

1. Yes the lease on Blackacre is terminated. Under Texas Law, the lessor & lessee's lease entered into will be construed against the lessee in the event of ambiguity. Furthermore, every term & clause is given its full & ordinary meaning. Here, the "delay rental" clause provided that "unless" they had operations & drillings of 1000 ft underway by April 1, 2010, the lease was terminated. The word "unless" creates a condition, rather than covenant in the agreement & thus the lease terminated automatically when that delay rental wasn't made under those specific circumstances.

Also, Big Oil's argument that the force majeure clause saved their late payment is incorrect. The force majeure clause applies only to drilling or other operations delay in regard to producing in paying quantities & keeping the lease alive as such. It does not apply. It does not apply to the delay rental which is a separate obligation on Big Oil's part & is not affected nor protected by the force majeure clause or any other clause that relates directly to producing oil.

Lastly, since Tim did not keep the check & deposit it, he did not accept the late payment thus being effective in keeping the lease alive under the delay rental clause.

2. No, the Redacre lease is not terminated. Under Texas law, a force majeure clause in a lease will "save" a lease from ending if the situation is provided for under the clause. Since they were producing oil in paying quantities within the given time, they will be allowed to exercise their right under the force majeure clause to not have it count against them.

But their best argument is under a Common Law doctrine that allows leases to stay alive after a temporary cessation causes the oil well to stop producing in paying quantities. The temporary cessation doctrine allows the operators to fix the mechanical breakdown w/ the oil well & if they do so diligently, they will not have the temporary stop in oil affect their lease. Here, since Big Oil was producing the paying quantities by the time the lease ended, & then lost operations due to a temporary breakdown, their efforts to fix it & get the well running will satisfy their requirement. Thus, Red Acre is still under a valid lease w/ Big Oil.

END OF EXAM

12(1) Blackacre

The Blackacre lease has been terminated.

Under Texas law, an oil and gas lease contains two terms, a primary term and a secondary term. The primary term is generally for a stated period during which the lessee is not bound to begin any type of drilling operation at all. The secondary term is linked to the production of oil and gas in paying quantities. Here, the lease as to Blackacre stated that the primary term lasted from April 1, 2009 until April 1, 2011. The secondary term began after April 1, 2011 during which production must have occurred in paying quantities. In addition, the Blackacre lease required that Big Oil begin operations for drilling a well to a depth of at least 1000 feet within 1 year or else pay a delay rental. Such delay rental was due on or before April 1, 2010. Here, Big Oil had begun to drill a well on February 15, 2010 but had ceased operations. The drilling only went down to a depth of 300 feet. Because Big Oil had abandoned its efforts to drill, it could not satisfy the lease condition that it begin drilling operations to a depth of at least 1,000 feet. Therefore, Big Oil could not meet the basic requirement under the primary term.

Big Oil's other option under the lease was to pay a delay rental to allow Big Oil the extra year to continue drilling and attempting to produce oil in paying quantities. It failed to make that payment in a timely fashion. The force majeure clause of the lease is unlikely to be effective to prevent Jim from terminating the lease. Under Texas law, a delay rentals clause that states that "unless" delay rentals are paid the lease is terminated creates a condition that terminates automatically upon the failure of the condition to occur. Here, therefore, when Big Oil failed to pay the delay rental as required, the lease automatically terminated. But under Texas law if a lessor accepts a late delay rental payment, the lease is revived. The question here is whether or not Jim accepted the delay rental. Under these facts, it appears that Jim received the delay rental payment on April 30, 2010 and that he returned the payment to Big Oil on May 4, 2010. This was only a 4 day period during which Jim held the delay rental. Under Texas law, a lessor must be given a reasonable time to return a late delay rental payment. Here, 4 days is within the reasonable time necessary for Jim to receive the payment and letter and mail them back.

Therefore, the late delay rental payment did not extend the primary term of the lease.

The force majeure clause will not apply to the payment of the delay rental. Under Texas law, the force majeure clauses are strictly construed. Here the force majeure clause stated that it only applied to "drilling and other operations." Here, the payment of a delay rental is certainly not a drilling activity. Nor does it fall under the category of other operations because a delay rental is purely a payment. Therefore, the force majeure clause does not apply. Therefore, the Blackacre lease has been terminated.

12(2) Redacre

The Redacre lease has not been terminated.

Under Texas law, an oil and gas lease contains two terms, a primary term and a secondary term. The primary term is generally for a stated period during which the lessee is not bound to begin any type of drilling operation at all. The secondary term is linked to the production of oil and gas in paying quantities. Here, the lease as to Redacre stated that the primary term lasted from April 1, 2009 until April 1, 2010. After April 1, 2010, the secondary term began during which production must have occurred in paying quantities. Under these facts, Big Oil properly drilled a well and began production in paying quantities on February 15, 2010. From then until April 5, 2010, the Redacre well was producing in paying quantities and the secondary term continued. Redacre's lease was not terminated due to the temporary cessation of production due to the lightning strike. Under Texas law, a temporary cessation of production is permitted as long as repairs are begun under a reasonably prudent operator standard. Here, Big Oil began repairs immediately and they were completed within 10 days. 10 days is only a temporary cessation of production. Because repairs were begun immediately, Big Oil complied with its reasonably prudent operator standard.

In addition, the force majeure clause in the lease stated that if drilling or other operations are delayed as a result of any cause beyond the control of Big Oil, the time of the delay was not to be counted against Big Oil. Here, a lightning strike on the oil well was something Big Oil could not control. Therefore, the delay to operations as a result of the lightning strike cannot be

counted against Big Oil anyway. Therefore, under the force majeure clause the Redacre lease has not been terminated.

END OF EXAM

12)

1. Big Oil's lease of Blackacre is terminated. The issue is whether or not the circumstances surrounding the delivery of the delay rental payment were excused under the force majeure clause of the Blackacre lease. According to the Blackacre lease, the lease would terminate at the end of the first year (April 1, 2010) of the lease if oil or gas were not produced in paying quantities or a delay rental of \$3000 was not paid on or before that date. Payment of the delay rental would extend the lease another year; however the lease would terminate at the end of the second year if oil or gas were still not produced in paying quantities. The delay rental clause provided conditions that a delay rental payment was required if operations for drilling a well to at least 1000 feet were not underway by the end of the first year. The gas well completed on February 15, 2010 was only to 300 feet and was immediately shut-in. The well was not returned to or progressed beyond the 300 foot well and therefore this well would not satisfy the condition under the delay rental clause. The production of the gas well, if it had been continuous and in paying quantities (defined as production revenue greater than operating costs and royalty payments), the delay rental would not have been required. However, Big Oil did not comply with either of the conditions in the habendum clause of the lease term or the delay rental requirement. Big Oil argues that they attempted to deliver the required delay rental before April 1, 2010 but an accident beyond their control prevented payment and the delay in payment is excused by the force majeure clause of the Blackacre lease. Big Oil is not excused for the delay in making the delay rental payment. A force majeure clause only effects drilling and other operations occurring on the lease premises. The accident involving the Big Oil employee charged with delivering the payment, while it may have been out of Big Oil's control, did not concern the drilling or operations in order to excuse the delay under the force majeure clause. Big Oil failed to either produce in paying quantities, commence drilling of a well to a depth of at least 1000 feet, or timely pay the delay rental; therefore Jim is right to say that the Big Oil lease on Blackacre has been terminated.

2. Big Oil's lease on Redacre has not been terminated and will continue as long as oil or gas is being produced in paying quantities on Redacre. The issue is whether the temporary shutdown caused by the lightning strike constitutes a stoppage of production in paying quantities to terminate the lease. Temporary stoppages in production due to equipment failure or other

reasons familiar to drilling operations are not considered stoppages of production in paying quantities for habendum clause purposes if certain conditions are met. The lessee must make timely and diligent efforts to correct the problem in order to recommence drilling or production in paying quantities. Here, Big Oil's production was stopped because a lightning strike caused production to temporarily cease. Prior to this stoppage, the primary term of the Redacre lease had expired, but the oil well was producing in paying quantities effectuating the extension of the lease under the habendum clause. Big Oil began repairs immediately and completed repairs within 10 days returning the Redacre well to production in paying quantities. The temporary stoppage was excused as a normal delay in production and did not effectively terminate the lease as a violation of the habendum clause. Also, Big Oil could excuse the delay under the force majeure clause of the Redacre lease. Unlike the event causing the termination of the Blackacre lease, the lightning strike on Redacre was a cause beyond Big Oil's control and delayed operations and production on Redacre. According to the force majeure clause, the delay in production would not be counted against Big Oil and the lease would not be terminated for the delay.

END OF EXAM