1. The issue is who owns what share of the mineral estate. When a grantor conveys a greater interest than he has to convey, the portion he purported to retain will be decreased and move to the grantee to satisfy his conveyance.

Here, North Ranch mineral estate was held one-half by Bill, one-half by Shelly. When Bill conveyed to Craig and reserved a "one-fourth interest, Craig was receiving a three-fourth" interest in the mineral estate, as there was no mention in the deed of Shelly's' existing one-half interest. Therefore, Bill conveyed a three-fourth interest to Craig when he could only convey a one-half. However the partition deeds were recorded, and as such, Craig was on notice of the interest held by Shelly at the time of the conveyance to him by Bill. Therefore, the proper ownership in the mineral estate of North Ranch is one-half interest to Shelly and one-half interest to Craig, with no interest remaining in Bob's estate.

Therefore, the proper royalty payments would be one-half to Shelly and one-half to Craig.

2. The issue is if acceptance of a shut-in royalty payment would extend this lease. A shut-in clause permits a production company to retain their rights to production by extending the lease. Courts generally construe these clauses rather strictly. The clause in the lease requires "a gas well capable of production "being completed, not merely determined by the production company.

Here, a well capable of production has not been completed, and as such the clause has not been triggered. The acceptance of the shut-in royalty payment by Craig and Shelly would not operate as a waiver nor extend the term of the lease, because the shut-in clause is not satisfied. Estoppel or reliance would not apply.

Therefore, the acceptance of the payment by Shelly and Craig would not extend the lease term as no well has been completed which is capable of production.

END OF EXAM

1. The royalty payment should be divided equally between Shelly and Craig. The issue is what amount of mineral interest do both Craig and Shelly hold. The mineral interest a person holds is determined at the time of conveyance and based on what percentage the grantor reserves to himself what percentage he grants to the grantee. To begin, Shelly had a 1/2 mineral interest in North because she reserved her undivided 1/2 interest in any oil, gas and other minerals in and under that may be produced from North Ranch when she conveyed to Bill. This means that Bill had the other 1/2 mineral interest at the time. When Bill conveyed North Ranch to Craig, Bill expressly reserved an undivided 1/4 of all oil, gas, and other minerals in and under and that may be produced by North Ranch. Since Bill did not mention that he only had a 1/2 interest in North Ranch, and not a full 100%, Craig thought he was receiving a 3/4 mineral interest. This presents a problem that can be solved by the Duhig doctrine. The Duhig doctrine states that when a grantor appears to grant more than what he owns, the mistake will be construed in favor of the grantee. Here, since Craig thought he was receiving a 3/4 mineral interest, Bill will be required to fix that mistake to the best of his ability by conveying all of his interest in North Ranch. Since Bill only has a 1/2 mineral interest, this is all he can convey to Craig, but this 1/2 interest is better than 3/4 of 1/2 interest. So, according to the Duhig doctrine, Craig will now have a 1/2 mineral interest in North Ranch, Bill will have no interest and Shelly will have the other 1/2 mineral interest in North Ranch. Royalty payments are divided according to mineral interests, so the payment should be paid 1/2 to Craig and 1/2 to Shelly.

2. No, the payment will not extend the term of the lease beyond the primary term. The issue is whether a shut-in royalty payment can extend a lease past the primary term. A shut-in royalty payment can only extend a lease past the primary term if a gas well capable of production is completed, but gas was not being sold or used. If this was the case, then a shut-in royalty payment would be considered to be production in paying quantities. Here, there is no evidence that the well was ever capable of production because the well Oilco drilled was a dry hole, meaning there was no oil or gas capable of being produced from it. Since the well was never capable of production, the shut-in royalty paymeny will not act as a substitute for production of paying quantities. and if there is no production of paying quantities at the end of the primary term, then the lease terminates. The fact that with additional equipment and months of work there may be a producing

well does not make a difference because at the time Oilco paid the shut-in royalty payment (on November 10, 2010) there was still no evidence of a producing well.

END OF EXAM

1) if the work on the well on NR results in produciton before Dec 5, 2001, how should the royalty payable under the lease be divided between Craig and Shelly?

The royalty should be divided 1/2 to each Craig and Shelly. The initial transfer of the property gave each party Bill and Shelly an undivided interest in both the mineaˈral and surface of the property. Later, Bill and Shelly decided to divide the property in the North and South Ranch. The North Ranch surface interest was given in fee simple to Bill and Shelly reserved a 1/2 mineral interest in the North Ranch. Subsequently Bill sold the North Ranch to Craig, reserving a 1/4 mineral interest for himself. However, Bill did not mention that the North Ranch already had a 1/2 mineral interest to Shelly. Therefore, under the <u>Duhing</u> doctrine, Bill gave more interest to Craig the third person, than what he had. Bill purported to keep a 1/4 interest, Shelly had a 1/2 interest and Craig had a 3/4 interest. These interest equate to more than 1. Therefore, Bill looses his interest, Craig only takes Bill's prior interest of 1/2 and Shelly keeps his 1/2 interest. Although Bill gave everything upon his death to Shelly, at the time of his death Bill had NO interest in North Ranch to give to Shelly. Thus, the royalty should be divided 1/2 to Craig and Shelly.

2) Assuming no produciton, and that Craig and Shelly accepted a correct division of the Nov, 10, payment, would that payment have extended the term of the lease beyond the primary term?

No. Acceptance of a late delay rental payment will revive the lease in the primary term, but once the primary term terminates because there is no produciton in paying quantities, the lease cannot be revived by paying royalty and acceptance of royalty without a new written lease. Her, under the lease agreement, the lease expressly stated that "if gas well <u>capable</u> of produciton was <u>completed</u>, but gas was not being sold or used, within 90 days a<u>fter the gas well was shut in</u>, Oilco could pay $2,500 as an annual shut-in royalty." This is essentially a shut-in clause that allows Oilco to extend the life of the lease after being capable of produciton in paying qualities and being shut in. The facts state that the well was a <u>dry hole</u> (i.e., not capable of production in paying quantities) and was <u>not shut in</u>. Prodution in paying quantities is calculated as follows: revenue - royalty - produciton cost = positive number. Here, becaue there is a dry hole, there is no revenue and therefore no produciton in paying quantities. Morevoer, shut in is only applicable where after produciton in paying quantities, the oil is shut in from the market. Therefore there is no shut in. Accordingly, Oilco cannot use the shut in clause to extend the leas term by paying the $2,500. Even if Craig and Shelly both accept the purported shut in royalty, the term is not extended. To properly extend the term, there must be a signed writing evidencing a new lease between the parties. Because there is no such wirting, the term is not extended.

END!

END OF EXAM