in the reservoir. It contends that ‘gas’ comprehends all substances in a gaseous state upon arrival to the surface.
* **Lessors argue that ‘gas’ means,** no more than that substance, which, under normal production operations, is marketed and sold in a gaseous state. Thus, under the lessor’s views, liquid condensate is not gas.
* **Court looked at the purpose of the constructive production provision and adopts the construction most consonant with that purpose.**

1. **Holding:** Court held that the purpose of the provision is to protect the lessee against loss of his lease when production from a well is impossible because of the absence of a readily accessible market for gas and the further absence of any reasonable and legally permissible use for the gas. Where a well is capable of producing only negligible quantities of liquid condensate, the need for such protection persists. But where the well is capable of producing liquid condensate in paying quantities i.e. where it would be reasonable to operate the well to produce liquid condensate alone, the need for protection ceases as does the application of the constructive production provision. **Case was submitted to the jury upon an erroneous interpretation of the constructive production provision.**
2. **Judgment: Reversed and remanded. Case must be remanded for a new trial.**
3. **Comments:**

**Rogers v. Osborn**

1. **Identities of the Parties:** Suit to terminate an oil and gas lease.
2. **Facts: Before the primary term expired on September 21, 1947, Well No. 1** had been commenced on May 15. From then on until November 12 the well was subjected to “periodic flowing.” Uncontroverted evidence established that all cutting of new hole on Well No.1 had been completed, all pipe cemented, and all flowing arrangements completed when the primary term expired on September 21st. At that time there was NO production from the lease (marketable oil or gas)

* **There was NO royalty** tendered for Well No.1 Court held that there was no production from Well No.1 as a matter of law.
* **Lease terminated on September 21, 1947.** Lessees rely upon reworking operations upon Well No.1 and upon the drilling of and production from Well No.2.

1. **Issue:** Whether work done upon a first well in an unsuccessful effort to make it produce at and after the expiration of the primary term kept alive the lease; and if so, whether the drilling of and production from a second well commenced after the expiration of the primary term will support the lease. Yes - No
2. **Holding:** Court held that the first sentence of paragraph 5 did not provide for discovering but NOT producing gas. The royalty provision quoted in Footnote 1, did provide for just this situation and required the payment of a specific “shut-in” royalty. Court has held that where the year of the shut-in royalty clause straddles the date for the expiration of the primary term, the “shut-in” payment must be made during the primary term, or the lease expires.

* **Lessees were unable to** avail themselves of the dry hole clause because Well No.1 was NOT dry, with the lessees unable to avail themselves of the “if production ceases” clause because there was never any production, with lessees keeping their lease alive through November 29, 1947 by the “reworking” clause, but with no finding on the date of termination and no definite evidence of reworking after November 29th, and within no production resulting from the reworking of Well No.1

1. **Judgment:** Judgment of the trial court and of the Court of Civil Appeals are reversed and judgment is here rendered for petitioners terminating the oil and gas lease on November 29, 1947 without prejudice to such salvage and other rights as lessees may have upon termination. Costs are taxed against respondents.
2. **Comments:**

**Perlman v. Pioneer Limited Partnership**

1. **Identities of the Parties:** Perlman filed this diversity suit for a declaratory judgment against Pioneer and Kendrick seeking to have an oil and gas lease and a surface lease declared unenforceable due to an alleged occurrence of a force majeure.
2. **Procedural History:** District court found as a matter of law that Section 8 of the Lease was not unenforceable as a penalty. DC awarded Pioneer and Kendrick a total of $75,000 for attorney’s fees.
3. **Facts: Pioneer entered into an oil and gas lease,** with Perlman to explore drill for oil and gas on acreage located in Montana and Wyoming. Perlman agreed to pay Pioneer $137,676.65 in initial rent, and to spend $1,500,000 in exploring and developing the acreage or, alternatively to pay Pioneer the difference between $1,500,000 and the amount spent. Perlman also obtained from Kendrick the right of access and use of land in Wyoming and Montana.

* **In exchange,** Pioneer agreed to pay Kendrick $60,000.
* **Perlman anticipated** to use his patented “Pearlman Process”. Perlman’s primary purpose in obtaining the oil and gas lease was to test the Perlman Process. However, neither the consultation agreement nor the lease stated that testing the Perlman process was the sole purpose of the contract.
* **Taylor 24 well** in Wyoming was completed using the Perlman process. Not on the Pioneer/Kendrick tract, and in fact was actually 85 miles away from the subject acreage. Taylor 24 was drilled into a fault and did not produced gas as expected. It did produced large volumes of water.
* **The Commission,** ordered the owners either to permit the well as a water well or plug it. After hearing news about the studies, Perlman concluded unilaterally that the actions of the Wyoming regulators hindered his performance under the contract.
* **Perlman invoked the force majeure clause taking the position that he was no longer bound to perform under the lease.**

1. **Issue: Whet**her he was hindered by governmental regulations in his efforts to fulfill the contracts.
2. **Holding: Court held that** no actual hindrance resulted from the regulations because Perlman made no effort whatsoever to obtain the appropriate permits or to begin drilling the wells.
3. **Comments:**

**Corley v. Olympic Petroleum Corp.**

1. **Identities of the Parties:** declaratory judgment suit by appellee, Olympic Petroleum Corporation, against appellants, B. Corley and wife, Oirilla to declare an oil, gas and mineral lease to be valid in full force and effect and to quiet title of appellee to said mineral lease.
2. **Procedural History:** Trial was to the court without the aid of a jury, and judgment was entered for appellee. Appellants have appealed.
3. **Facts:** Appellants in defense contended that the lease had terminated because annual delay rental was not timely paid.

* Lease in question was executed on August 1, 1960, by appellants as lessors, to Stubblefield, lessee, covering 140 acres of land in Cass County. Lease is for a primary term of 10 years from August 1, 1960, and as long as thereafter oil, gas or other mineral is produced form the land covered thereby or pooled therewith in accordance with the pooling provisions of said lease.
* Terms of the lease obligate the lessee to commence drilling operations within1 year from the date of the lease.
* No well or drilling operations were commenced on the property covered by the lease prior to August 1, 1964, nor thereafter to the date of the trial. It is undisputed that annual delay rentals were timely paid for each of the periods covering August 1, 1961, 1962, 1963.
* **On July 25, 1964,** appellee, in order to avail itself of the privilege of deferring drilling obligations under the lease for the annual period commencing August 1, 1964 placed in US mail the check for the full amount of the annual delay rentals. The envelope never reached Naples, Texas, although the Postmaster at Naples should have received testimony of Post Office in the regular course of the mails not later than 7am on July 27, 1964.
* **Upon being informed by the PO Department,** of the apparent loss in the mails of the check, appellee instructed its attorneys to mail another check to the depository bank. Thereupon, on or about August 28, 1964, appellee’s attys mailed their check in the same amount, to the depository bank with a letter explaining the loss of appellee’s check in the mail and requesting the bank to accept their check on behalf of appellee in lieu of the lost check. Check was good and valid and deposited to the account of appellants in depository bank on September 15, 1964.
* **On or about October 30, 1964,** appellants notified appellee’s attys by letter of such date that they considered the lease terminated and tendered the return of the amount deposited to their credit from the proceeds of appellee’s attys check of August 28, 1964.

1. **Holding:** Appling case did not contain any provision providing for or authorizing payment of rentals by mailing and the delay rentals in that case were NOT deemed to be paid until the remittance was actually received by the depository bank named in the lease. Gillespie case does NOT apply.
2. **Rule:** An oil and gas lease may expressly provide for the payment of delay rentals by the mailing of a check, draft or other form of remittance to the lessors. In such a situation, the postal service is made the lessor’s agent to deliver the remittance and proper mailing, although it is never delivered, constitutes payment.
3. **Judgment: Judgment of the trial court is affirmed.**
4. **Comments:**

**Mitchell v. Simms**

1. **Procedural History:** Trial Court found that in said month of December, Mitchell and Doucas paid to Simms the sum of $40 to cover the annual rental that accrued June 1, 1929, and that Simms accepted the payment and used the money.
2. **Facts:**

* **On June 1, 1926,** Lessor Simms leased their 320 acre tract to McGrath. Under the terms of the lease, McGrath had the right to assign any portion of the leasehold, and on Augutst 15, 1927, McGrath assigned 40 acres of this lease to Mitchell and Doucas.
* **On July 9, 1926,** lessors Simms conveyed to JP Leslie a ½ interest in the minerals on the 320 acre tract covered by the McGrath lease, reciting that the tract was currently under lease to McGrath. Sale of the ½ interest to Leslie was expressly made subject to the prior lease and “covers and includes ½ of all the oil royalty and gas rental or royalty due and to be paid under the terms of said lease. It is agreed and understood that ½ of the money rentals which may be paid to extend the term within which a well may be begun under the terms of said lease is to be paid to the said JP Leslie, and in the event, shall be owned a ½ interest in all oil, gas and other minerals upon said land. Leslie conveyed this undivided ½ interest to parties designated by the court as the Leslie assignees.
* **During the 12-month period ending June 1, 1929,** the prescribed annual rental for the 40 acre tract was not paid or tendered by Mitchell and Doucas, or by anyone else. It is an admitted fact that this last mentioned rental sum was not paid or tendered by Mitchell and Doucas until December, 1929.

1. **Issue:** Chief question to be decided goes to the status of the McGrath lease, as regards the 40 acre tract, in December, 1929, before the last mentioned rental sum was paid to Simms, and its status after that event occurred.
2. **Holding:** Court held that the lease, in so far, as the 40-acre tract in question was concerned, came to an end. All rights of Mitchell and Doucas under the lease contract ceased to exist, and the leasehold estate in said 40 acres was extinguished. Thus the Leslie assignees in December 1929, stood vested with fee simple title to a full undivided half of the minerals in place under said land, freed of all claims of Mitchelll and Doucas under the McGrath lease. Payment of the rental sum to Simms in December did not affect the title of the Leslie assignees to one-half the minerals in place under the 40-acre tract.

* **Court held that as regards Simms and wife,** a different situation arose when the rental payment was made in December, 1929, and was accepted by Simms. The acceptance by Simms of that payment operates to estop him from claiming that the lease had terminated before the payment was made. As regards the 40 acre tract, the McGrath lease was enforceable against Simms and his wife, after December payment was accepted by Simms. The practical result of the estoppel which arose in December is the same as if Simms and wife, had, by binding agreement in December, revived the lease. In neither instance, would the rights and interests of the Leslie assignees in the land be affected. In a word, as against, Simms and his wife, the lease, after the payment of rental was made in December 1929, was in force, but not against Leslie assignees.
* **Rental payment accrued June 1, 1930,** has been paid, but even if same has NOT been paid or tendered that would not affect the subsistence of the lease, as against Simms and wife and those claiming rights under the conveyances made Simms and wife since December, 1929.
* **In March 1930, while the lease was still in force as to Simms and wife, Simms repudiated the lease,** as being no longer in force and denied all rights of Mitchell and Doucas thereunder, on account of the failure of the latter to pay on or before June 1, 1929.
* **Declaration for this repudiation and denial was in the form of an affidavit to that effect,** which Simms executed and caused to be put of record in the deed records of Carson County. This suit, was brought by Mitchell and Doucas on May 17, 1930, and Simms and wife undertook to contest the lease, and still undertake to contest, on the asserted ground that same terminated in June 1929, and therefore is NO longer in force.
* **It was incumbent upon M&D,** to prove that the prescribed rentals which became due before the trial of the case and after the controversy arose, were deposited in the bank, as provided in the lease, or to offer in their pleadings to pay into the registry of the court such rentals as the court properly finds ought to be paid as a prerequisite to the relief sought. They failed to do either of these.

1. **Rule:** If the lessor has declared he will not receive the rental when due or has notified the depository not to accept the rental, or has by any other acts evidenced a repudiation of the contract, the tender of the rentals will not be required.
2. **Judgment: Judgment of the trial court cannot be affirmed even as to Simms and wife.** Court of Civil Appeals judgment be set aside, and that, as to all the Ds in error, the judgment of the trial court be reversed and the cause remanded. We further recommend that all costs incurred herein in the COA be taxed against the Ps in error, Bill Mitchell and Doucas, and that all costs incurred in the SC be taxed against Ds in error.
3. **Comments:**

**Humble Oil and Refining Co. v. Harrison**

1. **Identities of the Parties:** Humble Oil brought suit to quiet title to its leasehold interest in 1074.4 acres of land in Brazoria County, Texas. Ds were DJ Harrison (3/8) and Mr. and Mrs. Otto (3/8), cotenants in the minerals.
2. **Facts:** Ottos owned a ¾ undivided interest in the minerals and conveyed ½ interest in these minerals to Harrison. Humble Oil construed the conveyance to be a one-half interest in the ¾ interest and sent Harrison delay rental checks covering this amount, rather than on an amount reflecting ownership of a full half of the mineral interest. Court concluded that Harrison owned a full ½ of the mineral interest. Therefore Humble had underpaid rentals due to Harrison.

* It is undisputed that Humble deposited in each instance a total amount, which paid the delay rentals in full; its only mistake was in misconstruing the mineral deed and erroneously dividing the delay rentals between Ottos and Harrison.
* There is no evidence that Humble did not act in good faith, nor does the evidence show that Humble acted negligently. The evidence shows affirmatively that Humble has been willing to make overpayments in order to keep the lease alive.
* Although Harrison was notified, by receiving the deposit slips, that Humble construed the mineral deed to entitle him to receive only ½ of the Otto’s share of the rentals, he made no protest and no demand for an additional payment, but remained silent until after the rental paying dates had passed.

1. **Issue:** Whether Humble’s lease is terminated as to Harrison’s interest because Humble mistakenly advised the depository bank to credit Harrison’s account with a less amount than he was entitled to receive and to credit to the Ottos’ account a greater amount than they were entitled to receive, at the time of each payment.
2. **Holding:** Humble’s failure to pay to Harrison his full share of the rentals originally payable to the Ottos is due primarily to a misconception of an ambiguous mineral deed to which Humble was not a party, and, secondarily, to a failure on the part of Harrison, after he knew that Humble had misconstrued the deed, to notify Humble of the proper construction.

* **Harrison is estopped to assert that Humble’s lease has been terminated because of its failure to make sufficient payments of delay rentals to him.**

1. **Rule:** Lessee under “unless” leases, such as those involved in this case, has a determinable fee, and that if he fails to drill or to pay delay rentals his lease is terminated. Some cases have acquired a strict compliance by the lessee with the terms of the lease relating to the payment of delay rentals, holding that a small deficiency in the amount of the payment or a failure to make the payment until a short time after its due date terminates the lease.

* It would be an imposition of an additional burden on the lessee to require that the lessee determine at its peril the proper construction of an ambiguous instrument thereafter executed by the lessors, conveying a part of their interest in the minerals and the royalties, bonuses and delay rentals. Lessee has in good faith made a mistaken construction of the lessors’ partial conveyance of their interests and the lessee has made a payment in accordance with such construction, of which the assignee has notice, the duty rests on the assignee to notify the lessee of its mistake so that the lessee will have an opportunity to make a proper payment of the delay rentals. Where the assignee, instead of giving the lessee such notice, remains silent, the assignee is estopped to assert that the lease has terminated as to his interest on the ground that the lessee has failed to pay to him a sufficiently large share of the delay rentals.

1. **Judgment: Judgment of the district court and Court of Civil Appeals are reversed and judgment is rendered in favor of petitioners.**
2. **Comments:**

**Humble Oil and Refining Company v. Clark**

1. **Procedural History: Suit was filed on July 18, 1931.**

* **Court of Civil Appeals held,** in effect, that the lease in controversy did not effect a conveyance, to the Humble Company, of the leasehold estate so far as the undivided interest of Margaret Coolidge in the land is concerned.

1. **Facts: In the year 1915, W. H. Coolidge died intestate, leaving surv**iving his wife, Lou Emma Coolidge, and three minor children (Nannie, Margaret and William). Coolidge owned a tract of 440 acres of land in Rusk County. Some years after Coolidge died, Nannie married L.H. Moore and Mrs. Coolidge W.L. Price.

* **Mrs. Price was appointed guardian of the estate** of her two minor children, Margaret and William.
* **On April 25, 1928,** an oil and as lease on the 440 acres of land was executed to J.M. Wood by Nannie and her husband, and Mrs. Price and her husband, and by Mrs. Price as guardian of Margaret and William.
* **This instrument will be treated as utterly void**, so far as the interest of said minors were concerned. Wood assigned this lease to the Humble Company.
* **Company, up to September 12, 1930,** paid all annual rentals provided in the lease. Each successive annual rental sum was paid to Mrs. Price, except 1/6, which was paid to Nannie. Margaret became 21 years of age on June 17, 1930. Shortly after this, the Humble Company discovered some defects in the field notes contained in the lease of 1928, and also discovered the invalidity of said lease so far as the interest of Margaret and William was concerned.
* **Company prepared 2 new leases,** one was to be signed by Mrs. Price, Nannie and her husband, and Margaret Coolidge, the latter being then of age and unmarried. The other lease was to be signed by Mrs. Price as guardian of William. Both of these leases were executed the same day, but no further notice need be taken of the last mentioned instrument, as it is not involved in this suit.
* **The instrument in controversy was duly signed GRs, Nannie and husband, Mrs. Price and Margaret Coolidge on September 12, 1930.**
* **In the latter part of March, 1931,** the Humble Company sent by mail to the First State Bank at Overton 2 checks to cover annual rental. One was in the sum of $220 payable to Mrs. W.L. Price and W.L. Price, in their individual capacity, and the other was for the sum of $220 payable to Mrs. W.L. Price as guardian of William and Margaret Coolidge, Minors.
* **None of the $ derived from the check to Mrs. Price**, as guardian, was ever credited on the bank’s books to Margaret Coolidge, and none has been paid or tendered to her. Money is still in the bank to the credit of Mrs. Price as her guardian.
* **In June 1931,** Humble Company began drilling operations on the land and on July 14, 1931, brought in a producing well.
* **On June 6, 1931,** Margaret Coolidge, Mrs. W.L. Price and Nannie and her husband, for a cash consideration of $22, 192.00 executed to the Salt Mount Oil Corporation a mineral deed conveying a 1/8 interest. Deed covered all the land now covered by oil and gas leases by Humble Oil.

1. **Holding: Court held that** the new instrument contains terms, that, of themselves, are sufficient in law to effect a conveyance of the leasehold estate at the time the instrument was executed, regardless of the date of the instrument, The fact that the new instrument contains the same terms as those contained in the old instrument, which was void, does not alter the fact that such terms became and are now terms of the new instrument. This being the case, the new instrument, duly executed as it was, affected a transfer to the Humble Company of the leasehold estate in the undivided interest of Margaret Coolidge in the land, regardless of the fact that the prior instrument is and was void.

* Admissions of Mrs. Clark, made from the witness stand, show that no fraud was practiced and that she voluntarily signed the instrument without reading it, under such circumstances as to preclude her from being heard now to say that she did not understand the legal effect of its terms.
* It must be remembered that on June 6, 1931, Margaret Coolidge, together with her mother and sister, executed to the Salt Mount Corporation, for a consideration of more than $20k, a mineral by which the GRs assigned to said company not only 1/8 of the oil, gas and other minerals that may be produced from the 440 acres of land, but also treated the lease in controversy as still subsisting, and assigned to SMC 1/8 of the oil and gas royalties and 1/8 of the annual rentals arising under said lease. Ratification of the lease and it was revived.

1. **Judgment: Court of Civil Appeals judgment is reversed, and that of the trial court is affirmed.**
2. **Comments:**

**Texas Co. v. Parks**

1. **Facts:** Park and his wife (appellees) sought to terminate a lease they had signed with Texaco (appellant) because of improperly paid delay rentals. Lease covered their undivided half mineral interest in 320 acres. Lease provided for the payment of $160 per year delay rental in the filled-in blank.

* **Appellant Texas Company tendered** to the First National Bank of Fort Worth the sum of $80 to be deposited to the credit of Parks to cover the annual rental for the privilege of deferring commencement of drilling operations for a period of 12 months from February 4, 1951.
* **Parks refused to accept the $80,** contending the proper amount of annual rental was the sum of $160. Texas Company at all times insisted that $80 was the correct amount.

1. **Issue:** Whether in the situation presented by the undisputed facts, appellant was entitled under the proportionate reduction clause to reduce proportionately the amount of rental stated in the rental clause.
2. **Holding:** It is inescapable that by the terms of the lease before us, it was the intention of the parties, and they agreed, that lessors would receive an annual rental of $160 for their interest conveyed. There is nothing in the lease to indicate that the parties were fixing the rental on a percentage or fractional basis, or in proportion to lessors’ interest in the entire tract. It was an agreement to pay the lessors in the particular lease the lump sum of $160 per year rental. Language employed does not support the contention that lessee agreed to pay a total of only $160 to all the owners of the 320 acre tract. Court did not err in holding that appellees were entitled to cancellation of the lease. Appellant in its reply for admission, took the position that it owed $80. Under the facts of this case, appellees are not estopped to declare the lease terminated.
3. **Judgment: Judgment of the trial court cancelling the lease and removing said lease and assignment as a cloud on appellee’s title is affirmed. Affirmed.**
4. **Comments:**

**Breaux v. Apache Oil Corp.**

1. **Identities of the Parties: Plaintiffs – lessors filed this suit** to cancel an oil, gas and mineral lease on the grounds that the Ds – lessees did not “commence operations for the drilling of a well” nor pay delay rentals, within the time specified.
2. **Procedural History:** DC granted D’s motion for SJ dismissing P’s suit. Ps appealed.
3. **Facts: Lease in question is dated March 18, 1966,** and covers 302.55 acres of land in Acadia Parish. Lease terminated in a year.

* **On March 16, or 17, 1967,** Ds commenced building a board road and turnaround on the well location. On March 18, 1967, board road and turnaround were completed.
* **Equipment was installed and actual drilling** commenced on March 22, 1967, at the location approved in the amended order of the Commissioner of Conservation. Operations were continued until the unit well was completed as a producer of gas and condensate.

1. **Holding:** Completion of the board road and turn-around before the crucial date, followed by continuous operations until the well produced, is sufficient to satisfy the requirement that the lessee ‘commence operations for the drilling of the well’. It is not necessary to determine whether drilling equipment was moved to the well site on or before March 18, 1967. Hence, there is no issue as to material fact. The case can be decided as a matter of law based on facts as to which there is no genuine issue.
2. **Rule:** Actual drilling is unnecessary to ‘commence’ a well within the meaning of the lease provisions; and that substantial surface preparations to drill are sufficient to be considered ‘commencement’ of drilling operations for the lease-clause purposes, such as making and clearing a location, delivering equipment to the well site, and the like, provided that such preliminary operations are continued in good faith and with due diligence until the well is actually spudded in”
3. **Judgment: Affirmed.**
4. **Comments:**

**Scott v. Pure Oil Co.**

1. **Facts:** P, Scott, bought a mineral interest on a 317-acre tract which was already leased to Pure Oil. Shortly after, the primary term of the lease ended. No well had been drilled on the 317 acres, but Pure Oil had taken 140 acres of this tract and pooled it into a 675-acre unit, as authorized under the lease provision.

* Both parties admitted that the lease was valid and subsisting insofar as it covered the 140 acres included in the unit.
* Scott, argued, that since the remaining 177 acres were NOT included in any unit prior to the alleged expiration of the lease, and no oil or gas was being produced from that acreage on the crucial date, the lease expired on the 177 acres.

1. **Holding:** Court held that the original lease provided that its term would continue so long as gas or oil be produced from ‘said land.’ It is elementary that if gas or oil had been produced on any on any of the portion of the land covered by this lease during the primary term thereof, for so long as such gas or oil was being produced in profitable quantities the lease on the entire acreage would have been perpetuated. Amendment did NOT limit the provision, but enlarged it by providing that if gas were produced from any acreage with which ‘any portion’ of the land covered by the lease should be unitized such production would be considered for all purposes, as if such operations were on and such production were from the land covered by this lease. ‘Land covered’ by the lease was the entire 317 acre tract, ‘any portion’ of which it was agreed might be unitized. Under the provisions of the agreement, it is clear that production on the unitized tract fulfilled the requirement for production in the original lease and that its terms were perpetuated upon the entire acreage therein described.

* **Production of gas on the Mid-**Continental Priesteley-Homes Unit in accordance with the provisions of the amended lease, effected the perpetuation of the original lease in its entirety and the TC correctly so held.

1. **Rule:** Where a portion of the whole leased acreage is rightfully unitized, production in paying quantities during the primary term of a gas and oil lease, although not from a well on such leased property, maintains the lease in effect as to that part of the leased land which is not included in the unit.
2. **Judgment: Affirmed.**
3. **Comments:**

**Jones v. Killingsworth**

1. **Procedural History:** Trial court, without jury, held that Killingsworth effectively pooled the acreage covered by the lease in accordance with authority granted in the lease, and for that reason the lease did not terminate on August 16, 1961, date of expiration of primary term. A take-nothing judgment rendered against the petitioners has been affirmed by the COA.
2. **Facts: On July 12, 1961, Killingsworth,** joined by the operators of adjacent leases, entered into a pooling agreement establishing the West Poynor Unit of 160-acres. 2 tracts of land described in the Mitchell-to-Long lease were included within this unit designation and contained a total of 20.55 acres.

* **Lessors contend that** they are NOT bound by the terms of the Unit Declaration and the Amended Unit declaration. It is agreed that Killingsworth and the other unit owners in the unit acted in good faith in forming the unit, securing the permit to drill, and in drilling the well on the unit.
* **Lessors take the position** that authority to pool their land into an oil unit consisting of 170.86 acres was NOT granted by the lease and that the attempt to pool did NOT effectively extend the term of the lease beyond the terminal date provided therein.
* **Killingsworth and the Hunt Petroleum Corporation contend** that the pooling clause in the Mitchell-Long lease created a relationship of principal and agent, or at least created a relationship similar to that of principal and agent, and that performance by the lessee is to be measured by the standard of good faith.

1. **Issue:** Whether or not the lands owned by the petitioner, Mildred Mitchell Jones, and described in an oil, gas and mineral lease executed by Jones and her husband, to Long, as lessee (later assigned to Killingsworth), on August 16, 1951, were effectively pooled into what is known as the Hunt Oil Company et al West Poynor Unit.

**-** Whether the pooling clause granted authority to pool the Jones’ land into an oil unit containing 170.86 acres.

1. **Holding: Court held that the lessee that the pooling provision confers authority on the lessee’s land** but, the extent to which the power to pool may be exercised is entrusted solely to the lessee’s judgment. Lessor’s land may be pooled ONLY to the extent stipulated in the lease. Lessors did not consent to enlarge an oil proration unit to any size permitted by governmental regulations. They gave their consent to enlarge a unit of substantially 40 acres, but only to the extent of the size of units prescribed by the regulatory authority. The fact that the TRC may permit a much larger unit cannot be read into the lease contract when, as here, the authority to create larger oil units is expressly limited to units of the size prescribed by the TRC. Commission prescribed a unit of 80 acres. Field rules clearly say that there must be a proration unit of at least 80 acres, and there may be larger units of not more than 160 acres. Not unreasonable to assume that the parties to the lease contract intended, by the use of both words, to give each a distinctly different meaning. Parties obviously knew when the lease contract was executed that a permitted oil proration unit could conceivably be much larger in area than one prescribed by governmental authority.

* **Lands were pooled without authority,** habendum clause in Mitchell-Long lease cannot be used to extend the term of the lease beyond August 16, 1961, terminal date of the primary term of the lease.
* **Orders of TRC cannot compel** pooling agreements that the parties themselves do NOT agree to. TRC has no power to determine property rights.

1. **Rule:** Absent express authority, a lessee can pool lessor’s land with units of any size permitted by the TRC would defeat the intention of the parties to restrict the size of the units to the size prescribed by governmental authority. A lessee has NO power to pool interests in the estate retained by the lessor with those of other lessors.
2. **Judgment:** Judgments of trial court and court of appeals are BOTH REVERSED and judgment is rendered declaring the Mitchell-Long lease terminated as of August 16, 1961, and the title and possession of the lands described in said lease is awarded to Mildred Jones. Respondent’s motion for rehearing is overruled.
3. **Comments:**

**Amoco Production Co. v. Underwood**

1. **Identities of the Parties:** Case involves cancellation by lessors of a “gas unit” designated by lessee under the pooling provisions of eight oil, gas and mineral lease.
2. **Procedural History:** Jury found that the designation of the gas unit by the lessee was NOT made in “good faith”. Jury answered 2 issues:
3. It was the judgment of Victory Petroleum, Westland Oil and Amoco and LC Kung that it was necessary or advisable to designate the gas unit in manner set out and described in the Unit Dec dated May 20, 1975 in order to properly develop and operate the 8 oil gas and mineral leases in question
4. Designation of the Circle Dot Ranch Gas Unit by Victory Petroleum Company was NOT made in good faith.

- Judgment was entered that the Unit Designation of the Victory be canceled and held for naught; that the cloud upon Ps title to the oil, gas and other minerals in and under N/2 of Section 1.

1. **Facts: Victory Petroleum Corporation entered into a “Farmout Contract”** with Amoco Production whereby Victory agreed to drill a test well on Section 3, BS&F Survey, and Amoco agreed to assign to Victory certain leases covering land located near Section 3.

* Amoco reserved an overriding royalty interest in the leases assigned.
* After the test was completed as a gas well, Victory filed a gas unit declaration forming a 688.02 acres operating production unit designated as the VP Circle Dot Ranch Gas Unit No.1. Unit perpetuated beyond the primary term eight different oil, gas and mineral leases containing 2,252.03 acres of land.
* Appellants contend the court erred in overruling their motion for instructed verdict and motion to disregard the jury’s answer to special issue 2 because there is NO evidence that appellants “gerrymandered” the eight leases as set out in the unit designation to advance their own pecuniary interest without regard to the rights of appellees and the other mineral owners in and under the affected lands.

1. **Holding:** Court held that appellees could have leased their land, other than Section 3 where the well was located, to other persons for a cash bonus of $75 per acre if it had not been “tied up” by the gas unit. Riney and Laxson employees of Westland, and Victory, attempted to justify the boundaries of the unit, however, the jury could have concluded from their testimony that they were not familiar with the Upper Morrow Formation and not qualified to evaluate the facts from a geological or engineering standpoint

**-** Jury could have concluded from the evidence and inferences listed above that the configuration of the unit was NOT established in good faith, but designated as stated in Rothwell’s letter to Amoco, “to hold the majority of the leases” which would otherwise expire on May 29 1975.

1. **Judgment: Affirmed.**
2. **Comments:**

**Coastal Oil & Gas Corp. v. Garza Energy Trust**

1. **Facts:** Salina leases authorized Coastal to pool “at its option” whenever “in its judgment” pooling was “necessary or advisable in order to properly explore, or to develop and operate said leased premises.” Salina had NO right to insist that Coastal exercise this broad discretion in any particular way, but Coastal was obliged to act in good faith, which the jury found it failed to do.

* Salina argues that Coastal should have included only one Share 12 acre in the Unit providing him the same benefit the M. Salinas No. 8 Well but more royalties on its production.
* Coastal counters that it was NOT required to maximize the benefit to Salinas and disregard its own interest altogether, so long as it acted in good faith

1. **Holding:** Jury also ofound damages of $1M, which trial court reduced to $81,619 the total Salinas claimed.
2. **Judgment: New trial.**
3. **Comments:**

**Veal v. Thomason**

1. **Identities of the Parties:** George Veal and his wife brought an action in trespass to try title to Tract 68, a 197.4 acre tract. The Thomasons alleged that they owned the tract.
2. **Procedural History:** Thomason petitioned in the district court to recover the title and possession of this land from Veal and wife because of certain alleged illegalities in the trustee’s sales under which they acquired title.

**-** Court of Civil Appeals construed this lease as operating to give each lessor in the unitized block the right to collect the royalty earned by his own individual land.

1. **Facts:** Bob Slaughter block of land in Hockley of which Tract 68 is a part, is divided into several tracts, owned by various parties. In 1936 some 21 of such owners, including George T. Veal and wife, made to the TRC a unitized lease, covering a group of contiguous tracts of land as one area or unified block (Block comprised about 6000 acres).

* For convenience, several lessors executed several instruments, instead of all signing the same paper. Each instrument, however, was identical as to terms, and described all the tracts of land in the unitized block.
* Lease provided that the unitized block should be operated and developed as one area, and that each land owner who executed a lease is vested with an interest in the royalty oil or any other minerals produced from any land in the whole unitized block, in the portion which his acreage bears to the aggregate number of acres in the whole block.

1. **Issue:**
2. **Holding:** Court held that all the lessors of land in the unitized block joint owners, or joint tenants, of all royalties reserved in each of the several leases in such block, the ownership being in the proportion which the acreage of each lease contract bears to the total acreage of the unitized block.

* Court held that Paragraph 3 expressly provides that the royalties are reserved for the benefit of the lessor, and the other lessors executing similar leases in the unitized block.
* Paragraph 9 expressly denies the individual lessor of any particular tract the right of demand or to collect the royalty earned from his own land.
* Effect of the lease is to vest all lessors of land in this unitized block with joint ownership of the royalty earned from all the land in such bloc.
* Thomason seeks in this action to obtain a judgment freeing this land from the TRC lease, and if this is done by judgment which names such Company only, the royalty owners under the other leases in this unitized block will have had such royalty interest in this land, for all practical purposes, cut off and destroyed without having had their day in court.
* **ROYALTY owners under the other lease contracts in this unitized block are necessary parties to this suit**.

1. **Rule:** A contract affecting land in this Sate, which grants or reserves mineral royalty in such land, constitutes the owner of such royalty the owner of an estate in such land. Mineral royalty affecting land in this State, granted or reserved, is an interest in the land covered by the contract.

**-** Those who are necessary parties to a suit are such personas as have or claim a direct interest in the object and subject matter of this suit and whose interests will necessarily be affected by any judgment that may be rendered therein. Such persons are not only proper parties but are necessary and indispensable parties, P or D.

1. **Judgment: COA judgment reversed, and judgment of the district court is affirmed.**
2. **Comments:**

**Wagner & Brown LTD v. Sheppard**

1. **Procedural History:** Lessor brought suit for underpayment of her profits interest, arguing that she was now both unleased and unpooled. Lower courts held for P-Lessor on the basis that the lessee’s pooling authority was limited to the interest received under the lease, i.e., the fee simple determinable interest in 1/8 of the minerals and could not bind the lessor’s reversionary interest.
2. **Facts:** Plaintiff-lessor was a mineral cotenant in a 63-acre tract and leased her 1/8 mineral interest to Lessee. She executed an oil and gas lease with a provision that the lease would terminate only if royalty was not paid within 120 days of the first sale of oil and gas. Pooling clause in the lease stated that the Lessee had the right to pool ALL or ANY part of the leased premises or interest therein with any other lands or interests.

* Lessee drilled and produced gas from wells located on the 63-acre tract after pooling this tract into a 122-acre unit, but failed to pay royalties on time.
* The lease terminated on the lessor’s 1/8 interest. Lessor now owned an unleased 1/8 mineral interest in the 63 acres where the 2 units wells were locates.
* Lessee accounted to the lessor for payments on gas sold from the 2 wells acres as the lessor was an unleased 1/8 mineral interest cotenant with a continuing 63/122 interest in the pooled unit rather than on the basis of an unpooled share. Even though, the lease had terminated, the lessee asserted that the pooling of Lessor’s interest continued in effect, although the accounting would now change from being based on a cost-free share of royalty to being based on an unleased mineral owner’s share.
* Unpooled the lessor would have been entitled to 1/8 of the profits from the two wells on her 63 acres. Instead, the lessee accounted to her for 63/122 x 1/8 of the profits from the well and charged her for that proportionate share of drilling including some costs incurred before the lease had terminated.
* Lessee basically treated Lessor as a Mineral Interest cotenant and applied cotenancy accounting law to the lessor’s still-pooled interest.

1. **Issue:**
2. Whether the termination of Sheppard’s lease also terminated her participation in the unit (in which case she entitled to 1/8 of 100%production, as both wells are on her tract) or did not do so (in which case she is entitled to 1/8th of only 51.3% of production.
3. Whether Sheppard should bear any costs incurred after the lease terminated that relate to the unit but not her lease.
4. **Holding:** Court held that the lease allowed the Sheppard tract to be pooled for purposes of production, and that is what the unit designation did As termination of the lease changed none of the lands committed to the unit. Sheppard is entitled as co-tenant to 1/8th of the proceeds due to the mineral owners of her tract, that does not entitle her to 1/8th of the proceeds that must be shared with mineral owners of other tracts by the terms of the unit agreement.
5. **Judgment:** is reversed and remanded for further proceedings in the trial court consistent with opinion.
6. **Comments:**

* **Texas Supreme Court reversed based on its reading** of the language of the pooling clause which authorized the lessee to pool the “premises” and the “lands rather than only the leased interests. Lease itself granted the “following described land, hereinafter called the “leased premises.” Lessors PR was an interest in land and so remained pooled. Although the lease terminated on her interest, the land did not terminate.

**Brewster v. Lanyon Zinc Co.**

1. **Facts:** Land covered by the lease and owned by the lessor, omitting the tract sold, consisted of 2 tracts, separated by a distance of 8 miles and embracing 232.50 acres. Both tracts were within a recognized oil and gas field.

* **Lessee** had drilled one well on one of the tracts in which gas was found in paying quantity. No additional wells were drilled or attempted to be drilled during the 14 months.
* **Many** wells had been drilled in the territory adjacent to and surrounding these tracts which produced oil and gas in paying quantities, and new wells were being drilled and operated in that territory.
* **Wells on these lands were so near** to these that they drained the same of a good portion of and gas therein and rendered the lease of much less value to the lessor than it would have been had the lessee proceeded with reasonable diligence to drill other wells on the two tracts and to operate them for the mutual benefit of the parties.
* **Lessee took and maintained the position** that, by drilling the single well, it acquired the right to hold the lease indefinitely, without further development or doing more than paying annually the stipulated $50 for gas from the well used off the premises. Extent of drainage of adjacent lands was not ascertainable and therefore the injury to the lessor from the lessee’s failure to proceed with reasonable diligence could NOT be adequately compensated in damages.

1. **Issue:** (1) Did the lessee expressly or impliedly covenant and agree to continue, with reasonable diligence, the work for exploration, development, and production after the expiration of the five-year period, if oil and gas, one or both, should be in paying quantities? (2) Was compliance with this covenant and agreement made a condition, the breach of which would entitle the lessor to avoid the lease? (3) Is such a breach shown by the bill? (4) Is the lessor entitled to relief in equity?
2. **Holding:** Implication arising from these provisions is that if at the end of the five year period prescribed for original exploration and development, oil and gas, one or both, had been found to exist in the demised premises in paying quantities, the work of exploration, development, and production should proceed with reasonable diligence for the common benefit of the parties, or the premises to be surrounded by the lessors.

* **They show, not only, an absence of reasonable diligence on part of lessee, but** a practical repudiation of the controlling purpose of the lease and a persistent disregard of the rights of the lessor.
* **Further exploration and development** would have been profitable to the lessee as well as beneficial to the lessor. Prolonged failure of the lessee to proceed with the contemplated operations, though due to a mistaken view of the obligations imposed by the lease, was a plain and substantial breach of the covenant and condition in respect of the exercise of reasonable diligence, and entitled the lessor to terminate the lease.’
* **Lease is a cloud upon title to the whole of both tracts.** Lessor is in actual possession of both, save a small portion of one occupied by the lessee in the operation of the single gas well. No action at law can be had in respect of what is occupied by lessee; judgment could NOT go beyond a determination of the title and right of possession to that particular portion.

1. **Judgment:** Decree is reversed, with instructions to overrule the demurrer to the amended bill and to take such further proceedings, as may not be inconsistent wit this opinion.

* Remand and NO forfeiture because it is usually harsh and oppressive.
* For covenants, forfeiture will not be the first remedy available to parties. First remedy that will be evaluated is that of damages.

1. **Comments:**

**Waggoner Estate v. Sigler Oil Co.**

1. **Identities of the Parties:**  P, in error, Waggoner Estate, brought this suit against D in error, Sigler Oil Co. to forfeit or cancel a conveyance of oil and gas in a certain 3000 acres of land in Wilbarger County.
2. **Procedural History: P, in error, instituted** this suit in January 29, 1924, averring that the Sigler Oil Co had lost all rights and interests in and to the oil and gas in the 3000 acres.

* **D, answered** by pleading a general denial and specially that it had fully performed its obligations by drilling certain wells for oil and gas, including two wells which produced oil in paying quantities and from which P had received and was receiving royalties. D was entitled to hold its right in the oil and gas in 2000 acres with a producing well at its center.
* **Jury found** that Sigler Oil Co. and its predecessors in title prior to January 29, 1924 failed to use reasonable diligence in development for oil of the 3000 acres of and, that Sigler prior to January 29 breached its duty to carry out the essential purpose of the lease, through reasonable development of the land; and third, that Sigler did not abandon its duty of carrying out the essential purposes of lease.
* **DC refused to cancel the lease, but** decreed a kind of limited specific performance, requiring the drilling of no less than 8 wells at the rate of one each six months, and adjudged the failure to comply with the decree should result in forfeiture of the lease.
* **Court of Civil Appeals** decided that in the absence of abandonment Waggoner had NO remedy for any breach of duty to reasonably explore and develop the oil and gas other than an action for damages or for specific performance. COA reversed and remanded for a new trial.

1. **Facts: January 27, 1919, Waggoner** and others by a writing for a consideration of $100,000 and stated covenants and agreements, leased 85,000 acres, including said 3,000 acres tract to W.G. Burton “for the sole purpose of mining and operating for oil and gas…”

* **Lease stipulated an annual rental of $100,000**. Payable in advance on the 27th day of each January during the life of the lease, provided each producing well shall hold 2000 acres in a square, and said well shall be released as to further annual rental.
* **Lease should remain in force for a term of 5 years** from date and as long as thereafter oil or gas was being produced from the land by lessee. If NO well was commenced on the land on or before the 1st day of June 1919, the lease should terminate as to both parties.
* **Lessors were to receive 1/8** royalty.
* **Estate of either party** was declared to be assignable in whole or in part, and the assignee of the lessee as to only a part of the leased lands was to continue payments of no more than his proportionate part of rentals.
* **D, in error,** Sigler Oil Co., had acquired all rights under this writing formerly held by Burton in the 3000 acres of land, and P in error, Waggoner Estate, had likewise succeeded to the rights of the lessors in the 85,000 acres.

1. **Holding: Court held that** Sigler Oil Co. as the assignee of the original lessee, was under an implied obligation, after the drilling of the two paying wells to continue with reasonable diligence, during the five year term as well as thereafter, the work for exploration for, and production of, the oil and gas in the 3000 acres.

* **After the producing wells were brought** in by the Sigler Oil Company no revenue whatever was to be derived from the lease of the land thereby released from rentals save through royalties.
* **Express provision of the third clause, is that the lease** shall NOT terminate, as long as either oil or gas is produced from the land by lessee.

1. **Rule:** In absence of express stipulation creating a duty to proceed with drilling after the discovery of oil and gas in paying quantities, the law, to accomplish the manifest intention of the parties, in leases where the principal consideration is royalties paid the lessee, implies a duty on the part of the lessee, to reasonably develop the premises.

* Presupposition is NOT satisfied by the payment of royalties from one small well if the land is clearly capable of further profitable development.

1. **Judgment:** Judgment of reversal by the Court of Appeals is affirmed, but the case is remanded to the DC for a new trial.
2. **Comments:**

**Sauder v. Mid-Continent Petroleum Corp.**

1. **Procedural History: Suit was instituted June 27, 1930.** In addition to reciting the facts above outlined, the complaint asserted there had been development and production of oil on adjacent tracts with consequent drainage of oil from the leased land.

* **Respondent** was bound to explore and develop the land and had neglected to do so. Unless the lease was cancelled the respondent would continue to hold it for speculative purposes and the Ps be deprived of the objects and considerations for which the lease was made.
* **Answer denied** that the lease was being held for speculative purposes, denied the operations on surrounding tracts were causing drainage, alleged the drilling of two wells was a fulfillment of the obligation to offset wells likely to drain from the demised premises, and deny any breach of the lease.
* **DC judge** found that the 2 wells were drilled as offsets and had been producing in small but paying quantities. There was some probability that damage was being done to the leasehold through drainage by wells on adjacent tracts.
* **Ps had NO adequate remedy at law;** that lessee had NOT in good faith and with reasonable diligence explored and developed the lands as required by the express and implied covenants of the lease; that it would be inequitable to permit the respondent to hold the property without further exploration and development, as it proposed to do and that Ps were entitled to a decree cancelling the lease, except to as portion, as to which Rs may hold and enjoy its leasehold right so long as it produces gas or oil therefrom in paying quantities.
* **Upon appeals COA** reversed the decree holding that R had not violated the covenants of its lease, and until it should be guilty of breach, it was entitled to continue to hold the tract.

1. **Facts: Sauder and Mid-Continent** entered into an oil and gas lease covering 360 acres of Sauder’s property.

* **Term of the lease was 10 years** and as long as thereafter as oil and gas could be produced in paying quantities.
* **To offset 2 wells drilled on adjoining property,** lessee drilled one well in November of 1921, and another in 1922, however, no other wells were drilled.
* **Sauder wrote Mid-Continent** and told them that the lease had expired because it was NOT a profitable contract. Mid-Continent replied saying that the lease was a paying lease and that they would not surrender it.
* **Ps argue** that if the lessee with good reason believes there is NO mineral to be obtained by further drilling it should give up the lease.
* **Rs argue** that as there is only a possibility of finding mineral, no prudent operator would presently develop but the mere possibility entitles it to hold the lease, because it is producing oil from a portion of the area.

1. **Holding: Court held that** R has not complied with its obligations. Lessee has held a half section for 17 years without the drilling of an exploratory well, and claims to be entitled to hold the lease for an indefinite period with NO exploration unless some other operator brings in a producing well on adjoining land, or fresh geological data come to mind. R’s officers state that they desire to hold this tract because it may contain oil, but they assert that they have no present intention of drilling at any time in the near future This attitude does NOT comport with the obligation to prosecute development with due regard of the interests of the lessor.

* **Production of oil on a small portion** of the leased tract CANNOT justify the lessee’s holding the balance indefinitely and depriving the lessor not only of the expected royalty from production pursuant to the lease, but of the privilege of making some other arrangements for availing himself of other mineral content in the land.
* **Ps are entitled to relief in equity** as they have NO adequate remedy at law. **Dissenting judge** in COA thought that a decree should be entered cancelling the lease as to the 320-acre tract unless within reasonable time an exploratory well should be drilled therein to the Mississippi Lime, and that the 40 acres embraced remain under the lease.

1. **Rule: A covenant on Rs part** to continue to work of exploration, development and production is to be implied from the relation of the parties and the object of the lease.

* **Whether or not in any particular instance** such diligence is exercised depends upon a variety of circumstances… Whatever, in the circumstances, would be reasonably expected of operators of ordinary prudence, having regard to the interests of both lessors and lessee is what is required.

1. **Judgment: Reversed** and the cause remanded to the DC for further proceedings.
2. **Comments:**

**Clifton v. Koontz**

1. **Identities of the Parties:** Suit brought by petitioners, Lillie M. Clifton, individually and as executrix of the estate of her husband, JH Clifton, deceased. She seeks the cancellation of an oil, gas, and mineral lease on the theory that after the expiration of its 10-year primary term, the lease terminated due to cessation of production.
2. **Procedural History: Trial Court** held that damages were too speculative to be ascertained with any degree of certainty.
3. **Facts:** Lease was executed in 1940. It covers 2 –tracts, of land encompassing 350 acres owned by the Cliftons.

* **Ps argue** that Rs breached the implied covenant to reasonably develop by failing to drill additional wells for the purpose of developing all formations for the production of oil and/or gas and that the evidence supports such contention.
* **P argues that** there is an implied covenant to explore as distinguished from the implied covenant to conduct additional development after production is once obtained. They argue that there is a distinction between development and exploration.

1. **Holding: Court held that** there is NO evidence that Ps will not recover all of their undivided interest in the gas reservoir under the land involved; neither is there any evidence that earlier reworking of the existing well would have resulted in the production of any greater quantity of gas It is entirely speculative and uncertain as to the life of the field.

* **Rs did NOT violate the implied covenant** to reasonably develop the lease by the drilling of additional wells. Ps did NOT discharge the burden which rested upon them to prove, as required that the lessees had failed to measure up to the standard of the prudent operator.
* **Corpus of** oil and gas law, as it has developed, treats the covenant of development as covering all additional drilling requirements after production is once obtained on the lease, except those for protection from offset wells which are draining the premises.
* **Court held that there is NO** implied covenant to explore as distinguished from the implied covenant to conduct additional development after production in paying quantities has been obtained. Lessee has the right to explore, but it does NOT follow that the lessee is under a duty to explore. Since there was no implied covenant to explore, the Rs were under NO duty to drill a second or additional well.

1. **Judgment: Judgment of COA is affirmed.**
2. **Comments:**

**Sun Oil v. Jackson**

1. **Identities of the Parties: Sun Exploration and Production Company (**the successor in interest to Sun Oil Company) and Amoco Production Company (together referred to as Sun) brought an action for declaratory judgment and an injunction against the Jacksons.
2. **Procedural History: Sun** sought to establish the validity of an oil, gas, and mineral lease covering a 10,000 acre tract known as the Jackson Brothers Ranch. Sun also sought a permanent injunction enjoining the Jacksons from denying Sun Oil entrance onto the leased property.

* **Jacksons counterclaimed** alleging breach of implied covenants to reasonably develop and explore the entire lease, and seeking cancellation of the lease.
* **TC rendered judgment for the Jacksons.** Cancelled that potion of the lease on which Sun had not drilled extensively and conditionally cancelled the lease below the depth to which Sun had drilled (8480 feet) in a developed area.
* **COA affirmed** the unconditional cancellation and reversed and remanded as to the conditional cancellation.

1. **Facts: March of 1938,** Ocie Jackson and other interested members of the Jackson family executed an oil, gas and mineral lease to Sun covering 10,000 acres of the Jackson Ranch.

* **Sun owns** a majority of the working interest under the lease. Amoco owns a small minority of the working interest, which it acquired many years ago.
* **Jacksons own** the entire surface and retain a majority of the outstanding nonparticipating royalty interest.
* **In 1941, Sun drilled its 3rd well** on the ranch, resulting in the discovery of a reservoir commonly known as the Oyster Bayou Field. Production from that reservoir continues to this date. Produces from a small part of the 10k acre tract.
* **Jacksons complain** that only the Oyster Bayou on the Jackson lease has been developed by Sun. They assert that Sun has neglected to explore and develop the larger remaining part of the lease. They want Court to recognize an implied covenant of further exploration.

1. **Issue: Whether** there exists in Texas oil and gas leases an implied covenant to explore, independent of the implied covenant of reasonable development?
2. **Holding: Court held that the lease remains valid.** Since there is no implied covenant to explore, independent of the implied covenant of reasonable development and that the jury found NO breach of the covenant to reasonably develop occurred.

* **COA erred** in rendering judgment for the Jacksons, since it should have rendered judgment for Sun since the jury determined that Sun did not fail to reasonably develop the Jackson lease.
* **The construction of the jury’s answers to the two questions advanced by the COA** created an ambiguity in the jury’s verdict when none existed. The clear and unambiguous finding of the jury is that Sun has reasonably developed the entire Jackson lease

1. **Rule: 3 Implied covenants in Texas:**
2. **To develop the premises**
3. **TO protect the leased premises**
4. **To manage and administer the lease**
5. **Judgment: Reverse the judgment of the COA and remand for the TC to determine** attorney’s fees and whether Sun and Amoco may be entitled to any injunctive relief.
6. **Comments:**

**Amoco Production Co. v. Alexander**

1. **Identities of the Parties:** action by royalty owners for damages because of field-wide drainage.
2. **Procedural History:** Trial court after a jury verdict, rendered judgment for the Alexanders, lessors, for actual and exemplary damages against Amoco Lessee. COA reformed the trial court’s judgment and affirmed the judgment as reformed.

* **COA held** that Amoco had a duty to protect the Alexanders from field-wide drainage.

1. **Facts: Hastings,** West Field, is a water-drive field. Water and oil are in the same reservoir. Because water is heavier than oil, the water moves to the bottom of the reservoir driving the oil upward. As oil is removed, water moves up to fill the space.

* **Leases in the SE** (closer to the surface) are called “updip leases” and on the lower “downdip leases.” Alexander’s leases with Amoco are downdip. Amoco, with 80% of the field production, also has updip leases. Exxon, Amoco’s chief competitor in the field owns leases generally updip from Alexanders and downdip from the remainder of the Amoco leases.
* **Downdip** leases are the first to water out.
* **Alexanders argue** that Amoco slowed its production on the Alexander-Amoco downdip leases and increased production on Amoco updip leases causing the Alexander-Amoco downdip leases to “water out” much sooner. Oil not produced from the Alexander leases will eventually be recovered by Amoco as the water pushes the oil to the Amoco updip leases.
* **Theory of liability,** Amoco owed the Alexanders an obligation to obtain additional oil production from the Alexander leases by drilling additional wells and reworking existing wells to increase production. If Amoco had fulfilled its obligation additional oil would have been produced from which the Alexanders would have been paid 1/6th royalty. Amoco updip leases pay 1/8th royalty.
* **Amoco argues** that the COA correctly held the drainage in this case was field-wide but the court erred in holding the law imposes an obligation upon Amoco to prevent field-wide drainage, or an obligation not to drain the Alexander leases by its updip operations. Amoco argues it imposes a new implied obligation never previously held to exist.
* **Amoco argues that exemplary damages** are NOT recoverable because the Alexanders failed to plead and prove a tort allowing recovery of exemplary damages.
* **Amoco argues that exemplary damages are NOT recoverable** under a cause of action for “waste.”

1. **Issue: (1)** Whether Amoco had a duty to protect from field-wide drainage, or a duty to not drain the Alexander downdip leases by its operations updip **(2)** Amoco had a legal duty under the Alexander leases to apply to the Railroad Commission for permits to drill additional wells at irregular locations, to obtain the permits and drill the wells. **(3)** TC erred in admitting testimony that the Railroad Commission would have granted exception permits to allow Amoco to drill additional wells on the Alexander leases. **(4)** The Alexanders are entitled to recover exemplary damages.
2. **Holding:** Court held that Amoco owed the Alexanders the duty to do whatever a reasonably prudent operator would do if the Alexanders were its only lessor in the field. Court held that Alexanders have no rights in the management or operation of the oil leases. Amoco as the operator could quickly determine when the wells began watering out. Amoco, because of its conflicting interests, had NO economic incentive to protect the Alexander leases. The downdip lessors, after their leases have watered out, have no opportunity to capture the oil updip. It is a failure to act as a reasonably prudent operator that triggers the loss. If the TRC denies the Rule 37 permits, after a reasonably prudent application, operator has no liability for not drilling the wells.

* **Court held that the implied covenant** to protect against drainage is a part of the lease and is contractual in nature. Even if the breach is malicious, intentional or capricious, exemplary damages may not be recovered unless a distinct tort is alleged and proved. A breach of the implied covenant to protect against drainage is an action sounding in contract and will NOT support recovery of exemplary damages absent proof of an independent tort.
* **Court held that there has been NO “waste”** as defined. No negligent waste or destruction as occurred in Eliff. Nor has there been an ultimate loss by a reversionary or remainder interest.

1. **Rule:**

* **Oil and gas lessee** has an implied obligation to protect from local drainage. Local drainage is oil migration from under one lease to the well bore of a producing well on an adjacent lease. Local drainage depends upon production from wells in a specific area in a field.
* **Duty** to seek favorable administrative action may be classified under the implied covenants to protect the lease, or to manage and administer the lease. Standard of care in testing Amoco’s performance is that of a reasonably prudent operator under similar facts and circumstances.
* **An operator who fails to act as reasonably** as a prudent operator by not seeking Rule 37 permits, is liable for loss caused by the failure to drill the wells.

1. **Judgment: Judgment of COA is modified to prohibit the recovery of exemplary damages and affirmed as modified.**
2. **Comments:**

**Empire Oil and Refining Co. v. Hoyt**

1. **Facts: Empire Oil and Refining Company** had leased 40 acres of land from lessors.

* **Empire drilled** 2 oil producing wells in the north twenty acres of the tract. When one well, drilled to a depth of 3427 feet, no longer produced oil in paying quantities, Empire hired Dow Chemical to acidize the well which increased production from 115 to 1400 barrels daily.
* **Sane treatment on the second well increased** production from 50 to 1930 barrels daily. Within 3 to 4 months of the acidizing, salt water invaded the wells and they were abandoned.
* **Field at issue was** an oil-bearing limestone strata composed of about 90% pure K, Mg, or calcium carbonate. Leased tract was near the edge of the oil structure and underground water pressure was “menacing the oil” as the water line moved upwards.
* **Lessor’s experts** testified that to correctly acidize the wells in question, a blanket of calcium chloride or some other heave inert liquid at the bottom of the well was required to arrest the penetration of the hydrochloric acid to the salt water level. Empire admitted that the corrosive acid was used without a blanket.
* **P-lessor introduced records of 23 wells** offsetting her tract, which showed average production per well of 93,948 barrels. 2 of her wells on her property had produced 36,000 barrels before their destruction by saltwater invasion. If wells had been properly developed they would have produced the same umber of barrels as the offsetting wells, so she sustained a loss in production 151,869 barrels which under the royalty rate of 1/8, would have been 18,987 barrels.

1. **Holding:**
2. **Rule:**
3. **Judgment:**
4. **Comments:**

**Baldwin v. Kubetz**

1. **Identities of the Parties:** **Lessors, trustees of the Baldwin estate, sued Kubetz for declaratory relief and declaration of forfeiture of a lease.**
2. **Facts: Baldwin, allege**d that Kubetz had violated **(1)** a covenant to operate in accordance with customary oil field practices, and **(2)** continuous drilling requirements of the sublease.

* **Evidence showed that K on numerous occasions** violated the provisions of the Los Angeles County Fire Prevention Code, created and maintained fire hazards, failed to use and observe oil field practices customary in LA County, and failed to use modern methods and equipment in accordance with standards customary. Lessee’s actions persisted despite repeated warnings and notices. Oil overflowed from the well; there was defective electric wiring; inflammable material was collected near well close to storage tanks and to the liquefied petroleum gas tank.
* **K drilled ONLY 1** well and his predecessor lessee had brought in two producers. No drilling whatsoever had occurred for many months.

1. **Issue:**
2. **Holding:**
3. **Rule:**
4. **Judgment:**
5. **Comments:**

**Waseco Chemical Supply Co. v. Bayou State Oil Corp.**

1. **Identities of the Parties: Scanland lessors** executed a lease in 1934 on 80 acres in the Bellevue field in Bossier Parish.
2. **Facts:**

* **Bellevue field consists of 900 surface acres** and produces oil from the Nacatoch sand between 350 to 5000 feet below the surface.
* **Field was discovered in 1921.** After initial production and pressure subsided, the field did not produce much oil until about 1963. Bellevue residuary oil is a heavy, asphaltic, high viscosity oil in a sand with very low gas saturation, and with essentially no reservoir pressure or susceptibility to water drive.
* **Great quantities of water** are produced with the oil by the stripper method of production common in the field before 1963. Bellevue wells are shallow, closely spaced, and are capable of being drilled with little risk, inexpensively in about 12 hours.
* **1952, Bayou State** acquired the Scanland lease and operated it, selling all of its production to itself for use in its refinery located some 50 miles from Bellevue.
* **By 1976, average production** had declined to about six barrels a day from 9 wells.
* **Bayou State operated for Getty Oil Co.** in the Bellevue field for several years. In 1963, Getty took over a portion of its Elston lease from Bayou state and began a fireflood burning.
* **Getty’s pilot fireflood program on** 2.8 acres increased production from about 4 barrels a day to about 100 barrels a day in approximately 18 months. Getty took over from Bayou State the operation of the rest of its Elston lease and its Lodwic Lumber CO. leases and began to acquire other leases in the area, some of which had once belonged to and had been abandoned by Bayou State. Getty proposed to Bayou State a fireflood program for Bayou State’s operations in 1967.
* **Bayou State** contracted with Kadane Corporation for a plan for extensive fireflood operations in 1972 on its Wyche lease, but revealed no plans until after trial for fireflooding the Scanland lease.
* **Bayou State-Scanland Lease** of 80 surface acres comprises about 10% of the Bellevue Field with estimated recoverable reserves in excess of 3,000,000 barrels of oil. 40 acre Getty-Elston lease, on which Getty began its fireflood project in 1963, has already produced more than 2,000,000 barrels of oil and is yet producing.
* **Getty has drilled almost 500 wells** on its leases since 1963 and plans to drill 200 more wells in its fireflood program.

1. **Issue:**
2. **Holding:**
3. **Rule:**
4. **Judgment:**
5. **Comments:**

**Heci Exploration Co. v. Neel**

1. **Identities of the Parties:** Suit by royalty owners against their lessee.
2. **Procedural History: COA reversed in part a** SJ for the lessee, holding that an oil and gas lease includes an implied covenant that a lessee will notify royalty interest owners **(1)** of the need to sue an operator on an adjoining lease for damage to the common reservoir, and **(2)** that the lessee intends to use. DISCOVERY rule applies causes of action against a lessee who fails to provide these notices.
3. **Facts: Neel and members of his family,** own royalty interests pursuant to the terms of an oil and gas lease that covers property in the Fayette County. Lessee was HECI and subsequently its successor in interest under the lease, Browning Oil Company, to whom we will refer as HECI unless otherwise indicated.

* **Neels sued** HECI in 1993 because it did not notify them that it had sued and obtained a judgment against the operator of an adjoining lease, AOP Operating Corporation.
* **Common reservoir** underlies both the HECI and AOP leases. Since at least 1985, AOP periodically overproduced a well in that reservoir in violation of rules promulgated by the TRC. HECI took appropriate action at the Commission, and overproduction was halted for a time.
* **In late 1987,** one of HECI’s wells, Allison Number 1, began to produce water. HECI thought that this was premature given the well’s location in the oil and gas formation.
* **HECI determined that AOP** was illegally producing. HECI instituted for further proceedings at the TRC and eventually AOP was enjoined.
* **Neel’s injury** was NOT the result of drainage. Reservoir itself was damaged because production by AOP at excessive rates caused oil to migrate into the gas cap overlying the oil reserves, which diminished the amount of oil and gas that can be recovered.

1. **Issue:**

* **Part III,** whether limitation bars the claims that HECI breached a duty to notify the Neels that they had reason to sue AOP.
* **Part IV,** why the law of Texas regarding implied covenants in mineral leases does NOT support the creation of a duty that would require a lessee to notify royalty owners of its intent to sue adjoining operators.
* **Part V,** unjust enrichment claim.

1. **Holding: Court held** that there is NO implied covenant that requires a lessee to give notice of its intent to sue an adjoining operator because such a duty is NOT necessary to effectuate the full purpose of the lease and is not so clearly within the contemplation of the parties that they deemed it unnecessary to express it. DISCOVERY RULE does not apply and the Neel’s claims are barred.

* **Part III –** Contract and negligent misrepresentation causes of action did not accrue on the date that HECI sued AOP. When a failure to notify when it knows or should have known of the failure to notify is the basis for a cause of action, a P knows or should have known of the failure to notify when it knows or should have known the facts about which it was to be notified. Thus, when the Neels knew or should have known that they had a cause of action against AOP, they knew or should have known that HECI had not told of that claim. **Neel’s cause of** action against AOP for damage is inherently undiscoverable. Not within the category of claims to which the discovery rule should be applied. **Implied covenants** do not dispense with the need for royalty owners to exercise due diligence in enforcing their contractual rights, express or implied, within the SOL. Any failure of a lessee to monitor activities of operators in a common reservoir or to notify royalty owners of a cause of action against those operators is not an inherently undiscoverable breach. BARRED BY SOL.
* **Part IV –** Neel’s causes of action for breach of contract and negligent misrepresentation are premised on the existence of an implied covenant that a lessee will notify royalty owners that it intends to file suit, the Neels’ claims fail.
* **Part IV –** fact that HECI may have recovered more than it was entitled to is a matter about which AOP could have complained in the suit against it, but that does not give rise to a cause of action for unjust enrichment in favor of the Neels. HECI and the NEELS had independent causes of action against AOP. Neels would have been entitled to recover from AOP full amount of damage attributable to their interest had they timely sued AOP. HECI’s judgment did NOT bind the Neels in any respect or limit their right to recover against AOP. HECI had NO right to sue for damages suffered by the Neels, and the Neels had NO right to require HECI to sue on their behalf.

1. **Rule:** Lessee must give notice (1) of the need for suit, and (2) of the lessee’s intent to sue.
2. **Judgment: Reversed in part and render judgment that the respondents take nothing.**
3. **Comments:**

**Coastal Oil & Gas Corp. v. Garza Energy Trust**

1. **Procedural History: Jury found that Coastal** failed to meet this obligation but was instructed to find as damages “the value of the royalty on the gas drained from Share 13 by the subsurface trespass by the Coastal No.1 fracing operation.
2. **Facts: Coastal had an implied obligation to act as a reasonably prudent operator to** protect Share 13 from drainage.

* **Coastal argues** that there is NO evidence to support that assumption, that the jury should have been instructed to find as damages, the value of the drainage that should have been prevented, and that there is no evidence of the amount of such drainage.
* **Coastal also had an implied obligation to continue to develop Share 13 with reasonable diligence** after M. Salinas No. 3 well was completed.

1. **Holding: Jury instruction was incorrect.** No evidence of what amount of drainage a reasonably prudent operator should have prevented. Absent any evidence of the proper measure of damages, Salinas cannot recover on its claim for breach of the protection covenant.

* **Salina’s experts calculations failed** to credit Coastal with interest on past payments it made, but the record is NOT entirely clear, and Court cannot conclude that Coastal conclusively established that Salinas was NOT damaged by a delay in development, or that Salinas offered NO evidence of the amount of such damages.

1. **Rule: Correct measure of damages** for breach of the implied covenant of protection is the amount that will fully compensate, but not overcompensate, the lessor for the breach – that is, the value of the royalty lost to the lessor because of the lessee’s failure to act as a reasonably prudent operator.

* **For breach of the development covenant,**  a lessee is entitled to recover the “full value of royalty lost to him.”

1. **Judgment: Coastal’s arguments are rejected** regarding the development covenant, though Coastal is entitled to a new trial.
2. **Comments:**

**BP America Production Company v. Marshall**

1. **Procedural History:**

* **Trial Court:** jury findings that BP had made fraudulent representations about its good- faith efforts to develop a well on the Marshall lease that the Marshalls could not have discovered before limitations expired, the trial court rendered judgment for the Marshalls. Jury found in favor of the Marshalls and against BP, and the court rendered judgment on the verdict. The Marshalls were granted: (1) a declaration that the Marshall lease with BP had terminated; (2) a declaration that BP’s property interest had terminated and reverted to the Marshalls; (3) a court-ordered accounting and a transfer of an overriding royalty interest; (4) past compensatory damages of $1,127,749.00 for each Marshall family member based upon the jury’s fraud finding; (5) attorney’s fees; and (6) prejudgment and post-judgment interest.
* **Court of Appeals:** court of appeals affirmed the judgment against BP.

1. **Facts:**

* 1970s, BP obtained oil and gas leases on the Slator Ranch from [among others], the Marshalls. Their leases had a standard sixty-day savings clause
* Primary terms of the Marshalls’ and Vaquillas’s leases were set to expire on July 11, 1980.
* Two weeks before the expiration date, BP drilled a well, the J.O. Walker No. 1. BP continued to work on the J.O. Walker No. 1 for the rest of the year, testing several zones in the well.
* Seeing no production from the well after the lease expiration date, Stanley Marshall, a member of the Marshall family, contacted BP and was informed that the lease was kept alive by continuing operations.
* March 25, 1981, BP entered into a series of agreements with Sanchez–O’Brien Oil & Gas Corporation by which Sanchez–O’Brien eventually became the operator on a portion of the Slator Ranch. The same day, BP decided to permanently plug and abandon the J.O. Walker No. 1 as unproductive. Sanchez–O’Brien drilled its first, undisputedly productive, well in April 1981. Then, in August 1994, Sanchez–O’Brien transferred its portion of the lease through a series of assignments to Fina Oil & Chemical Co., and ultimately to Wagner.
* 2001, the Marshalls intervened in the suit against BP and Wagner, similarly alleging that their lease had terminated in 1981 and adding that BP had defrauded them by purposefully concealing facts and circumstances demonstrating that the lease had already terminated.

1. **Holding:** We hold that the evidence conclusively established that BP’s fraud could have been discovered by the Marshalls through the exercise of reasonable diligence. Accordingly, we reverse and render for BP. BP memoranda indicating that the company had little expectation that continuing operations would prove successful. BP failed to disclose to the Marshalls was independently available from the Railroad Commission no later than October 1982, when BP filed the well log for J.O. Walker No. 1. While the Marshalls are correct in pointing out that the well log did not list BP’s operations in the Upper Wilcox, the plugging report filed with the Commission’s Corpus Christi district office on October 6, 1981, well within the limitations period, did. These public documents, the well log and the plugging report, read together, would have led the Marshalls to discover that BP conducted operations at an interval incapable of production. Moreover, Stanley Marshall testified that he was a sophisticated lessor who subscribed to industry publications, worked as a driller when he was younger, and thus understood the oil and gas industry.
2. **Judgment:** reversed the court of appeals’ judgment and rendered judgment for BP.
3. **Comments:**

**HOOKS V. SAMSON LONE STAR LIMITED PARTNERSHIP**

1. **Procedural History: C**ourt of appeals reversed a judgment in favor of the lessor, Hooks, for $21 million against its lessee, Samson Lone Star, in a case involving bad-faith pooling and fraudulent misrepresentations by the lessee. The court of appeals threw out the judgment, holding that the Hooks' valid claims were barred by the statute of limitation and that the discovery rule did not apply, based on the precedent of *BP v. Marshall*.
2. **Facts: H**ooks lease prohibited pooling and contained an "offset obligation" providing that if a gas well were completed within 1,320 feet of Hooks’ lease line, then Samson was obligated to do one of three things to protect Hooks: (1) drill an offset well; (2) pay Hooks compensatory royalties; or (3) release the offset acreage. In 2000, Samson drilled a well on the adjacent tract that was bottomed about 1,186 feet from Hooks’ lease, within the 1,320–foot protected zone. Samson then proceeded to hide this too-close location from Hooks.

* Majority has found that the discovery rule does not apply to the Hooks' fraud, fraudulent inducement, and statutory fraud claims and that they are barred by limitations as a matter of law.

1. **Issue:** Whether a mineral owner’s claims of fraud and breach of contract in the leasing and pooling of his mineral interests are, as a matter of law, barred by limitations.
2. **Holding:**  Present case does not fall into any of the categories where we can determine, as a matter of law, that reasonable diligence would have timely uncovered the fraud. Though Samson relies extensively on *Marshall* and *Ross*, Hooks correctly identifies an important distinction: in those cases, the public record itself was not tainted by the fraud. We have not previously considered whether reasonable diligence would uncover a correct public Railroad Commission filing when more recent filings contain false information.

* When the defendant’s fraudulent misrepresentations extend to the Railroad Commission record itself, earlier inconsistent filings cannot be used to establish, as a matter of law, that reasonable diligence was not exercised. Under these circumstances, reasonable diligence remains a fact question. The factfinder, no doubt, may consider the failure to examine older records when determining whether reasonable diligence was exercised, but their availability is not enough to establish that reasonable diligence was not exercised as a matter of law.

1. **Rule:** Fraudulent inducement is a subspecies of fraud; “with a fraudulent inducement claim, the elements of fraud must be established as they relate to an agreement between the parties.
2. **Judgment:** the mineral owner’s diligence in discovering the underlying fraud was in this instance a question of fact for the jury, we reverse the court of appeals’ judgment on this and other issues in part, affirm its judgment on other issues in part, and remand the cause to the court of appeals for review of a factual sufficiency of the evidence complaint and other issues not considered because of the court’s ruling on limitations.
3. **Comments:**

**Southland Royalty Co. v. Pan American Corp**

1. **Procedural History:** Court of Civil Appeals has held that the first royalty provision does not provide for the payment of royalty on gas, and that respondents are liable only under 2 and 3.
2. **Facts: In 1925,** Hendricks leased 10, 240 acres of land. Royalty interests under this lease came to be owned by the Southland Royalty Company, Ps in this case. Pan American Corporation was the lessee-respondent under this lease.

* **Oil was discovered in the area in 1926.** In 1927, production of oil was obtained from the Rs portion of the leased premises. Thereafter, a number of oil wells were completed on R’s portion of the lease at depths ranging from 2800 to 3800 feet.
* **Some** of the oil wells also produced gas. Later on, some of the wells quit producing oil and produced only gas.
* **Rs and predecessors** were the owners of substantial portions of another lease Ida Hendrick lease, which covered some 21,000 acres of land, and on which Rs had many producing wells.
* **Gas was taken from the wells** on Ps land by means of pipelines to the other leases of Rs furnishing gas. Record reflects that the gas taken from wells producing oil was paid for by Rs on the basis of $50 per well per year when used off the premises. Such payments had been accepted by Ps and predecessors in title for 32 years before this suit in 1959.
* **In 1949,** Rs made a contract with Lyman to sell gas produced from shallow wells to be used in gas plant. Lyman obtained the gas by connecting on to some of the same wells of respondents from which they were using gas to develop other leases.
* **Ps were not notified** of such sales, nor did the Rs pay Ps 1/8 of the proceeds of such sales.
* **Respondents drilled a deep gas well** on petitioners' portion of the T. J. Hendrick lease in 1956, which produced gas only. They began selling the gas from this well in 1958. Two other deep gas wells were completed, one in 1958 and one in early 1959, from which respondents began selling gas. Petitioners learned of such sales shortly before filing this suit in 1959, at which time respondents were selling gas from these three wells at the rate of more than a million dollars' worth per year.
* **Petitioners contend** that respondents are obligated to them for the payment of 1/8 of the proceeds of the sale of gas from their portion of the premises covered by the lease as provided in the first royalty clause therein.
* **Respondents contend** that they are only obligated to pay for gas used or sold under the provisions of paragraphs 2 and 3, contending that the first royalty provision does not provide for royalty on gas.

1. **Issue: (1)** whether or not the term "other minerals" in the context in which it is used in the first royalty paragraph includes gas. **(2)** if it does include gas, is this royalty provision repugnant to the second and third royalty provisions which provide for a flat-rate royalty for gas used off the premises? In answering the second question we must determine if the term "gas used off the premises" means gas sold for use off the premises.
2. **Holding: Court held that t**he "proceeds of potash and other minerals" means net proceeds” from the sale of potash and other minerals. We also think there is no serious question raised but that the words "mineral" or "minerals" include gas. The term "used off the premises" is ambiguous.

* **It is undisputed that,** those holding under the lessors did not know that the successors to the lessees were so construing the lease and were paying royalties accordingly. It is also undisputed that respondents have for more than thirty years been using gas off the land of petitioners in the development of their other leases in the area. The payment of the flat-rate royalties under paragraphs 2 and 3 of the lease during this time is entirely consistent with petitioners' contention that the payment of such royalties was not notice that respondents were selling gas.
* **The second and third royalty** clauses as imposing obligations to pay the flat-rate royalties only while gas is being used off the premises by the lessee, repugnancy is avoided. The obligation would be to pay the percentage royalty on gas sold and the flat-rate royalty on the gas used off the premises. Thus none of the clauses are nullified and all three clauses are given meaning and operative effect.

1. **Rule:** Lease which contains a specific provision for the payment of royalty for gas sold and also contains a provision for the payment of royalty on a flat-rate basis for gas used off the premises, the term "used off the premises" does not include "sold for use off the premises."
2. **Judgment:** Petitioners' motion for rehearing is granted, the judgment heretofore rendered and entered is set aside, and the judgments of the District Court and the Court of Civil Appeals are reversed and the cause is remanded to the District Court for further proceedings in accordance with this opinion.
3. **Comments:**

**Cannon v. Cassidy**

1. **Procedural History:**

* The trial court answered in the negative, granting judgment to lessees. Based on the finding that cancellation of an oil and gas lease for lessees’ failure to pay royalty as provided in the lease will not lie without an express provision in the lease which authorizes cancellation thereof for non-payment of royalties.
* The Court of Appeals reversed the trial court, cancelling the leases and quieting title thereto against lessees.

1. **Facts:** The oil and gas leases in question provided for quarterly payments to lessors of one-eighth (1/8) royalty on gas sold. The leases do not provide for forfeiture in the event of lessees' failure to pay accrued royalties.

* **Lessees** did not pay lessors royalties for gas produced and marketed for approximately eleven months.
* **Lessors** brought this action for cancellation of the oil and gas leases based upon the non-payment and they also sought to quiet their title to the real property. Lessors pled that the failure of lessees to pay accrued royalties breached both the express and implied covenants of the lease.
* **Parties stipulated that the** lessee had failed to pay royalties totaling $1693.32 on 11 months of production.
* **Lessees further contend** that cancellation of the lease would be harsh and inappropriate as lessors had a speedy and adequate remedy at law for money damages.
* **Lessors present the novel argument** that lessees' non-payment of royalties constituted more than a breach of the express terms of the lease. They submit that the non-payment was additionally a breach of the implied covenant to market. However, lessors are unable to present any persuasive authority to the Court in support of this assertion.

1. **Issue:** Can an oil and gas lease be cancelled for lessees' failure to pay accrued royalty when that failure is in violation of the express terms of the lease but such remedy is not expressly provided by the lease?
2. **Holding: NO. Court held that** they were not going to depart from the rule expressed in Wagoner, that lessee's failure to pay royalty as provided by the lease will not give lessors sufficient grounds to declare a forfeiture unless by the express terms of that lease they are given that right and power.
3. **Rule: *Waggoner Rule -*** Failure to pay royalty or for injury to the land as provided by the lease will not give the lessors sufficient grounds to declare a forfeiture, unless by the express terms of the lease they are given that right and power.
4. **Judgment:** judgment of the Court of Appeals as modified and corrected by the Order of Amendment is Vacated and the Judgment of the Trial Court Granted in favor of lessees is Affirmed.
5. **Comments:**

**Texas Oil and Gas Corp v. Vela**

1. **Procedural History: Trial court found** that the contracts in this case were made in good faith, and the finding has not been attacked.
2. **Facts: Oil and gas** lease executed in 1933 and covering 1,500 acres of land in Zapata County.

* **Gas was discovered** in the Lopeno field underlying this lease in 1934. 6 gas wells drilled on the lease in the 1930s produced from the Queen City sands at depths above 2700 feet.
* **No pipeline** in the Lopeno Field and NO market for the gas when it was first discovered.
* **Nordan & Morris,** a partnership, acquired various leases in the field. They entered into a gas sales contract with United Gas on November 20, 1934. United agreed to construct a pipeline to the field and was granted th exclusive right to purchase on a ratable basis all gas produced from land in the field in which N&M owned or acquired an interest.
* **In 1950, Wilcox** production was discovered in the area, at depths below 5400 feet. Additional pipelines were then built into the area.
* **When the Nordan & Morris contracts were made, however,** United was the only commercial purchaser of gas in the field. The operators could market their gas only on a "life of the lease" basis, and the price stipulated is the only price that could be obtained at that time. Respondents also point out that gas is not sold on a day-to-day basis, and that any substantial volume can be marketed only under a long-term contract that fixes the price to be paid throughout its term.
* **Ps argue** that in this case the market price of gas within the meaning of he lease is the price contracted for in good faith by lessee in pursuance of its duty to market gas from premises.
* **Parties agree that** the market price of gas is to be determined by sales of gas comparable in time, quality and availability to marketing outlets.

1. **Holding:** The prevailing market price at the time of the sale or use. The gas which was marketed under the long-term contracts in this case was not "being sold" at the time the contracts were made but at the time of the delivery to the purchaser. There is no basis in the record for an ordinary estoppel in pais against either Nordan or Mrs. Gaines. The trial court did not find, and the evidence does not establish as a matter of law, a prejudicial change of position on the part of the working interest owners in reliance on any misrepresentation or silence when there was a duty to speak.

Both the witness and the trial court were required to fix a figure that would be used in determining the amount that should have been paid to the royalty owners over a period of four years. If the rate of production were constant, that figure would be the average market price for the period. Baumel's conclusion as to the market price of the gas in question is corroborated, moreover, by the sales of Queen City gas under amendments to the existing contracts. As for respondents' contention that there is no demand for Queen City gas at the price found by the trial court, it does not appear that any well in the field is shut in for lack of a market.

1. **Judgment:** judgment of the trial court as so reformed is affirmed.
2. **Dissent:** Burden is on those suing for royalty deficiencies to show that such contract price is not equivalent to the "market price" called for in the lease royalty provision. That burden cannot be discharged by showing the average price for which gas is sold in other long-term gas contracts of sale, unless they are comparable in time (and otherwise) with the contracts under attack.

* We must look to common practices in the industry at the time the lease contract was made in 1933 to ascertain what was the intention of the parties with reference to this matter. All parties agree and this Court so holds that at such time the only sales for gas from wells producing gas only were made on long-term contracts or for the life of the lease. The parties, when they entered into the lease contract, knew how such gas had to be marketed; it had to be marketed under a contract similar to the one before us.

1. **Comments:**

* **Vela Lessors** brought their suit in 1964 and four years later the Texas Supreme Court held that “market value” in the lease royalty clause was not measured by the contract price at which gas was sold but rather was to be measured by the price of similar gas being sold in the market at the time of trial.

**Exxon Corp v. Middleton**

1. **Identities of the Parties:** Exxon secured three oil and gas leases from A. D. Middleton in 1933 and 1934 and one lease from members of the White family in 1935. Sun obtained two oil and gas leases from A. D. Middleton and others in 1940, and 1941, one lease from R. M. White in 1933, one lease from Lily Mae Hamilton and O. B. Hamilton in 1933, and two leases from Felix Jackson and others in 1933 and 1938.
2. **Procedural History:** Three lawsuits involving these leases were filed in 1974.
3. Was by the successors in interest to A. D. Middleton (Middletons) against Exxon.
4. The second was by the successors in interest to R. M. White (Whites) against Exxon and Sun.
5. The third was brought by the successors in interest to Felix Jackson (Jacksons) against Sun.

These separate suits alleged a deficiency in the amount of royalties paid by Exxon and Sun, as lessees, for the years 1973, 1974 and 1975. The three original lawsuits were consolidated into a single suit, which was tried to the court in January of 1977, and judgment was rendered for the plaintiffs. The Court of Civil Appeals reversed the trial court judgment and remanded the cause in part and rendered judgment in part

1. **Facts:**

* Exxon argues that its sale to the City of Anahuac and Houston Pipeline Company at the tailgate of the Anahuac Plant, not located on the Middleton or White leases, but within the Anahuac Field is a sale at the wells. Therefore, the royalties should be based on the amount realized from such sales.
* The Middletons and Whites argue that the Anahuac Plant is not on the leased premises and the royalties should be based on market value because a sale off the leased premises is not a "sale at the wells.

1. **Holding:**

* **Court held that** "off the premises" modifies both "sold" and "used." The "premises" is the land described in the lease agreement. Therefore, sold "off the premises" means gas which is sold outside the leased premises. Thus, "sold at the wells" means sold at the wells within the lease, and not sold at the wells within the fields.
* Exxon must pay royalties based on the market value of all the gas sold off the White and Middleton leases, we turn to the question of when and how market value is determined.

**I. Sale at the wells or sale off the premises**

* Exxon must pay royalties based on market value for gas "used off the premises," that same royalty clause cannot permit Exxon to pay royalties on "gas sold off the premises" on any basis other than its market value when delivered. The wording of the royalty clause, therefore, negates the idea of a sale of gas on the effective date of a gas contract for royalty purposes. Just as gas was "being sold" when delivered to the gas purchasers in Vela, so was gas "sold" when delivered by Exxon to its customers.
* When Exxon negotiated the gas contracts, it took the risk that the revenue therefrom would be sufficient to satisfy its royalty obligations. That subsequent increases in market value have made these obligations financially burdensome is no reason to compel the Court to disregard the plain and unambiguous terms of the royalty clause and rewrite it to conform to the meaning that Exxon, as drafter of the language, says was intended.
* Mr. Hudson's testimony is competent testimony, which supports the trial court's determination of market value. Mr. Hudson adjusted the sales he used according to the BTU content of the gas to make them comparable. Also, the sales used were intrastate sales, and therefore comparable in legal quality. Trial court did not err in valuing the gas as if it were free and available for sale.

**II. Division Orders**

* Sun argues the trial court correctly held, under well-settled law that these instruments were binding for the time the parties acted under them. We agree. Texas law has been that payments made and accepted under an agreement such as these were effective until the agreement was revoked.
* Our holding on Sun's division orders applies to Exxon's division orders executed by Middletons and Whites. We hold as a matter of law the division orders were revoked on March 29, 1974, when these royalty owners served Exxon with copies of their pleadings.

**III. Gas Sold on The Unit**

* Provisions mean that in determining each lessee's royalty obligation the terms of the leases are considered. Under the Middleton leases, the scope of each royalty standard is determined by the lease lines. The Unit Agreement does not substitute the Unit lines for the lease lines. Article 8, in fact, expressly provides that the gas attributable to each unitized tract shall for royalty purposes be considered as sold or used off the premises.

1. **Rule:** Market value is defined as the price property would bring when it is offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no necessity of buying it. Market value may be calculated by using comparable sales. Comparable sales of gas are those comparable in time, quality, quantity, and availability of marketing outlets.
2. **Judgment:**

A. EXXON CORPORATION.

* Exxon is liable to the Middletons and Whites for the difference in the royalties paid based on amount realized and the royalties due based on market value prior to March 29, 1974 is reversed.
* Plaintiffs failed to prove the market value of the gas sold from the White, Middleton, and Jackson leases is reversed and the cause is remanded to the Court of Civil Appeals to determine the insufficient evidence points presented to the Court of Civil Appeals. The insufficient evidence points of error shall be considered only to evidence of market value of gas after March 29, 1974.

B. SUN.

* Whites, Middletons, and Jacksons take nothing in their actions against Sun is reversed and the cause is remanded to the Court of Civil Appeals to consider the insufficient evidence points.

1. **Comments:**

**Yzaguirre v. KCS Resources, Inc.**

1. **Procedural History:** Tennessee sued for a declaratory judgment that the GPA did not obligate it to purchase all of the gas from the leases at the GPA price. That action was eventually resolved in favor of the producers, including another predecessor of KCS.
2. **Facts:** In 1973, the petitioners or their predecessors in interest granted oil and gas leases in Zapata County to the predecessor of KCS Resources, Inc. The leases include a bifurcated royalty clause, providing that the **(1)** royalty for gas sold at the wells is based on the "amount realized," while the **(2)** royalty for gas sold off the premises is based on "market value."

* In 1979, KCS entered into a 20-year gas purchase agreement ("GPA") with Tennessee Gas Pipeline Co., under which Tennessee agreed to purchase gas at a set price from the Zapata County leases. Point of sale was to be a processing plant several miles away from the leased property.
* GPA sales triggered the clause in the oil and gas leases that obligated the lessee to pay a market-value royalty on gas sold off the premises. KCS paid royalties for production from one gas well based on the GPA price until 1994, although it paid market-value royalties for its two other wells.
* **Large production resulted after the Bob West field was discovered** in 1990. Meanwhile, automatic price escalations in the GPA caused the GPA price to far exceed the market value of the gas
* **KCS urges** that it owes the Royalty Owners a market-value royalty, which is a royalty based on the prevailing market price at the time of sale.
* **Royalty Owners contend** that producers have always based "market-value" royalty payments on actual sales proceeds, so that the leases already require KCS to pay royalties based on the GPA price.
* **Royalty Owners next argue** that by not paying royalties based on the proceeds received under the GPA, KCS has breached its implied covenant to reasonably market the oil and gas.

1. **Issue:** how to measure the royalty KCS owes to the Royalty Owners under the 1973 leases.
2. **Holding: Court held that** the parties to these leases, in unambiguous terms, based the royalty on the amount realized for gas sales at the well and on market value for sales that occurred off the premises. These provisions are similar to the royalty terms in [*Texas Oil & Gas Corp. v. Vela*](https://scholar.google.com/scholar_case?case=3650752043044602006&hl=en&as_sdt=6,44&as_vis=1)*,* in which the oil and gas leases provided for a market-value royalty for off-premises sales and a proceeds-based royalty for sales of gas at the well. The same plain terms that fix the lessee's duty to pay royalty also define the benefit the lessor is entitled to receive. Thus, under the leases, Yzaguirre and the other Royalty Owners are entitled to a market-value royalty, not an amount-realized royalty.

* Parties entered into a lease requiring a market-value royalty. Because the lease provides an objective basis for calculating royalties that is independent of the price the lessee actually obtains, the lessor does not need the protection of an implied covenant. Depending on future market behavior, this may be financially beneficial to the lessor, as it was in *Vela,* or it may be less advantageous, as here. In either event, the parties have received the benefit of their bargain.

1. **Rule:** Amount realized under a sales contract does not affect the lessor's royalty obligations under a market-value clause.

* Texas law has long recognized that an oil and gas lease imposes duties on the lessee that extend beyond the terms of the lease itself if the lease is silent on certain subjects. There is no implied covenant when the oil and gas lease expressly covers the subject matter of an implied covenant.
* Tennessee was obligated to purchase KCS's gas at an ever-escalating price, regardless of its value on the open market. The gas was not free and available for sale, and its price was negotiated in 1979, not contemporaneously with the deliveries. Under these circumstances, the GPA price is not evidence of market value, and the trial judge properly excluded it

1. **Judgment: Affirmed.**
2. **Comments:**

**Heritage Resource, Inc. v. Nationsbank**

1. **Identities of the Parties:** construction of royalty clauses in several oil and gas leases.
2. **Procedural History: Nationsbank sued** Heritage contending that Heritage deducted transportations costs from the value of NationsBank’s royalty in violation of the leases. Royalty clauses showed the parties’ intent not to deduct the post-production transportation costs when determining market value at the well. Division orders Heritage and the royalty owners executed did not bind the royalty owners and that Heritage was liable for the full amount deducted.

* **Trial Court** rendered a partial summary judgment against Heritage deciding liability and damages through 1991.
* **Court of Appeals** affirmed the trial court’s judgment.

1. **Facts: NationsBank** is the trustee for owners of interests in gas, oil and other minerals inherited under David Trammel’s will. Heritage is the lessee and operator and sold gas off the leased premises. Heritage deducted the cost of transport the gas from the wellhead to the point of sale as a post-production cost from the sales price before calculating royalties.

* **In January 1919,** NB noticed that H was deducting severance taxes and transportation charges from the purchase price. NB objected to the transportation charge deduction. NB contended that the leases specifically prohibited the deduction.
* **Royalty Clause Construction**
* H contends that the royalty clauses define the lessor’s royalty as a fraction of the market value at the well. Therefore, clauses limiting deduction from the value of the lessor’s royalty simply means that Heritage cannot deduct an amount from the sales price that would make the royalty paid less than the required fraction of market value at the well.

1. **Issue:** Whether Heritage improperly deducted transportation costs from the royalty payments.
2. **Holding: Lease in question is unambiguous.**
3. **Rule: To determine market value at the well:** 1) to use comparable sales. A comparable sale is one that is comparable in time, quality, quantity, and availability of marketing outlets.
4. **Judgment:** Trial court and court of appeals incorrectly interpreted the royalty clauses. Judgment is reversed.

* NationsBank takes nothing, and they disapprove of the COA’s judgment about the liability of an operator who underpays royalty owners.

1. **Comments:**

**Amoco Production v. First Baptist Church of Pyote**

1. **Identities of the Parties:** Issue of an implied covenant to market natural gas at FMV under a lease, which provides for a royalty based upon the amount realized from the sale of such gas.
2. **Procedural History:** Trial court awarded recovery for a sum based upon the price paid by other purchasers of gas from the same well.
3. **Facts: Dispute is regarding** 18 leases covering small tracts of land in the Townsite of Pyote. Appellant owns oil and gas leases covering these tracts, each of which provides that on gas sold at the wells, the royalty shall be 1/8th of the amount realized from such sale.

* **Several owners of the oil and gas leasehold** estates in tracts of land in Section 100 pooled the same to form the Caprito 100 Unit, containing 640 acres of land. Appellant’s leases as pooled cover 17.14 % of the unit.
* **In 1973,** working interest owners drilled a well on this Section, and it was completed as dual producer from both Devonian and Ellenberger Formations. Working interest owners have been selling gas to one of four different purchasers, each of whom has its own gas pipeline connected to the well. Total production is sold at approximately 53% to Lone Star, 20% to Pioneer Natural, 14% to Delhi Gas and 13% to Natural Gas.
* **Amoco and Pioneer** entered into a 20-year gas purchase contract in November 1969 covering leases then owned by Amoco in 19 sections of land. No requirement for additional or subsequent dedication to the contract of other leases.
* **In October 1970, Amoco and Pioneer** amended the 1969 gas contract and substituted a new list covering Ds leases in 12 sections of land including 6 of the 18 leases involved in this case.
* As of **June 1975,** Amoco entered into a supplemental agreement with Pioneer and Odessa by which Amoco dedicated additional leases to the 1969 contract, including the 12 other leases involved in this litigation.
* **Division Orders:** Amoco also asserts that it has no liability for amounts in excess of those paid under the terms of its gas contract with Pioneer and Odessa because of division orders signed by the royalty owners.

1. **Issue: 1) DUTY:** whether Amoco breached any legal duty owed to these Appellees when, some twenty months after the Caprito 100 Well began producing gas, it committed and dedicated such gas to long-term contract on terms approximately one-half the amount at which gas was then being sold to other purchasers from the same well and with no right for future price redetermination based on market increases, and while doing so obtained for itself extra benefits in respect to other properties in which these Appellees had no interest. – Whether there is a duty or implied covenant to market at any particular price, particularly when the lease provides for a royalty based on the “amount realized” from such sale. **2) BREACH OF DUTY:** whether the evidence supports the trial court’s findings of a breach of the legal duty owed by Amoco to its royalty owners.
2. **Holding:**

* **Duty Issue: YES, AMOCO** had an implied covenant or duty to act in good faith when selling the gas of its royalty owners.Amoco by dedicating additional leases, including those of the Appellees herein, in June 1975, obtained an increased price for gas already dedicated under the prior contract from 17 to 70 cents per MCF. This was a substantial benefit for Amoco and its royalty owners under the previously dedicated leases. It also meant that as to 12 of the leases involved in this case, the royalty owners would receive a payment for gas which was approximately ½ of the amount soon to be paid Lone Star and Delhi, and with a very limited provision for future accelerations. NOT a substantial benefit to other royalty owners whose gas was soon to be purchased by Lone Star and Delhi.
* **BREACH OF DUTY:** That which others pay for the same gas from the same well under an annual price redetermination clause is strong evidence of market value. Evidence of sales of gas comparable in time, quality and availability of marketing outlets. Those sales prices become almost conclusive, particularly when there is NO evidence to the contrary. Evidence is sufficient to establish the TC’s findings as to FMV of these royalty owners’ gas during the years in dispute. Tom Johnson, witness
* **DIVISION ORDERS:** the orders do not really change the basis for calculating royalty payments from the terms of the lease. The lease refers to "the amount realized from such sale" and the division orders refer to "net proceeds at the wells." The division order does not purport to relieve the lessee from its duty to exercise good faith in obtaining market value for gas sold.
* **FUTURE PAYMENTS:** Amoco was ordered to pay royalty for gas produced after June, 1977 based upon the price at which Lone Star purchased gas from the well after that date. The judgment ordered future payments based on that standard. This was error. The purchase price paid by Lone Star may be the best evidence of the market value, but it is not conclusive. We sustain Appellant's Point of Error No. 13.

1. **Rule:**

**DUTY RULE:**

* Interests of the lessor and lessee will coincide; lessee will have everything to gain and nothing to lose by selling the product. Where the interest of the two diverge and the lessee lacks incentive to market gas, closer supervisions of his business judgment will be necessary.

**BREACH OF DUTY:**

* Opinions from expert witnesses who have evaluated gas sales in a given field and arrived at a price, which they consider to represent FMV at any given time.

**DIVISION ORDERS:**

* Purpose of the typical division order is to protect the purchaser of products produced on a lease in a division of the proceeds, paid by him, among those entitled to share in such proceeds, namely, the lessee and the royalty owners. It was never intended to afford a lessee the opportunity to amend the lease, relieve himself of lease obligations, and secure advantages over the lessor, which he could not have asserted under the provisions of the lease.

**FUTURE PAYMENTS:**

* Royalty payments are made monthly and the market can and does fluctuate at something other than annual periods. In addition, purchases by one individual buyer cannot be conclusive as to market price. Normally, market price is based upon a comparison of several sales of a given commodity at a given time and place. Generally, it is not tied exclusively to one particular sale.

1. **Judgment: Affirmed in part and reversed in part. J**udgment of the trial Court is affirmed, except as to the provision for payments of gas after June, 1977, and that part of the judgment is reversed and rendered so as to provide for such payments based upon market value of the gas sold at the time and place of sale.
2. **Dissent:**
3. **Comments:**

**Gavenda v. Strata Energy, Inc.**

1. **Identities of the Parties:** This oil and gas case concerns the effect of division and transfer orders.
2. **Procedural History:** Trial court held the orders were binding until revoked and rendered summary judgment for the operators. The court of appeals affirmed. Both sides filed motions for summary judgment. The trial court and the court of appeals held for Strata and Northstar, maintaining the division orders were binding until revoked. The court of appeals, however, reversed summary judgment and remanded as to Victor Gavenda's estate. The court of appeals held that there were fact issues whether the division and transfer orders encompassed Victor Gavenda's estate.
3. **Facts: In 1967, the Gavenda family** conveyed land in Burleson County to the Feinsteins. The Gavendas reserved a fifteen-year one-half non-participating royalty interest

* Feinsteins later sold the land, subject to the Gavendas' oil and gas reservation, to Billy Blaha. In 1976, Blaha executed an oil and gas lease for a 1/8th royalty.
* Strata Energy, Inc. and Northstar Resources, Inc. each acquired a working interest in the lease. They drilled one producing oil and gas well in July, 1979 and another in February, 1980. Strata and Northstar entered into a joint operating agreement naming Strata the lease operator and providing that Strata would disburse all royalties from production. The agreement also provided that Strata's actions were made on behalf of both Strata and Northstar.
* **Strata hired an attorney** to perform a title examination, and he erroneously informed Strata that the Gavendas were collectively entitled to a 1/16th royalty, rather than the actual ½ royalty. Following the attorney's erroneous report, Strata prepared the division orders and disbursed the proceeds. When various Gavendas died and royalty ownership changed, Strata prepared and sent transfer orders to the new royalty owners reflecting the same collective 1/16th royalty. The Gavendas signed these division and transfer orders and received the disbursements. The Gavendas were underpaid by 7/16th royalty, 7/16th of gross production, and Strata and Northstar kept at least part of the underpayment.
* On discovering this error, the Gavendas on September 29, 1982 revoked the division and transfer orders. Two days later, their royalty interest terminated under the express terms of their reservation. Later in 1982 the Gavendas filed suit to recoup more than 2.4 million dollars in underpaid royalties owed them under the deed reservation.
* Gavendas bring three points of error, contending the rule that division orders are binding until revoked does not apply when there is unjust enrichment, and therefore they should be allowed to recover royalty deficiencies from Strata and Northstar.
* Strata and Northstar contend the division and transfer orders were also binding on Victor Gavenda's estate. They, however, do not dispute: (1) the deed reserved a ½ royalty, or ½ of gross production; or (2) the amount of the royalty underpayment, $2,435,457.51 plus interest.
* Strata also argues that it is not responsible for the loss because the attorney who prepared the title opinions was not Strata's agent but rather an independent contractor.

1. **Issue:** whether division and transfer orders are binding until revoked when an operator who prepares erroneous orders underpays royalty owners, retaining part of the proceeds for itself.
2. **Holding:** the division and transfer orders do not bind any of the Gavendas. Strata both erroneously prepared the division and transfer orders and distributed the royalties. Because of its error, Strata underpaid the Gavenda family by 7/16th royalty, retaining part of the 7/16th royalty for itself. It profited, unlike the operators in [*Exxon v. Middleton*](https://scholar.google.com/scholar_case?case=15226520099124068605&hl=en&as_sdt=6,44&as_vis=1)*,* at the royalty owner's expense. It retained for itself, unlike in [*Chicago Corp. v. Wall*](https://scholar.google.com/scholar_case?case=13746714563313947793&hl=en&as_sdt=6,44&as_vis=1)*,* part of the proceeds owed to the royalty owners. Therefore, Strata is liable to the Gavendas for whatever portion of their royalties it retained, although it is not liable to the Gavendas for any of their royalties it paid out to various overriding or other royalty owners.

* The attorney-client relationship is an agency relationship. The attorney's acts and omissions within the scope of his or her employment are regarded as the client's acts; the attorney's negligence is attributed to the client.
* Reverse the judgment of the court of appeals in part and remand the cause to the trial court to determine the amount of royalties owed by Strata and Northstar to the Gavendas, prejudgment interest due thereon, and attorney's fees. Although the total amount of the royalty deficiency is undisputed, we cannot tell from the record what portion of the royalty deficiency was retained by Strata and Northstar.

1. **Rule:** General rule in Texas is that division and transfer orders bind underpaid royalty owners until revoked. One principle underlining this rule is detrimental reliance. If underpaid royalty owners' suits against purchasers and operators were not estopped, purchasers and operators would pay the amount of the overpayment twice—once to the overpaid royalty owner under the division order and again to the underpaid royalty owner through his suit. They would have double liability for the amount of the overpayment. Exposing purchasers and operators to double liability is unfair, because they have relied upon the division order's representations and have not personally benefited from the errors. Generally, the underpaid royalty owners, however, have a remedy: they can recover from the overpaid royalty owners. The basis for recovery is unjust enrichment; the overpaid royalty owner is not entitled to the royalties.

* When the operator, however, prepared erroneous orders and retained the benefits, we held that the division orders were not binding.

1. **Judgment:** We reverse the judgment of the court of appeals in part and remand the cause to the trial court
2. **Dissent:**
3. **Comments:**

**Gavenda v. Strata Energy, Inc.**

1. **Identities of the Parties:** This oil and gas case concerns the effect of division and transfer orders.
2. **Procedural History:** Trial court held the orders were binding until revoked and rendered summary judgment for the operators. The court of appeals affirmed. Both sides filed motions for summary judgment. The trial court and the court of appeals held for Strata and Northstar, maintaining the division orders were binding until revoked. The court of appeals, however, reversed summary judgment and remanded as to Victor Gavenda's estate. The court of appeals held that there were fact issues whether the division and transfer orders encompassed Victor Gavenda's estate.
3. **Facts: In 1967, the Gavenda family** conveyed land in Burleson County to the Feinsteins. The Gavendas reserved a fifteen-year one-half non-participating royalty interest

* Feinsteins later sold the land, subject to the Gavendas' oil and gas reservation, to Billy Blaha. In 1976, Blaha executed an oil and gas lease for a 1/8th royalty.
* Strata Energy, Inc. and Northstar Resources, Inc. each acquired a working interest in the lease. They drilled one producing oil and gas well in July, 1979 and another in February, 1980. Strata and Northstar entered into a joint operating agreement naming Strata the lease operator and providing that Strata would disburse all royalties from production. The agreement also provided that Strata's actions were made on behalf of both Strata and Northstar.
* **Strata hired an attorney** to perform a title examination, and he erroneously informed Strata that the Gavendas were collectively entitled to a 1/16th royalty, rather than the actual ½ royalty. Following the attorney's erroneous report, Strata prepared the division orders and disbursed the proceeds. When various Gavendas died and royalty ownership changed, Strata prepared and sent transfer orders to the new royalty owners reflecting the same collective 1/16th royalty. The Gavendas signed these division and transfer orders and received the disbursements. The Gavendas were underpaid by 7/16th royalty, 7/16th of gross production, and Strata and Northstar kept at least part of the underpayment.
* On discovering this error, the Gavendas on September 29, 1982 revoked the division and transfer orders. Two days later, their royalty interest terminated under the express terms of their reservation. Later in 1982 the Gavendas filed suit to recoup more than 2.4 million dollars in underpaid royalties owed them under the deed reservation.
* Gavendas bring three points of error, contending the rule that division orders are binding until revoked does not apply when there is unjust enrichment, and therefore they should be allowed to recover royalty deficiencies from Strata and Northstar.
* Strata and Northstar contend the division and transfer orders were also binding on Victor Gavenda's estate. They, however, do not dispute: (1) the deed reserved a ½ royalty, or ½ of gross production; or (2) the amount of the royalty underpayment, $2,435,457.51 plus interest.
* Strata also argues that it is not responsible for the loss because the attorney who prepared the title opinions was not Strata's agent but rather an independent contractor.

1. **Issue:** whether division and transfer orders are binding until revoked when an operator who prepares erroneous orders underpays royalty owners, retaining part of the proceeds for itself.
2. **Holding:** the division and transfer orders do not bind any of the Gavendas. Strata both erroneously prepared the division and transfer orders and distributed the royalties. Because of its error, Strata underpaid the Gavenda family by 7/16th royalty, retaining part of the 7/16th royalty for itself. It profited, unlike the operators in [*Exxon v. Middleton*](https://scholar.google.com/scholar_case?case=15226520099124068605&hl=en&as_sdt=6,44&as_vis=1)*,* at the royalty owner's expense. It retained for itself, unlike in [*Chicago Corp. v. Wall*](https://scholar.google.com/scholar_case?case=13746714563313947793&hl=en&as_sdt=6,44&as_vis=1)*,* part of the proceeds owed to the royalty owners. Therefore, Strata is liable to the Gavendas for whatever portion of their royalties it retained, although it is not liable to the Gavendas for any of their royalties it paid out to various overriding or other royalty owners.

* The attorney-client relationship is an agency relationship. The attorney's acts and omissions within the scope of his or her employment are regarded as the client's acts; the attorney's negligence is attributed to the client.
* Reverse the judgment of the court of appeals in part and remand the cause to the trial court to determine the amount of royalties owed by Strata and Northstar to the Gavendas, prejudgment interest due thereon, and attorney's fees. Although the total amount of the royalty deficiency is undisputed, we cannot tell from the record what portion of the royalty deficiency was retained by Strata and Northstar.

1. **Rule:** General rule in Texas is that division and transfer orders bind underpaid royalty owners until revoked. One principle underlining this rule is detrimental reliance. If underpaid royalty owners' suits against purchasers and operators were not estopped, purchasers and operators would pay the amount of the overpayment twice—once to the overpaid royalty owner under the division order and again to the underpaid royalty owner through his suit. They would have double liability for the amount of the overpayment. Exposing purchasers and operators to double liability is unfair, because they have relied upon the division order's representations and have not personally benefited from the errors. Generally, the underpaid royalty owners, however, have a remedy: they can recover from the overpaid royalty owners. The basis for recovery is unjust enrichment; the overpaid royalty owner is not entitled to the royalties.

* When the operator, however, prepared erroneous orders and retained the benefits, we held that the division orders were not binding.

1. **Judgment:** We reverse the judgment of the court of appeals in part and remand the cause to the trial court
2. **Dissent:**
3. **Comments:**

**Schlittler v. Smith**

1. **Procedural History: Trial court held** that the GR was to receive ½ of not less than the usual 1/8 royalty reserved by lessors in oil and gas leases. There is nothing to indicate that the royalty to be reserved was the usual 1/8, although very likely neither of the parties thought it would be less.
2. **Facts:** In 1930, D in error, Smith executed to P in error, Schlittler Jr., a general warranty deed conveying a tract of land in Young County, Texas.

* **GR, Smith,** insisted that this language reserved to him the right to receive ½ of all bonus money and rentals as well as royalties.
* **P, in error, GE, Schlitter Jr.,** insists that he is only entitled to ½ of royalties.

1. **Holding: Here,** there is a reservation of only “royalty rights.” It is obvious, that it does NOT include a reservation of bonuses or rentals, but only of an interest in oil, gas or minerals paid, received or realized as “royalty” under any lease existing on the land at the time of the reservation, or thereafter executed by the GE, his heirs or assigns. GR contemplated the leasing of the land for production. He reserved no right of leasing to himself, and consequently the GE possesses such right. There should be the utmost fair dealing on the part of the GE in this regard.
2. **Rule:** Broadly speaking a reservation of minerals or mineral rights without limitation would include royalties, bonuses and rentals. A conveyance of land without reservations would include all minerals and mineral rights. **However**, it is **well settled that a GR may reserve minerals or mineral rights and he may also reserve royalties, bonuses and rentals, either one, more or all.**
3. **Judgment: Judgment of COA is reversed, and** the judgment of the trial court is reformed in so far as it decreed that the D in error should receive not less than ½ of the usual 1/8 of royalty, and he shall receive ½ of such royalty as may be reserved in any oil, gas, or mineral lease which may be executed by the P in error, his heirs or assigns. Judgment of TC is affirmed as thus reformed.

* D in error should pay all costs of appeal in this court.

1. **Comments:**

**State National Bank of Corpus Christi v. Morgan**

1. **Identities of the Parties:** Dispute is about the ownership of the interests reserved in the 5th paragraph of the leases, the **bank contending** that it owns ½ of such interests, by reason of the reservation of an undivided ½ interest in all royalty contained in its deed to **Fisher, and Morgan taking the position** that the interests retained in the 5th paragraph of the leases are not royalties, but are bonuses, and therefore are not within the reservation of the deed.
2. **Facts:** State National Bank of Corpus, the owner of a tract of land containing 234.55 acres in Nueces County, conveyed the land to GE Morgan by general warranty deed.
3. **Issue:** Whether the interest reserved in the 5th paragraph of the leases, which we designate and oil payment, is royalty within the meaning of the deed from the bank to Fisher.
4. **Holding: The oil** payment reserved in the fifth of the leases executed by Morgan are bonuses. They are sums contracted to be paid as consideration for the leases over and above the usual royalties. It does not clearly and plainly appear from the language of the leases that the oil payment provided for in the 5th paragraph is royalty. The two paragraphs of the leases clearly indicate that the oil payment is and, is intended by the parties to the lease to be, additional consideration above the usual royalty reserved in the fourth paragraph, in other words, bonus. Court is unwilling to give the one word controlling effect against a contrary intention disclosed by the whole of the two paragraphs considered together. The substance and meaning of this testimony is that the oil payment of $48,000 provided for in each of the three leases of an 80 acre tract was meant and intended to be bonus rather than royalty. Testimony does NOT contradict the leases but shows an intention consistent with that evidence by the writing when given an interpretation of which it is fairly and reasonably susceptible.
5. **Rule: *Bonus*** *is a* merely convenient term applied indiscriminately to consideration for the lease over and above the usual royalty. Usual royalty is 1/8. Applying this definition the difference between 1/8 and 1/6 would come within this definition of bonus. It might properly termed a ***royalty bonus****.*
6. **Judgment: Judgments of the district court** and the Court of Civil Appeals are affirmed.
7. **Comments:**

**Lane v. Elkins**

1. **Facts:** P, Elkins, and other NPRI owners brought suit against Lane, the mineral owner who had leased the tract upon which the NPRI owners owned interests, and against Texaco, Inc., and Signal Oil and Gas Company, seeking a declaratory judgment that Ps were entitled to a certain portion of the royalty provided for in an oil and gas lease, including an overriding royalty provided for therein and to recover monies impounded by Ds, Texaco, Inc, and Signal Oil and Gas from the sales of oil produced under the lease and attributable to such royalty interests. **D, Lane, appellant filed a cross-action against Texaco, Inc., and Signal Oil & Gas.**

* Lease provides for a usual royalty of 1/8 of the oil produced from the land.
* **Lane contends** that the 1/16th overriding royalty interest reserved in Paragraph 11 is actually a reservation of a bonus payment rather than a reservation of royalty and that appellant is entitled to receive all of such reservation to the exclusion of NPRI owners.

1. **Holding:** Paragraph 11 includes all the necessary elements and characteristics of a royalty interest. Such reserved interest was royalty and the court did NOT err in so holding. Contrary to appellant’s contention that Lane could not, acting for himself and the royalty owners, enter into an agreement with the lessee which would, contrary to the language of the lease, change the meaning of the term royalty so as to defeat the rights of the non-participating royalty interest owners.
2. **Rule:** The right to a proportionate share of the oil produced from a well during the life of an oil and gas lease. A *bonus* is the sum or amount paid for the execution of an oil and gas lease whether in cash or out of production.

* **Characteristics of royalty interest: Interest** thus reserved has the characteristics of a royalty interest if: it is an expense-free obligation (except as to taxes), payable as a specified share of the gross production, and is to continue throughout the life of the lease.

1. **Judgment: Affirmed.**
2. **Comments:**

**Morris v. First National Bank of Mission**

1. **Identities of the Parties:** Interpleader suit brought by the FNBM as depository for certain funds payable under an oil and gas lease, to determine the issue.
2. **Procedural History:** Trial Court held that the sum of $50 paid for the shut-in gas well on the leased land, was royalty and that the royalty owners would share in those payments.
3. **Facts: On May 15, 1944,** Santa Cruz Garms, as lessor, executed a lease to Magnolia Petroleum on a large tract of land, providing for the usual 10 year primary term in the habendum clause, the usual 1/8 royalty clauses, delay rentals of $2 per acre during the primary term, which would amount to $15,942.00 annually 1, and a minimum royalty of $2 per acre during the primary term and thereafter of $1 per acre.

* **Lease** was executed for a cash bonus of approximately $40,000 and delay rentals were paid for 3 years.
* **On May 9, 1947,** a gas well was completed that had a potential of 11,500,000 cubic feet of gas a day. Although, it was a well producing gas in paying quantities, it was shut-in and has been shut-in continuously since that date. Since that time, lessee Magnolia Petroleum Company, has paid annually the sums required of it by the lease.
* **Appellants contend** that the payments by the lessee, under the provisions of paragraphs 3, and 14 of the lease, are “minimum royalties,” in which they as royalty owners should share.
* **Appellees contend,** supported by dicta, that the minimum amounts required to be paid under the lease cannot be royalty. Argument is that royalty can in no event exceed a 1/8 of actual production, even though the parties agree upon a greater amount. They reason that any greater fraction necessarily would be bonus or rental, or something else, and would go to those owners rather than royalty owners.

1. **Issue: Whether** the funds paid by Magnolia Petroleum Company as lessee, after May 9, 1947, the day of producing gas well was completed, are royalty or something else.

* **Court first determined whether** there was in fact production as contemplated by the lease.

1. **Holding:** Court held that this situation stated precisely what happened here constituted a producing well. Since the royalty has been paid on the well that is equivalent to production and sufficient to hold the entire acreage covered by the lease. There is a producing well such as may hold the lease indefinitely, and that production or substituted production has never ceased. After production the option to pay delay rentals, provided by paragraph 4, ceased. Since the fact of production did exist, the lease did not terminate upon a failure to comply with the delay rental provisions of paragraph 4. But after production, Paragraph 3 required the lessee to pay royalty. Hence, the royalty under paragraph 3 was required to be paid, and the rentals under paragraph 4 were not required to be paid after production.

* After production, **Paragraph 14** became operative and required certain payments. Paragraph 4 required the difference between the royalty paid under Paragraph 3 and $15,942 be paid. Unquestionably, Paragraph 4 is a delay rental clause and it does delay operations, but the payments required by paragraph 14 do not delay anything.
* **Paragraph 14,** imposed a duty after production that continued so long as there was production, rather than a privilege to delay operations before production and during the primary term.
* **Paragraph 12 identified** paragraph 4 as a delay rental clause and the court concluded that Paragraph 12 identifies paragraph 14 as the *minimum royalty clause.* Payments made under Paragraph 14 were intended to be just what the parties named them – “royalty”
* Court did not agree with second arguments. Court held that the non sequitur that any provision for a greater or different royalty is beyond the realm of agreement. It is a far-reaching legal proposition, which ignores important elements of change, competition, demand, circumstance, the creativeness of the oil industry and the law profession and freedom to contract. Law does NOT prohibit a royalty that is different from or greater than the usual fractional 1/8 out of actual production.
* Payment of the minimum amounts was a duty since they “shall be paid to the lessor” rather than an option, as is usual with a rental clause. And the intent, manifest from what we consider an express and unambiguous contract, is that the payments will be a “minimum royalty.”

1. **Judgment: Judgment of the trial court is reversed** and here rendered construing the payments made as royalty payments.
2. **Comments:**

**Bullard v. Broadwell**

1. **Identities of the Parties:** Primary purpose of this lawsuit is to establish the rights and duties, as between themselves, of the owners of the oil, gas and minerals in a certain tract of land.
2. **Procedural History:** After a nonjury trial, the DC entered judgment that Bullard was only entitled to recover an amount of money equal to 1/3 of the usual and customary 1/8 royalty. Bullard appeals.
3. **Facts: Van Bullard** acquired an undivided 1/3 mineral interest, subject to his GR’s right to execute oil, gas and mineral leases.

* **R.E. Broadwell** and wife acquired all of the surface ownership in this tract of land, an undivided 2/3 mineral interest, and the right to execute leases, which would bind the entire mineral interest.
* **Broadwell and family** drilled a producing oil well. They sought to pay Bullard 1/3 of the usual 1/8 royalty on oil and gas produced from the jointly owned tract. No valid oil and gas lease, and Bullard insists that he should receive 1/3 of the value of all oil and gas produced, less 1/3 of the expenses of drilling, completing and operating the well.
* **Broadwell** did NOT secure Bullard’s consent to the exploration and production of oil from this tract by the Broadwell family.

1. **Holding:** Provision in the mineral deed to Bullard for 1/3 of all royalty was conditioned upon the “terms of any such lease or leases.” In the absence of a valid lease, Bullard is NOT limited to 1/3 of the royalty interest; he is entitled to full 1/3 mineral interest, less his pro rata share of the reasonable costs of producing and marketing the oil and gas. It is true that Broadwell had the right to execute oil and gas leases under which Bullard would share pro rata in all of the benefits, but this right does NOT give Broadwell and his family the right to develop the property ad retain all of the benefits except for the 1/24 royalty which they concede to Bullard.
2. **Rule: Texas Rule –** a cotenant who produces minerals from common property without having secured the consent of his cotenants is accountable to them on the basis of the value of the minerals taken less the necessary and reasonable cost of producing and marketing.
3. **Judgment: Judgment of trial court is revered,** and the cause is remanded with instructions for an accounting on the basis that Broadwell and family are entitled to recover all of the reasonable and necessary costs of drilling, completing and operating the oil and gas well on this tract and that Van Bullard is to then recover of one-third of all oil and gas production, less his pro rata share of the reasonable costs of producing and marketing the oil and gas.
4. **Comments:**

**Archer County v. Webb**

1. **Facts: Margaret Shannon** owned a league of land upon which she executed a deed to Ferguson on May 7, 1929.

* **Interests** acquired by Ferguson under this deed passed to the Petitioners Archer County et al.
* **Margaret Shannon** died in 1931 and her will passed all of her interest in this land to respondents Webb, as trustees of her estate and of the Shannon West Texas Memorial.
* **On April 24, 1940, Rs** as lessors executed an oil and gas lease covering 202 acres in the league of land. The lease was for a primary term of 10 years. Lease provided for payment of shut-in gas royalty of $50 per well per year where gas from a well producing gas only was not sold or used.
* **Delay rentals** were paid to Rs sufficient to keep the lease in force until April 24, 1944. Lessees, Phillips and Turner, completed as well as a potential producer on September 24, 1953. Except for about 4 months in late 1948, the well was shut in. Lessees annually tendered payment of the shut-in gas well royalty provided for in the lease to the R-lessors, all of which tenders, except one in 1943, were refused.

1. **Issue:** Whether the terms of the royalty deed, which provide for the continuation of the GE’s interest after the original 15-year term, have been met. Deed does NOT define “production in commercially paying quantities.”

* **Whether** the terms of the royalty deed were modified by the execution of the oil and gas lease above mentioned.

1. **Holding: Royalty interest** conveyed considering alone the terms of the deed under which petitioners claim, terminated on May 7, 1944.

* Language of the lease does not either expressly or by implication extend the term of the royalty deed. Payment of the shut-in gas well royalty is considered “production” within the meaning of paragraph 2. Paragraph 2 of the lease prescribes its own duration, and the effect of the provision quoted is merely to extend the term of the lease and not the term of the royalty deed.
* The term of the royalty deed was not extended beyond the fifteen years by the execution of the oil and gas lease.
* NO unfairness to the term royalty owners in the execution of the oil and gas lease by Rs. No injustice resulted to them. Execution of the well could well have resulted in great benefit to the petitioners.

1. **Judgment:** Court held that the term royalty deed expired at the termination of the 15-year period provided therein, and that the oil and gas lease still subsists. The result is that the judgment of the Court of Civil Appeals is affirmed.
2. **Comments:**

**Manges v. Guerra**

1. **Identities of the Parties:** Proper exercise of the executive right of a mineral estate. Present suit was filed by JC Guerra and others against Clinton Mages, Gas Producing Enterprises and the Bank of the Southwest National Association.
2. **Procedural History:** Trial court rendered judgment removing Manges as holder of the executive rights; cancelling a lease Manges executed himself; voiding, as to the Guerras’ interests, certain transactions between Manges and third parties, and awarding the Guerras $382, 608.79 in actual damages and $500k in exemplary damages. Court of Civil Appeals affirmed the judgment of the trial court.
3. **Facts: Clinton Manges, and several members** of the Guerra family were mineral co-tenants, with Manges holding the executive right to all the minerals.

* **Guerras sued** Manges for failure to exercise diligence in leasing the minerals to third personas and for leasing a portion of the minerals to himself at allegedly unfair terms.
* **On March 31, 1969,** Clinton Manges entered into a contract to purchase 72,000 acres of land in Jim Hogg and Starr counties from the Guerra & Son partnership.
* **Under the contract,** Manges was to purchase all of the surface and an undivided one-half of the partnership’s 55,000 to 60,000 mineral acres.
* **Sale was to include** the executive rights to the ½ mineral interest reserved by the Guerras. Litigation among members of the Guerra family resulted in the land being placed with a receiver.
* **On August 20, 1971,** the receiver executed a deed conveying the land to Manges in accordance with the contract of sale. Deed said provided Manges was not to lease the Guerras’ mineral interest for less than a 1/8 royalty.
* **An agreed judgment** rendered on June 11, 1974 adjudged that Manges was the owner of 53.4% of the minerals and the Guerras owned 46.6%.
* **On May 10, 1974,** Manges, his wife, and Duval County Ranch Company executed a deed of trust securing a note in the principal amount of $7, 028, 346 held by the Bank.
* **On September 11, 1974,** Manges, his wife, and Duval County Ranch executed two instruments to Gas Producing Enterprises. Instruments covered the mineral interest Manges purchased from the Guerras plus other properties owned by Manges in a total of 13 Texas counties.
* **After Guerras** filed suit, Manges discovered that Exxon had drilled wells on an adjoining tract, which were draining the Guerra/Manges minerals.
* **On July 16, 1977,** Manges, as lessee under the MtoM lease, entered into a farm out agreement with Joe Schero.

1. **Holding:** Manges’ conduct amounted to a breach of fiduciary duty as found by the jury in making the lease to himself, in agreeing upon a $5 nominal bonus for 25, 911. 62 acres of land, and in dealing with the entire mineral interest so that he received benefits that the non-executives did not receive. The taking 100% of 7/8 of the three producing wells, his taking ½ of the working interest, free and clear of costs, by his farm-out to Schero, was also the receipt of special benefits that the non-executives did not receive. Upon the basis of his receipt of special benefits, the lease must be cancelled.

* No power to set aside the COA findings of factual sufficiency and there is some evidence that supports the findings. Guerras as owners of 46.6% of the minerals, are legally entitled to receive their proportionate 46.6% of those damages as held by the judgments below.

1. **Judgment:** Judgment affirmed canceling the lease that Manges made to himself. Award of damages for Manges’ failure to lease the Guerra mineral acreage not covered by the Manges-to-Manges lease which the jury found he could have leases, and upon the basis of those actual damages we sustain the award of punitive damages. We reverse the judgment that removed Manges as the executive.
2. **Comments:**

**Mims v. Beall**

1. **Identities of the Parties:** Chattie and Mims appeal from a judgment in favor of the Bealls. Based upon jury findings that the Mimses breached their duty of utmost good faith and fair dealing owed by them as holders of executive rights to non-participating royalty owners in an oil and gas transaction.
2. **Facts: In 1947,** the Bealls’ parents sold approximately 200 acres of land to John and Chattie Mims retaining an undivided ¼ non-participating interest in the royalties obtained through leasing of the tract.

* **In April 1979,** their son, Angus Mims, having learned that an adjoining property was being developed, leased the mineral interests under this tract from his parents for a 1/8 royalty without a cash bonus.
* **In August 1979,** Angus assigned the lease to Henderson Clay Products in return for a 1/16 overriding royalty on the leasehold estate.
* **Bealls contend** that these activities constituted a breach of duty to the non-participating royalty owners because the 1/8 royalty was unreasonably low.
* **Texas courts** have generally held that the accepted standard required of one exercising executive rights to lease or develop minerals is that of utmost good faith or the ordinary prudent landowner test.

1. **Holding: Case differs** Manges from the present case in that the non-participating interest owners in Manges were also cotenants with Manges, the executive rights owners, and Manges’ management determined not only the amount of royalties received by these non-participating interest owners but also the amount of bonus and delay rentals.

* **Angus Mims did NOT owe a fiduciary duty the Bealls,** but a lessee who induces or participates in the executive’s breach can also be held liable to the non-participating interest owner. So long as the lessee maintains at arm’s length position in the transaction, he does NOT owe a fiduciary duty or a duty of utmost good faith to the owner of a non-executive interest. If, however, the lessee agrees with the executive to an arrangement made for the purpose of excluding or minimizing the benefits of an outstanding or non-participating interest owner, the lessee can be held liable to the injured third party.
* **Conduct of John Mims** in negotiating the earlier lease so that the Bealls woul not receive their proper percentage of the royalty and the conduct of Angus Mims in not recording the portion of the lease relating to the amount of royalty were evidence from which the jury could infer that they conspired for the purpose of violating the fiduciary duty through self-dealing.

1. **Judgment: Judgment of the trial court** is affirmed except that it will be reformed to show the total amount of actual damages to be $31, 127.64.
2. **Comments:**

**Brown v. Smith**

1. **Facts: Ector and Floyd Smith** and their wives (Rs) sued a prospective lessee (HL Brown, and W.R. Wheeler) (Ps), and the escrow agent, Security Bank & Trust Company of Beaumont to recover $6,275, representing the bonus for an oil and gas lease which had been executed and deposited in the bank in an escrow account.

* **Parties** had concluded negotiating the lease, but the lessee wanted time to examine the title to the tract. Therefore, the parties entered into the escrow arrangement under a written contract whereby the S agreed to give lessees a set period of time for examination of the title by lessee’s attorneys.
* **If title to the land,** was shown by an abstract to be good, lessee was required to accept the lease. The escrow agent would deliver the lease to lessee and the bonus check to S as lessors.
* **If title was NOT good,** lessors had 6 months to cure specified defects in the title, and if cured, the deal would be consummated. If NOT cured, contract between the parties would end and the bonus check was to be returned to the lessee.
* **P-Lessees refused to proceed** with the leasing on the basis that the abstracts of title did NOT show good title and Rs did NOT cure the defects.
* **Land described** in the lease is a tract of $62.75 and an annual rental of $313. 75. Tract of 62.75 acres.
* **Floyd Smith’s Ownership of the 20 acres,** is subject to a 1/32 royalty interest owned by Mrs. Lee. ¼ royalty of the 1/8 royalty.

1. **Issue:** To what extent would Mrs. Lee’s royalty interest in the 20 acres be affected by the execution and delivery of the lease executed by Floyd Smith and Ector Smith and deposited in the bank with the escrow agreement?
2. **Holding:** Mrs. Lee did not reserve the right to execute or join in the execution of mineral leases of the land (Schlitter case). But, it does not follow that Lee’s deed invested her GE with the right or authority to pool her royalties with royalties from other land that might thereafter be included with it in a lease. Royalty interest reserved by Mrs. Lee is an interest in land.

* **The provision which Lee reserved to herself,** negates the existence of an intention to confer upon the GE the power or authority to convey or in any way dispose of any part of the royalty interest which she reserved.
* **Since Ms. Lee did NOT join the lease,** the execution and delivery of it by the Smiths would neither divest her of any part of her royalty in the 20 acre tract nor vest in her any interest in the 42.75 acres.
* **Ps were justified** in disapproving the title when Rs failed to satisfy the requirement that Ms. Lee join in the execution and delivery of the lease. It is materially a different lease.
* **Ps would suffer disadvantages.**

1. **Rule:** Provision in Ms. Lee’s deed to Floyd Smith made in connection with her reservation of the royalty interest, the GE shall NOT be under obligation to drill or operate the land for the production of oil, gas or minerals, except at his option, is intended to protect the GE against the implication of an obligation to develop or operate the 20 acre tract for production to pay the royalties reserved. No relation to drainage by wells or to questions of pooling.
2. **Judgment:** Judgment of the district court and the Court of Civil Appeals in favor of the Smiths were reversed.

* **Ps –** **Lessees** were awarded the sum of $6, 275.00 which had been deposited by Security State Bank in the registry of the district court, minus the costs in that court.

1. **Comments:**

**Montgomery v. Rittersbacher**

1. **Identities of the Parties: P, W.R. Montgomery,** brought suit to establish his right to accumulated and prospective royalty under an oil, gas and mineral lease.
2. **Procedural History:** Trial court in a non-jury trial rendered judgment that Montgomery take nothing. Court of Civil Appeals affirmed.
3. **Facts: In 1945, Montgomery,** conveyed approximately 80 acres of land, designated in record as ‘First Tract’ to Rs predecessors in the title but reserved for himself a NPRI.

* **In 1953, Rs** filed for record an oil gas and mineral lease dated September 4, 1951, covering both First and Second Tracts. (80 for 1, and 204.19 for 2 = 204.19.
* **Rs held executive rights of ‘First Tract’ so** it was not necessary for Montgomery to join. Lease contained a pooling clause whereby lessee was permitted to combine the leasehold estate with any other mineral estate in order to create appropriate operating units.
* **Lessee, Sun Oil Company,** formed several units out of the original leased acreage by combining some of the land under the lease with land Sun held under other leases. A producing well was completed on the Crutchfield tract in October 1956 and commercial production begun in May 1958. ‘First Tract’ was placed in a unit on which a dry hole was drilled in July 1961.
* **Montgomery brought this suit in May, 1964,** against Sun Oil (lessee) and Rs, holders of executive rights, claiming by virtue of the entirety clause a share of the royalties which were accruing under the lease. Montgomery seeks the proportion of the royalties accruing under the lease that his non-participating interest bears to the leased acreage. He contends that the entirety clause by its express terms applied to and included his NPRI, and since he ratified the lease Rs cannot now deny the effect of the contract entered into between Rs and Sun.
* **Rs contend that M** did not have the power to bind M’s NPRI with an entirety clause; M did not properly ratify the lease, and M did not qualify to recover as a 3rd party beneficiary of the lease.
* **Issue: Ratification –** whether a NRPO has an option to make an entirety clause operative on his interest.

1. **Holding:** Court said they did not have the power to bind M’s NPRI, but Petitioner

* **Entirety Clause –** Lease explicitly described the entire tract in which M had a NPRI as being covered by the lease. Unambiguous entirety clause clearly indicated that it was to apply to all the interests covered by the lease. The clause points out that even fi the premises are owned in severalty at the time of the execution of the lease, as the premises were in this case, the premises nevertheless shall be developed and operated as one lease, and *all royalties* accruing hereunder shall be treated as an entirety and shall be divided among and *paid to such separate owners*  in the *proportion that the acreage owned* by *each bears to the entire leased acreage.*
* **Ratification –** Montgomery ratified by filing suit. He is only entitled to receive royalties accruing from and after May 12, 1964, the date this suit was filed. Montgomery having thus, ratified the lease, is as much bound hereby as if he had joined in the original execution thereof. As long as the lease is in force, he is NOT free to claim his full ½ NPRI under ‘First Tract’.

1. **Rule:**

* **Entirety Clause -** Court has held that pooling effects a cross-conveyance among the owners of minerals under the various tracts of royalty or minerals in a pool so that they all own undivided interests under the unitized tract in the proportion their contribution bears to the unitized tract. Mere reservation of a NPRI under a tract does NOT show that the royalty owner intended to give to the hold of the executive rights the power to diminish the royalty owner’s interest under that tract. Consequently, pooling on the part of the holder of the executive rights cannot be binding upon the non-participating royalty owner in the absence of his consent. Consent of owner MUST be obtained.
* **Ratification –** if a NPRO ratifies a pooling agreement, either by joining in the execution of the agreement or by accepting royalties from the pool, his interest is bound by the pooling agreement. ***NPRO has the option to ratify or repudiate a lease containing provisions, which as to his interest the holder of the executive rights had no authority to insert in the lease.***

1. **Judgment:** Reversed. Cause remanded to the trial court with instructions.
2. **Comments:**

**DeBenavides v. Warren**

1. **Procedural History: Trial Court** rendered a judgment in favor of the D-NPRO granting their counterclaim and prejudgment interest. Ps appealed and the COA affirmed the holding in favor of NPROs.
2. **Facts: Ps, including Bennavides family members,** were the executive right owners, sued for a declaratory judgment. **Ds, NPRI owners,** countersued for an accounting, asking that a constructive trust be imposed upon royalty payments claimed by Ds to belong to them.

* **Royalty deed** was dated March 19, 1923.
* **Benavides, executive right owner,** had leased the land and leases contained pooling clauses. Lessee had pooled some of the land upon which the NPRO owned royalties with other land on which the NPROs had NO interest.
* **Gas well** was drilled on the unit, but NOT on the land burdened with NPRO’s interest. Unit was completed in March 1966, and there was continuous production in paying quantities through August 1972.
* **Ps, argue,** that Ds are NOT entitled to any royalties from this gas unit because they failed to ratify it before production began.

1. **Issue: 1)** Whether term royalties had terminated. 2)Effect of pooling on keeping the NPRI alive.
2. **Holding: Utmost fair dealing** mandated that Ps notified Ds of the execution of leases creating a unitized tract which included their property to allow them to decide whether to ratify or not. Ds acted promptly by filing a counterclaim upon learning of the Benavides Gas Unit. They are therefore entitled to royalties accruing.

* **Ps are estopped** from asserting D’s failure to ratify because Ps failed to inform Ds of the existence of the pooled unit, until Ps themselves filed their declaratory judgment action in 1979. Evidence is sufficient to support the fact finding that production of the BGU extended throughout the stipulated period and production from this unit is therefore sufficient to perpetuate the royalty agreement as to the entire tract.

1. **Rule:** Production from a gas unit will perpetuate royalty interests in tracts included in the unit, even if the well is NOT located on such tracts.
2. **Comments:**

**London v. Merriman**

1. **Identities of the Parties:** Appellant, Dorothy London, asks this Court to determine her rights as lessor under an oil and gas lease, as well as the rights of the non-participatory royalty interest owners (the Merrimans).
2. **Procedural History:** London appeals from a judgment awarding the Merrimans gas royalties. They elected to have judgment on the ratification theory, and the trial court awarded them $390,051.35 for royalty payments due them from the time the wells began to produce until the Railroad Commission ordered pooling.
3. **Facts: London owns two adjoining tracts of land** and holds the executive right (the right to lease) to all the minerals. She owns a 3/16 royalty interest in the eastern tract and a 1/8 royalty interest in the western tract. The Merrimans own a 1/16 non-participating (no right to lease) royalty interest in the western tract, created by reservation when Mr. Merriman conveyed the land to London.

* **In 1980, London executed a single oil and gas lease** which included both tracts. The lessee later assigned its interest to the McCord Exploration Company. In 1982, McCord brought in successful gas wells on the eastern tract, in which London owns all the royalty interest. No wells have been drilled on the western tract.
* **In 1983, the Merrimans** sued McCord and London, claiming that McCord breached a duty to protect the tract in which they owned a royalty interest against drainage by the other tract.
* **In 1984, they successfully** sought statutory forced pooling of their royalty interest with London's by the Railroad Commission, enabling them to share in the royalties paid on the wells since the effective date of the Commission's order, March 7, 1984.
* **In 1986, they filed** a supplemental petition, alleging an alternative theory that they had ratified the lease between McCord and London and so had accepted London's alleged offer in the lease to pool their royalty interest with hers.
* The case proceeded to trial on both pled theories. The ratification theory was tried to the court, while the breach of duty theory was tried to the jury. The Merrimans were successful on both.
* **London's first two points of error involve the issue of ratification**, tried to the court. In its judgment, the court found that the Merrimans ratified the lease by filing suit on July 14, 1983, entitling them to their share of royalties from that date until the effective date of the Railroad Commission's forced pooling order, March 7, 1984. London asserts that the oil and gas lease by its terms precluded ratification and the consequent pooling of the royalty interests.
* The oil and gas lease executed by London is a standard "Producer's 88" lease. It contains a provision which authorizes the lessee, at its option, "to pool or combine the acreage covered by this lease, or any portion thereof, as to oil and gas, or either of them, with any other land ..." if certain conditions exist. If pooling occurs, the lease provides that the royalties shall be paid on a pro-rata, acreage basis; payments are to be made depending on the number of acres each royalty interest owner owns in the pooled unit.
* London argues, however, that a clause in the lease here distinguishes *Ruiz.* At the end of the same paragraph which grants the power to pool to the lessee, the lease contains a clause which London characterizes as a "non-unitization" or "anti-communitization" clause.
* London contends that this clause negated any intent to pool or unitize the royalties and keeps the royalties separate, so that the Merrimans are entitled to recover only for production from the western tract.
* Merrimans counter that the clause is ineffective and they are entitled to a proportionate share of royalty from production anywhere on the leasehold, under *Ruiz* and *Montgomery*

1. **Holding:** The purported non-unitization clause simply provides that no pooling or unitization of royalties is intended "merely from" the inclusion of the two tracts in one lease. Rather, it results from the previous lease provisions which authorize the unitization or pooling of the royalties should the lessee pool the tracts of land in any fashion. The purported non-unitization clause expressly does not detract from this authorization.

* Pooling of the royalties resulted from London's attempted authorization for the lessee to pool the Merrimans' interest without their consent, enabling the Merrimans to ratify the unauthorized act.
* London’s lease with McCord attempted to authorize an unauthorized act, thereby offering the Merrimans an opportunity to ratify the lease, which the TC found occurred when suit was filed in 1983. By ratifying the lease, the Merrimans became a party to it, and the rule that the execution of an oil and gas lease by more than one mineral interest owner effects a pooling of their interests applied.

1. **Rule:** When an ordinary oil and gas lease is executed by all the owners of different mineral interests in two or more tracts, the royalties payable under the lease will be pooled. In other words, all royalty interest owners in the land subject to the lease share in production no matter where the well is drilled on the leasehold. By an effective ratification of the lease after its creation, the non-executive accomplishes this result just as if he had been a party to the lease.
2. **Judgment: Affirmed.**
3. **Comments:**

**Smith v. Allison**

1. **Identities of the Parties: Northeast is the issue.**
2. **Facts:** GR conveyed to GE an undivided half interest in two tracts of 160 acres each, which are marked as boxes a and b. GE argued that Mother Hubbard Clause also operated to convey the GR’s interest in the minerals underlying box c.

* **H.P. Allison and others filed this suit against R.E. Smith and** others in trespass to try title to recover an undivided 1/4th interest in the oil, gas, and other minerals under the NE ¼ section.
* **Deed, dated March 27, 1941,** executed by Bertha Clark and delivered to Nedra Neely, conveyed by specific description and undivided ½ interest in the oil, gas, and other minerals in and under the SE 1/4 .
* **Deed reserved a right to Bertha Clark to execute all future oil** and gas leases on the conveyed minerals.
* **Petitioners, Smith and others,** claim under subsequent conveyances from Clark, took the position that if the description did not, as a matter of law, limit the conveyance then the description was ambiguous and that Clark intended to convey to Neely only an undivided ½ in the minerals.

1. **Holding: Smith’s contention of Ps are sustained and judgment of the trial court is affirmed.** A jury found that Mrs. Clark did not intend to convey to Mrs. Neely an undivided ½ interest in the minerals in the northeast ¼ of Section 124, and judgment was rendered in the trial court for petitioners, R. E. Smith and others. The Court of Civil Appeals upheld the judgment of the trial court wherein it held that the deed was ambiguous and that the evidence supported the finding of the jury that it was not the intention of Mrs. Clark to convey any interest in the northeast ¼ to Mrs. Neely, but sustained the contention of respondents, Allison and others, that the trial court erroneously submitted the issue of intention to the jury, in that the issue only inquired as to the intention of Mrs. Clark and did not inquire as to the intention of Mrs. Neely, and that, therefore, the finding of the jury that Mrs. Clark did not intend to convey ½ of the minerals in the northeast ¼ of Section 124 was insufficient to constitute a basis for judgment of the trial court. For that reason, the judgment was reversed and the case remanded to the trial court for a new trial.

* Ultimate purpose in construing a deed is to ascertain the intention of the grantor, and when this intention is ascertained, that construction which carries the intention into effect, when such intention is lawful, governs and controls.
* We have held that the deed is ambiguous, and that the true intent of the grantor was not to convey any interest in the northeast ¼ of Section 124, and that the issue upon intent was correctly submitted to the jury, and that the only reasonable reason for inserting the general description in the deed was for the purpose as stated above in quoting from the Bennett case.

**ON MOTION FOR REHEARING HOLDING #2:**

* **RULE**: Upon further consideration we have concluded that the correct rule to be followed in the construction of a deed passing from a seller to a buyer for a valuable consideration is rather that the intention of the parties is to be ascertained. This must be true because the deed purports to express a bilateral agreement. It is to evidence a meeting of the minds of both parties as to the property intended to be conveyed and paid for.
* Under the evidence the intention of the grantee must have been the same as that of the grantor.
* Mrs. Clark, that she did not intend to convey the mineral interest in the northeast quarter, the intention of the parties becomes a question of law for the reason there is no evidence that would support a jury finding that the parties did intend by this instrument that the northeast quarter or one-half of the minerals thereunder be sold and conveyed by Mrs. Clark to Mrs. Neely.
* Deed provides "this conveyance is made subject to any valid and subsisting oil, gas or other mineral lease or leases on said land, including also any minerals lease, if any, heretofore made or being contemporaneously made from grantor to grantee". The meaning thus attributed in these leases to the term "said land" is that it embraces only the two-quarter sections particularly described in the deed.
* We conclude from a consideration of the entire deed that the intention of the parties was to convey only that land particularly described and any strips or small tracts that might have been contiguous or been said to constitute a part of the described tracts and that the clause did not serve to convey the northeast quarter or the minerals thereunder.

1. **Dissent:**
2. **Rule:** When an intention by a grantor to retain or except such a strip out of a
3. conveyance is expressed or made clear, his intention will be respected by the courts, but where such intention is not discernible from the language employed in the conveyance, the presumption is that the grantor acted in accordance with the established public policy of the State and did not intend to retain ownership of a narrow strip of land that would be of no value or of very slight benefit to him
4. **Judgment:** it follows that the judgment of the Court of Civil Appeals in so far as it reverses and remands the case to the trial court should be reversed and the judgment of the trial court affirmed. In all other respects the judgment of the Court of Civil Appeals should be affirmed.
5. **Comments:**

**French v. Chevron USA Inc**

1. **Identities of the Parties:** controversy in this case is over the size of an interest conveyed by a mineral deed. Grantee's successor-in-interest claims to own a royalty interest equal to the value of 1/656.17 of all oil and gas produced from the entire tract of land involved. Grantor's successors-in-interest contend that the deed conveyed only a 1/656.17 portion of the royalty to be paid by the lessor. We agree with the grantor's successors-in-interest and consequently affirm the judgment of the court of appeals.
2. **Procedural History:** The trial court denied Fuller Trust's summary judgment motion, finding only that the case constituted a proper declaratory judgment action, and granted Chevron's motion, holding that the deed conveyed a mineral interest with a reservation of certain rights.

* Court of appeals concluded that under *Watkins* and other Texas decisions, a deed transferring a royalty interest must expressly provide that royalty be from "actual production." On the basis that the Paul deed did not include that language, the court of appeals distinguished *Watkins* and affirmed the judgment of the trial court.

1. **Facts: In 1943, George Calvert** (Grantor), the owner of a 1/32 mineral interest in a 32,808.5 acre tract, deeded a fifty acre, 1/656.17 interest to Capton M. Paul (Grantee). The pertinent parts of the document, titled "Mineral Deed," read as follows:

* Petitioner Fuller Trust, the successor-in-interest to the grantee, brought suit against Grantor Calvert's successors to construe the deed as conveying a royalty interest. Fuller Trust maintains the deed conveyed a pure fixed royalty interest of 1/656.17 of all production.
* Respondent Chevron claims the deed conveyed a mineral interest with a reservation of all rights stated in paragraph II. If the deed conveyed a mineral interest reduced by reservations, the grantee would receive only a 1/656.17 fraction of any royalty payable under a lease.
* On appeal, Fuller Trust argued that the phrase "royalty interest only" indicated that the parties intended to transfer only a royalty interest in production from the land.

1. **Holding:** If the language is unambiguous, the court's primary duty is to ascertain the intent of the parties from the language of the deed by using the "four corners" rule.

* While the first paragraph appears to grant a mineral estate, the second paragraph of the lease specifically states that the interest conveyed is a royalty interest only. The clause in the second paragraph, beginning "and that," sets forth the consequences of the royalty interest only declaration, by going further to specifically reserve in the grantor the four components of a mineral estate other than the royalty: the rights to lease, to receive bonus payments, to receive delay rentals and to develop or prospect.
* We interpret the transfer to have conveyed a 1/656.17 mineral interest with reservation of all developmental rights, leasing rights, bonuses, and delay rentals. The conveyance grants, in essence, only a royalty interest, as stated in the second paragraph. First, the granting clause must be read in light of the rest of the document. Paragraph one states that the grantor is conveying a fifty acre interest. A "fifty acre interest" is 1/656.17 of the 32,808.5 tract, and the deed then recites that it is conveying "an undivided 1/656.17th interest in and to all of the oil, gas, and other minerals in, under, and that may be produced from the described lands." Standing alone, this would convey a 1/656.17 interest in the minerals. Paragraph two indicates that the interest in the minerals conveyed in paragraph one is a royalty interest. The remainder of paragraph two is best interpreted as explaining the consequences of the "royalty only" description. It reserves in the grantor the right to receive delay or other rentals, or any revenues from the leasing or from any renewal or extension of any lease. This reservation would be redundant and would serve no purpose whatsoever if the interests in minerals being conveyed was a 1/656.17 royalty interest, that is, 1/656.17 of all production.
* From the four corners of the document, we conclude that the parties intended to convey a 1/656.17 mineral interest with the reservations described, thus conveying only the royalty portion of the mineral interest. This harmonizes and gives effect to all portions of the deed

1. **Rule:** when a deed conveys a royalty interest by the mechanism of granting a fractional mineral estate followed by reservations, what is conveyed is a *fraction of* royalty, not a fixed fraction of total production royalty.
2. **Judgment:** Court of appeals correctly affirmed the trial court's summary judgment. We affirm the judgment of the court of appeals and render judgment by construing the Paul deed as conveying to Paul a 1/656.17 interest in the minerals and not 1/656.17 of production *as* royalty.
3. **Comments:**

**Averyt v. Grande, Inc.**

1. **Procedural History:** trial court held that the reservation reserved a fraction of the entire mineral estate. The court of appeals affirmed. 686 S.W.2d 632. We affirm.
2. **Facts:** On September 30, 1977, Respondent Grande, Inc. conveyed the real property in question to the Fogelmans.

* The Fogelmans then conveyed the property to Petitioner James R. Averyt, trustee for R.M. Hopkins, Jr. Averyt, individually and as Hopkin's trustee, sued to determine what portion of the mineral interest Grande conveyed to the Fogelmans.
* Grande argues that the deed reserves one-fourth of the royalty of the entire mineral estate.
* Averyt argues that the deed reserves one-fourth of the royalty only from the undivided one-half mineral interest Grande owned at the time of the conveyance to the Fogelmans.
* Averyt argues, however, that the exception of one-half of the minerals in the "subject to" clause is part of the description of the land. Averyt asserts that the "lands above described," therefore, are the two tracts minus the one-half mineral interest excepted from the grant in the "subject to" clause.

1. **Issue:** Issue in this declaratory judgment action is whether a mineral reservation in a general warranty deed reserves a fraction of the entire mineral estate or only a fraction of the undivided one-half mineral interest owned and conveyed by the grantor.

* Whether Grande reserved one-fourth of the royalty from the entire 86.82 and 0.003 acres or one-fourth of the royalty from the undivided one-half mineral interest Grande owned at the time of the conveyance.

1. **Holding:** We construe the language of the deed to ascertain the intent of the parties without considering parol evidence. The Grande to Fogelman deed reserves one-fourth of the royalty from minerals "that may be produced from the lands above described." This places the reservation within the King rule.

* We hold that a "subject to" clause which excepts fractional mineral interests from lands and minerals conveyed does not form part of the description of the land. The "subject to" clause does limit the estate granted and warranted.
* The deed further evidences an intent to reserve one-fourth of the royalty from the minerals under the entire land when it reserved "1/4th of the royalty covering all of the oil, gas and other minerals ... in and under and that may be produced from the lands above described".
* We therefore hold that the Grande to Fogelman deed reserved to Grande an undivided one-fourth of the royalty from the minerals produced from the whole of the tracts described in the deed.

1. **Rule:**

* **Hooks Rule:** If the deed reserves a fraction of the minerals under the land conveyed, then the deed reserves a fraction of the part of the mineral estate actually owned by the grantor and conveyed in the deed.
* **King Rule:** If, on the other hand, the deed reserves a fraction of the minerals under the land described, the deed reserves a fraction of the minerals under the entire physical tract, regardless of the part of the mineral estate actually conveyed.
* There is a difference, however, between the estate granted and the land described. "Land" is the physical earth in its natural state, while an estate in land is a legal unit of ownership in the physical land.

1. **Judgment: Affirmed.**
2. **Comments:**

**Duhig v. Peavy-Moore Lumber Co.**

1. **Procedural History:** The trial court ordered that the lumber company recover title and possession of the land, except all minerals and mineral rights therein, and that as to the minerals and mineral rights, it take nothing against the defendants. The trial court in effect determined that the reservation was effective to retain 1/2 of the minerals for Duhig, which when taken with the outstanding 1/2 interest left the grantee with only the surface. On appeal by the lumber company, the court of civil appeals reversed the judgment of the trial court and rendered judgment in favor of the lumber company.
2. **Facts: The estate of Alexander Gilmer, deceased, conveyed land in the Josiah Jordan Survey in Orange County to W. J. Duhig**, but reserved an undivided 1/2 interest in the minerals, creating the outstanding mineral interest. Mr. Duhig thereafter conveyed the survey to Miller-Link Lumber Company.

* The deed to the Lumber Company contained the requisite reservation language, purporting to retain an undivided 1/2 interest in the minerals. Peavy-Moore Lumber Company succeeded to the title of Miller-Link Lumber Company in 574-3/8 acres of the survey.
* Peavy-Moore Lumber Company sued Mrs. Duhig and others who claimed under W. J. Duhig for the title and possession of the 574-3/8 acres. Mrs. Duhig’s contention, sustained by the trial court and denied by the court of civil appeals, was that W. J. Duhig reserved for himself in his conveyance of the land to Miller-Link Lumber Company the remaining undivided 1/2 interest in the minerals that had not been reserved by Gilmer.
* Peavy-Moore Lumber Company took the position that the deed from Duhig did not reserve the remaining 1/2 interest in the minerals, but that it in effect excepted only the 1/2 interest that had theretofore been reserved by Gilmer’s estate. Peavy-Moore argued that Duhig’s deed therefore transferred title not only to the surface estate, but also to Duhig’s 1/2 interest in the minerals.
* The deed to Miller-Link Lumber Company is a general warranty deed, in which the granting clause standing alone purported to convey land described as that certain tract or parcel of land in Orange County, Texas, known as the Josiah Jordan Survey, and further identifying the land by survey and certificate number and giving a description by metes and bounds. After the habendum clause and the clause of general warranty appeared the following: “But it is expressly agreed and stipulated that the grantor herein retains an undivided 1/2 interest in and to all mineral rights or minerals of whatever description in the land.”

1. **Issue:**
2. **Holding:**

* ***DUHIG* DOES NOT APPLY IF THE GRANTOR OWNS THE ENTIRE MINERAL ESTATE; THERE MUST BE AN OUTSTANDING INTEREST .**
* Duhig did not acquire title to the one-half interest in the minerals after he executed the deed containing the general warranty, but he retained or reserved it in that deed. Plaintiffs in error, who claim under him, insist that they should be permitted to set up and maintain that title against the suit of defendant in error and to require it to seek redress in a suit for breach of the warranty. What the rule above quoted prohibits is the *assertion* of title in contradiction or breach of the warranty. If such enforcement of the warranty is a fair and effectual remedy in case of after-acquired title, it is, we believe, equally fair and effectual and also appropriate here.
* It operates as an estoppel denying to the grantor and those claiming under him the right to set up such title against the grantee and those who claim under it.

1. **Rule:**

* **Duhig Rule:** When full effect cannot be given to the granted interest because of a previous outstanding interest, priority will be given to the granted interest (rather than to the reserved interest) until full effect is given to the granted interest. Duhig rule is applied only to “warranty” and “special warranty” deeds in most of the states that have adopted this rule. A warranty deed “promises” or “warrants” certain interest, and must be taken as a “stand alone” document, without regard to other documents or previous deeds.
* Deed purporting to convey a fee simple or a lesser definite estate in land and containing covenants of general warranty of title or of ownership will operate to estop the grantor from asserting an after-acquired title or interest in the land, or the estate which the deed purports to convey, as against the grantee and those claiming under him. (citation omitted)”.

1. **Judgment:** judgment of the Court of Civil Appeals should be affirmed by the application of a well-settled principle of estoppel.
2. **Comments:**

**Parker v. Parker**

1. **Identities of the Parties: appellees, as** Ps, allege that the lease was “unitized” or pool lease, and to be declared the owners of 66/2444ths of the 1/8 royalty provided for by the lease.
2. **Facts: On June 25, 1935,** Parkers executed an oil and gas lease to Jones & Ferguson covering 244 acres of land in Cass County, Texas for the cash consideration of $3050.

* **Land was described** as a single tract of land, and the lease provided for the payment of royalty to each in lessor in the proportion that his ownership bore to the whole 244 acres.
* **In June 1936,** lessees paid the rentals in lieu of drilling obligations to keep the lease in force.
* **Thereafter, the lessees,** Jones & Ferguson, assigned a certain 80 acres which constituted a part of the Parker 178 acres to Bay Oil who drilled thereon and brought in a producing well.
* **In June 1937,**  Ray Drilling Co. tendered to the credit of appellees rental on the 66 acres in lieu of performing drilling obligations.
* **Appellees further allege that appellee, Erbert Parker, was a half brother of the owners** of the 178 acres and that he and they had always been friendly in their dealings.

1. **Issue:** whether, where parties own different tracts of land which are contiguous and lease them in all respects as though they were a single tract owned by the lessors in common, said lessors thereby pool their interest so that they will share pro rata in the interest so that they will share pro rata in the royalty no matter from which land oil is produced.
2. **Holding: The clear terms of of the lease require the “lessee,”** to pay the cash consideration to the “lessor” on the basis that the tract is leased as a whole, and to pay the royalties to the same “lessor” in the proportion that the property belonging to each bore to the entire 244 acres, no matter in what part of the tract production is had. The lease here in question by its terms is a unitized lease as a matter of law. Parties definitely and expressly intended the result which the lease as drawn effectuates.
3. **Rule:** An oil and gas lease executed by three several owners of contiguous lands, embracing which said lands described the demised premises as a single tract, contemplating a single well as a condition of its continuance, providing for payment of delay money to them jointly and, otherwise, treating them as tenants in common, is a joint lease of a single tract of land.
4. **Judgment: Affirmed.**
5. **Comments:**

**Concord Oil Co. v. Pennzoil Exploration and Production Co.**

1. **Identities of the Parties:** size of a mineral interest conveyed by a 1937 deed executed while the grantor's interest was subject to a producing lease. The deed in question contains two different fractions: the granting clause conveys a 1/96 interest in the minerals, while the subject-to clause says the deed covers and includes 1/12 of rentals and royalty. The deed does not contain a future-lease clause. The case was tried to the court on stipulated facts.
2. **Procedural History:** The trial court held that the deed conveyed two estates of different sizes and durations: a 1/96 perpetual interest in the minerals, and a 1/12 interest in rentals and royalties, which ended when the existing lease expired. Appellants contend that when all parts of the deed are harmonized and interpreted in the context of oil and gas law of the 1930's, one estate of 1/12 of the minerals was conveyed. We affirm the judgment.
3. **Facts:** Plaintiff-Appellants Concord Oil Company and Crenshaw Royalty Corporation ("Concord") are the successors in title to Southland. Defendant-Appellees Pennzoil Exploration and Production Company, Pennzoil Producing Company, Sanchez-O'Brien Oil & Gas Corporation, and John M. Robinson ("Pennzoil") also hold title from Crosby pursuant to a 1961 warranty deed conveying a 7/96 mineral interest to Robinson.

* Concord contends that the parties were acting under the oil and gas notions that prevailed during the 1920's and 1930's, and the deed conveyed only one interest, a single estate consisting of 1/12 of the minerals. This 1/12 interest was subject to a producing lease which entitled the owner to a 1/8 royalty on the 1/12 mineral interest equal to 1/96 of production.

1. **Issue: 1)** The first and central issue is whether the 1937 Crosby-Southland deed conveyed all of Crosby's 1/12 interest, or only 1/96; if it conveyed Crosby's entire 1/12 to Southland, the Concord parties succeeded to all of his 1/12 and he did not own 7/96 to convey to the Pennzoil parties in 1961**. 2)** Second, if the deed conveyed a 1/96 interest in the minerals, an additional issue is whether the subject-to clause nevertheless grants a 1/12 interest in future leases. **3)** The third and final issue is whether the court erred in ruling the deed unambiguous and excluding extrinsic evidence.
2. **Holding:** The word "estate" refers to the mineral interest conveyed in the granting clause. The deed uses the term "estate" in two successive sentences: the last sentence of the granting clause ("such estate herein conveyed") and the first sentence of the subject-to clause ("the estate hereby conveyed"). The estate mentioned in the granting clause can refer only to the estate conveyed in that paragraph—the 1/96 mineral estate. The most sensible construction is that when the same word is used in the next sentence, it refers to the same estate—the mineral estate. The use of the singular "estate" simply means that the parties thought they were dealing with one mineral estate (1/96) and also a larger temporary interest (1/12) in the proceeds under the existing lease.

* We hold that the subject-to clause applies only to leases then in existence and not to future leases. After the existing lease terminated in 1937, Southland and its successors had only a 1/96 mineral interest.
* We hold that the conveyance at issue, when considered in its entirety, constituted a grant of a 1/12 interest in any rights or benefits under the lease in existence at the time of the grant and the possibility of reverter of a 1/12 interest in the mineral estate.   Accordingly, we reverse the judgment of the court of appeals and render judgment in favor of Concord and Crenshaw.

1. **Rule:** When interpreting deeds courts avoid using mechanical, arbitrary rules of construction and instead determine the intent of the parties from the language found within the instrument's four corners.
2. **Judgment: Reversed.**
3. **Comments:**