

1. Yes. Sue can claim that the mineral lease is not effective because at the time the lease was signed Sue, not Nora, possessed the executive rights required to convey the fee simple determinable in the mineral estate (the lease rights) to Athens. If Nora had only a non-participating mineral interest in the mineral estate, and not the executive rights, then she did not have authority to make the conveyance to Athens. (In Texas, only the party holding the executive rights can execute oil and gas leases.) Here, Sue told Nora she was making a gift of the rights but there was no signed document evidencing the transfer and there was no recording. Therefore, Athens should have had record notice that Nora did not possess the executive rights. Athens was not therefore privileged to rely on Nora's statement that Sue's signature was not needed. For this reason, Sue can claim the mineral lease is not valid.
2. Tom can assert a right to sole use and possessing the surface estate. Tom's lease includes a (covenant from Dale not to use the surface to develop the mineral estate). Although the owner of the mineral estate has a right under Texas law to use the surface to develop the mineral estate, Dale waived his right. Dale's covenant runs with the land and is binding on his successors (Nora and Sue) because it touches and concerns the land and it was properly recorded, thereby giving them notice. Nora and Sue could not convey to Athens a right they themselves did not possess. For this reason, Tom can prevent Athens from drilling for the remaining period of his lease. If he is unsuccessful, Tom should assert the doctrine of reasonable accommodation under Texas law, the pre-existing uses of the surface estate must be accommodated by the development of the mineral estate where there's a reasonable cost effective method of doing so and it can be done on the leased tract.
3. Sue must make a pre-suit demand from Athens. Sue is likely to prevail because Athens did not satisfy the requirements for a valid contract to purchase a royalty interest because it did not identify the document as such a contract through the use of a descriptive heading, nor did it use the required bold, large print. Sue is entitled to her actual damages.

END OF EXAM

1. Sue can claim that the lease was not effective because she inherited the right to execute oil and gas leases on Greenacre. Dale owned Greenacre in fee simple and leased the surface estate to Tom, so he maintained the mineral estate and the executive right. However, Dale also waived his rights to use the surface for drilling oil and gas over the 3 yr. Term of the lease. Dale devised a 1/8 royalty interest and oil executive rights to she, and Nora received a 7/8 royalty interest in Greenacre, which was "all other interests in Greenacre not bequeathed to Sue." Since Nora did not receive the executive right, Sue could not, just on the basis of her royalty interest in Greeacre, sign a oil and gas lease without Sue's consent. The executive right is one of the "bundle of sticks" and Sue was the owner of the executive right and therefore had the sole right to sign leases on the property. Sue's attempt to give to Nora as a gift the executive right was ineffective, because while she evidenced the intent to make the gift she never prepared and recorded the proper deeds to convey her interests.
2. Tom has a surface lease on Greenacre, and the surface estate is subservient to the dominant mineral estate. Therefore, the surface estate must allow the mineral estate to be used in a reasonable manner, which often includes allowing oil and gas to be produced from the mineral estate. Here, however, Dale, the mineral estate owner, waived any right to use the surface for the production or exploration of natural gas for the 3 yr. lease. Since the lease was recorded, all subsequent acquirers or purchases of the property should be on notice about the waiver on the lease. Since his lease has not yet expired, Tom can assert that the waiver should be upheld and that an injunction should be granted to prevent Athens from conducting drilling activities. However, if this effort is not successful Tom could also assert that the accommodation doctrine should apply. This doctrine allows a surface estate owner to require the activities of the mineral estate to be conducted elsewhere on the lease as long as (i) there is a pre-existing alternative available on the premises, (ii) the alternative is a reasonable alternative Tom can argue that he has a pre-existing use and that Athens should accommodate his use.
3. Sue is likely to assert that she was defrauded by Athens and that they obtained her consent to the conveyance of her mineral interest in the property improperly and through misrepresentation. Sue will argue that Athens was required to conspicuously note on the document that they sent Sue that she, by signing and returning the document, she was conveying, her interest in the property to Athens. Sue does not want to rescind the conveyance, but she wants damages which would consist of this true value of her interest, if the \$500 is found to be an undervalued amount for the interest that Sue believed she was conveying. It is likely that she will prevail in her suit because Athens seems to have disguised the fact that Sue was conveying away her entire executive interest, which has the appearance of taking advantage of Sue.

END OF EXAM

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1. Sue can claim that the mineral lease was not effective because Nora did not have executive rights in Greenacre. Under Texas law, only the party with executive rights may enter into leases and execute leases. The executive rights may be severed from interest in the mineral estate itself. Further, any conveyance of that right must be in writing and signed by the grantor. Here, Sue acquired executive rights to Greenacre from Dale through his will. Thus she was the person with the exclusive right to lease the mineral estate. Although Nora inherited the mineral interest itself from Dale, ownership of the mineral estate does not automatically grant the holder the right to lease the mineral estate. That right remains with the executive interest holder. Although Sue informed Nora that she would give her the executive rights to Greenacre, the conveyance was made orally. Because the conveyance of executive rights to Nora wasn't in writing, the rights never officially passed and, at the time of the lease, Sue was the rightful holder of the executive rights to Greenacre. Athens will likely not be able to assert that it lacked notice as the probated will should afford constructive notice to Athens that Sue was granted executive rights to Greenacre. As Nora had no rights to lease to Athens, Athens did not acquire any rights with respect to Greenacre and Sue can challenge the lease of the mineral estate on such grounds.

2. Tom can assert his properly recorded surface lease against Athens to prevent drilling activities on Greenacre. Under Texas law, the dominant mineral estate may reasonably use the servient surface estate for the exploration and production of oil and gas. However, such rights can be varied by agreement. Here, Dale signed a surface lease with Tom granting Tom exclusive possession of the surface estate and waiving any rights to use the surface for any purpose. The lease expressly included the exploration and production of oil in this restriction. The surface lease was properly recorded, thus Athens had constructive notice that Greenacre was encumbered by this surface lease that took priority.

3. Sue must show that the document submitted by Athens did not conform to the statutory requirements. Under Texas law, an offer to purchase a royalty interest submitted by the operator must contain a cover letter expressly informing the person that the document is a conveyance and that signing the document will convey any royalty interest in the property. The

conveyancing document must contain a descriptive heading that indicates its purpose. Further, the language purporting to convey the property must be noticeable and stand out from any other print in the document in such a manner as to sufficiently ensure that the grantor is aware that they are transferring their interest. Here, the cover letter submitted to Sue contained only the instruction that Sue sign the enclosed document and return it to Athens. There was no mention that the enclosed document involved a transfer of her royalty interest. Further, the document itself had no descriptive heading indicating that it was a conveyance of the royalty interest. The portion of the document conveying the interest was in small print and not readily distinguishable from the rest of the document. Sue was unaware of what she was signing and reasonable in her belief that the document was a royalty interest payment.

END OF EXAM