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1. Hal was not entitled to deny Ace access on the new road.

As the owner of Blackacre, Hal owned the surface estate of Blackacre in fee simple and the mineral estate of Blackacre (less the 1/8 royalty interest reserved by Raul, and then by Big). As owner of the mineral estate, he had the executory right to transfer the mineral estate, which he did through the oil and gas lease signed with Ace. Through this transfer, Hal severed the mineral estate from the surface estate by conveying a fee simple determinable in the mineral estate to Ace, with a possibility of reverter to himself should Ace fail to meet the terms of the lease.

As between the mineral and the surface estate, the mineral estate is the dominant estate. The mineral estate owner has a working interest in the mineral estate, meaning that it has the right to production, exploration, and development of the mineral estate. The mineral estate owner also has the right to use the surface estate as reasonably necessary for production, exploration, and development. Here, Ace is the holder of the mineral estate as described above. Therefore, Ace has the right to use Hal's surface estate as reasonably necessary to access the drill site in order that it may engage in development and production of the mineral estate. Because it is necessary to build a road to access the drill site, Ace has the right to use the surface estate to build that road. Because Ace's accessing of the new road is within its rights as a mineral estate holder, Hal may not deny Ace access to the new road. Note that because Hal denied Ace access to the road, the time of that denial of access will be added to the secondary term of the lease such that Ace will have a longer amount of time to achieve production in paying quantities, if applicable.

2. Hal has right of accommodation against Ace for the road obstruction and may obtain damages for the lost income from water sales that resulted when the trucks that carried water were unable to reach the well. Although the mineral estate is the dominant estate, the surface estate holder has a right to accommodation of its use of the surface estate where 1) the surface estate holder had maintained a pre-existing use of the surface estate; 2) a reasonable alternative not too costly to the mineral estate holder exists that would enable the mineral estate holder to continue its use of the surface estate while also enabling the surface estate holder to maintain its preexisting use; 3) the alternative can be conducted on the same tract of land. Here, before the lease to Ace, Hal farmed and received income from the sale of water from the water well located on Blackacre. Therefore, Hal's use of the surface estate for the sale of the well water is a pre-existing use

under the accommodations doctrine. In the process of constructing the new road (a rightful use of the mineral estate), Ace has left large piles of dirt obstructing part of the existing road, which has resulted in the road's being impassable. Hal therefore cannot engage in his pre-existing use of the surface estate because trucks cannot reach the well as a result of the dirt deposits.

However, a reasonable alternative to Ace's use of the surface estate exists: Ace can simply relocate the dirt a short distance away from the roads. In this way, Ace can still use the surface estate to get to the drilling site, but without much expense, it can also afford Hal the ability to access his well. This alternative exists on Blackacre. Because the requirements under the accommodation doctrine are met, Hal has the right to accommodation: Ace must relocate the dirt deposits so that Hal can access his well.

Ace may also have to pay damages for the income that Hal lost as a result of the road obstruction.

3. Big is not entitled to a share of the proceeds of the water sales. A non-participating royalty interest holder ("NPRI") is a holder of a royalty interest in a tract of land who has the right to royalty payments, but who does not have an executory right to convey the mineral estate. Here, Raul was an NPRI. Although he did not have the right to convey Blackacre's mineral estate, he did have the right to convey his royalty interest in Blackacre. Therefore, his transfer of that royalty interest to Big was effective. Under that royalty interest, Big received a right to a 1/8 royalty interest in the oil, gas, and other minerals produced on Blackacre. At issue, then, is whether water is part of the mineral estate such that Big has a right to receive royalties from its production, or whether it is part of the surface estate. Because water is a part of the surface estate as a matter of law, Big has no right to receive royalties from its production.

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Part 1

Hal was not entitled to deny Ace access on the new road. When an owner of property grants a lease to produce the minerals under the land, the lessee has a fee simple determinable. Therefore, Ace has a fee simple determinable. In an oil and gas lease, the lessee's interest in the mineral estate is dominant over the surface estate. This means that the mineral estate lessee can use the surface estate as is reasonably necessary for the development and production of minerals under the lease. Because Ace needed access to the drill site, its construction of a new road is within its rights as the lessee of the dominant mineral estate. Even though Ace's conduct in constructing the new road blocked Hal's road, Hal is not entitled to deny Ace access to the new road. This is because as lessee, Ace has a dominant mineral interest over the surface estate. As discussed below, Hal does have an alternative remedy under the accommodation doctrine.

Part 2

Hal has rights against Ace under the accommodation doctrine for Ace's obstruction of Hal's road. In Texas, the accommodation doctrine provides a balance against a lessee's dominant right to use the surface estate. Under the doctrine, a lessor can require the lessee to use another method of development or production if (1) the current method interferes with a pre-existing use of the surface estate, (2) a profitable, alternative method is available on the leased tract, and (3) the lessor can show damages. Under these facts, the lessor (Hal) can show that Ace's dirt piles interfere with a pre-existing use of the surface estate: the dirt piles prevent access to Hal's well, from which he sold water before the lease was granted. Hal can also show that a profitable alternative method of developing the road is available: Ace can "easily" locate the dirt a short distance away from the roads. This is unlikely to prevent a cost barrier for Ace, and it is clear that this method is available on the leased tract. Finally, Hal can show damages. When Hal's road was blocked, he lost income from water sales because the trucks that carried the water were unable to reach the well.

Therefore, under the accommodation doctrine Hal can require Ace to put the dirt (current and future dirt) a short distance away from the roads and recover damages for lost income from water sales.

Part 3

No, Big is not entitled to a share of the proceeds of water sales. Raul's 1/8 royalty interest in "oil,

gas, and other minerals" is non-participating royalty interest ("NPRI") that benefits from the production of minerals from the mineral estate. In Texas, water is a mineral that belongs to the surface estate as a matter of law. When an mineral belongs to the surface estate, the holder of an NPRI does not benefit from any production thereof; the owner of the surface estate is entitled to all of the proceeds.

END OF EXAM

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1. No, Hal was not entitled to deny Ace access on the new road. In Texas, the mineral estate has a right to the reasonable use of the surface to accomplish its extraction. Hal's displeasure and monetary loss due to Ace's actions did not mean he was allowed to disrupt Ace's working interest in the mineral estate. By locking Ace out, Hal disturbed Ace's performance of its duties under the implied covenants to reasonably develop the property. Hal should vindicate his rights in court, as discussed below, not by physically denying Ace access to the property.

2. Hal may sue Ace for the road obstruction to protect his pre-existing surface use. In Texas, the mineral estate has a right to the reasonable use of the surface to accomplish its extraction, subject to the accommodation doctrine. Under the accommodation doctrine, the mineral interest owner must accommodate the surface owner's pre-existing use if there is a reasonable alternative that is not unreasonably costly, and the alternative is available on the leased tract. Here, Hal had a pre-existing surface use, the sale of water from the water well. As described below, water belongs to the surface as a matter of law, and additionally, the trucks that carry the water were using the surface to reach the well. The sale of water from the well and the trucks crossing the surface all began prior to Hal's signing the lease with Ace. Ace, as the holder of a working interest in the mineral estate, must accommodate the pre-existing surface use by Hal, the surface owner. The reasonable alternative is quite reasonable in cost and execution: Ace could simply locate its dirt piles a short distance from the road to the well. Additionally, the reasonable alternative is available on the leased tract: Ace may place its dirt anywhere except on the road.

Hal may sue Ace for money damages for the lost profits from the lack of water sales while trucks were unable to pass through Blackacre, and may seek an injunction to prevent Ace from locating its dirt on the road to the well in contravention of the accommodation doctrine.

3. No, Big is not entitled to a share of the proceeds of water sales. In Texas, water is one of nine substances that belongs to the surface estate as a matter of law (building stone, limestone, caliche, surface shale, sand, gravel, water, near surface lignite, and iron ore). Here, Big purchased Raul's reserved royalty interest in oil, gas, and other minerals. This royalty interest pertains to minerals only and thus does not include the water or any income therein. Because Big owns no interest in the surface, only in the mineral estate, Big is not entitled to a share of the proceeds of water sales.

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