

(1) No. Oilco is not entitled to form a pooled unit that includes the South part of Redacre. The language of the lease controls in this problem. While the lease gave Oilco the right to pool the leased acreage, it also provided that the “lease would remain in force only as to those lands within the pooled units on which production was already occurring at the end of the primary term.” The stated term was “one year from June 1, 2010 and as long thereafter as oil & gas are produced.” The primary term in this lease was one year. Therefore, after one year – or on June 1, 2011 – the lease only was in place as the lands within the pooled units that was producing. Because, on June 2, 2011, the South half of Redacre was not pooled and not producing, the lease was no longer in force over that land. Therefore, Oilco did not have the right to pool the land.

(2) Oilco may conduct seismic operations on Blackacre. When Bob conveyed Blackacre to Henry in 2008, but reserved “all oil, gas, and other minerals in & under” Bob split the surface estate from the mineral interests. When severed, the mineral interests are dominant over the surface estate. One with mineral interests are entitled to do what is reasonably necessary to collect oil, gas, and minerals, including exploring for those minerals. Seismic activity may be conducted on the land with Bob’s permission if it is reasonable and needed to gain more information to enable it to collect the minerals, even if Harry objects.

END OF EXAM

10)

1. The issue is whether the production of paying quantities on Redacre sustained the lease past the primary term

An oil and gas lease is divided into a primary and secondary term. The lease typically remains in effect for the secondary term so long as production in paying quantities happens.

Here, the lease for Redacre set the primary term for 1 year and the secondary term for so long thereafter as there is production in paying quantities.

Oil and gas leases may provide for pooling clauses. Under a pooling clause the oil and gas company combines two different tracts into a single unit. Production on any part of the pooled unit maintains the lease for all tracts that are subject to the pooling. However, a lease may contain a Pugh clause which provides that the lease is not maintained on a pooled tract except for the part that is within the pooled unit which is producing paying quantities. The part of the tract outside the pool must be maintained without regard to whether paying quantities are produced as to the whole tract.

Here, Redacre's lease had a pooling clause and Oilco pooled the north part of Redacre. Redacre's lease also contained a Pugh clause which provided that the lease would remain in force past the primary term only as to those parts of the tract subject to the pooling clause which were producing paying quantities. The language of the clause overrides the general rule that production on one part of the tract saves the lease as to the entire tract. In other words, because of the Pugh clause in the Redacre lease, Oilco would have to produce in paying quantities on the parts of Redacre that were not subject to the pooling agreement to maintain the lease into the secondary term. Here, the southern part of Redacre was not pooled. There was production in paying quantities within the pool and the well was even on Redacre so there was production in paying quantities on Redacre. However, because of the Pugh clause, the lease remained in force only as to those acres within the pool. Oilco did not produce in paying quantities on the south part of Redacre outside the pool or even drill a well on that part of the tract outside the pool.

Therefore, the lease terminated as to the southern part of Redacre outside the pool. Oilco cannot pool the southern part because it does not have a valid lease over that part of Redacre.

2. The second issue is what rights does the surface estate owner have as to mineral interest operations

Real property consists of 2 estates: the surface estate and the mineral estate. These estates can be severed. One person may own the surface estate and another the mineral estate. The mineral estate is the dominant estate. Therefore, the owner of the minerals can do whatever is reasonably necessary to produce the minerals he owns in the mineral estate. This right is subject to the Accommodation Doctrine under which the mineral estate, in producing minerals, must reasonably accommodate a prior use of the

surface estate if there are alternative reasonable means to do so.

Here, there is no indication in the facts that there is a prior use of Balckacre's surface estate. Absent such a prior use which producing the minerals would harm, the mineral estate owner may do whatever is reasonably necessary to produce the minerals. Exploration of the mineral estate through seismic operations is reasonably necessary to produce the mineral estate and therefore the surface estate cannot complain when the dominant estate exercises such right.

Therefore, Oilco can conduct seismic operations on Blackacre regardless of Harry's (the surface owner) objections.

END OF EXAM

10)

(1) No; Oilco lost its interest in the southern half of Redacre when the primary term expired, according to the plain language of the Pugh clause.

The first issue is whether Oilco is entitled to form a pooled unit on portion of Redacre not within the original pooled unit after the expiration of the primary term of the lease. An oil and gas lease is both a conveyance and a contract, and it conveys to the lessee a fee simple determinable in the minerals on the land. In most oil and gas leases--as well as in the leases in this problem--the interest is divided into a primary term and a secondary term. The primary term is usually a fixed period of time that the lessee has a right to produce the minerals on the land, during which time the lessee has no implied duty to drill or produce. At the end of that term, the lease will continue into the secondary term for so long as there is a well on the land producing in paying quantities (or some substitute for production, according to the terms of the lease). One of the main substitutes for production is a pooling agreement. Under a pooling agreement, the lessee has a right to "pool" certain acreage with nearby lands and upon doing so, a well drilled on any of the pooled acreage will be treated as a well that holds each of the individual leases into the secondary term. In return, the landowners get a portion of the royalties for wells drilled in the pooled unit, even if the well is drilled on someone else's land. In this case, Oilco had permission to pool Blackacre and Redacre together, which it did. As a result, under the general rule, the well drilled on Redacre will hold the leases on both Redacre and Blackacre into the secondary term, so long as it is producing in paying quantities. The facts tell us that the well is producing in paying quantities, so that test is met. However, the Redacre lease had an additional clause relating to pooling that said that the lease would continue into the secondary term "only as to those lands within the pooled units upon which production was already occurring at the end of the primary term." This is called a Pugh clause, and it allows a lessee to get some of his land back if it didn't make it in the original pooled unit, rather than allowing the lessee to keep control of land that wasn't earning any royalty. In this case, the southern portion of Redacre was not included in the pooled unit and so according to the normal operation of a Pugh clause, that means Oilco lost its interest in that portion of Ron's land on June 1, 2011 when there was no production on the southern half. However, this question is a bit more complicated because under the general rule of oil and gas leases, if a well is drilled anywhere in the leased unit (i.e. Redacre in this case), it will hold the entire leased unit into the secondary term. Without the pooling, it would be very simply--Oilco had a productive well on Redacre, and therefore, it gets to keep its lease on all of Redacre until that stops. But the pooling clause complicates things because it says that the lease remains in force only on the lands in the pooled unit "*upon which production was already occurring*". As a result, Ron

could argue that because production was not occurring on the southern half, and because it was not in the pooled unit, the lease did not carry into the secondary term for the southern half. Oilco could propose a reasonable interpretation to the contrary, but as a rule of interpretation in oil and gas law, all leases are construed against the lessee (the party who purportedly drafted the lease). As a result, Ron's interpretation will win out and Oilco does not have any interest in the southern half of Redacre. Therefore, it has no right to pool the southern half of Redacre.

(2) Yes because in Texas, the mineral estate is dominant and may use as much of the surface as is reasonably necessary to produce the oil and gas.

The next issue is whether Oilco can conduct seismic operations on Blackacre in spite of the surface owner's objection. In the law of oil and gas, the mineral estate can be severed from the surface estate, that is ownership of those estates can be in different people. That's what happened here when Bob sold Blackacre to Harry, but reserved for himself "all oil, gas, and other minerals in and under and may be produced from Blackacre." This language has been interpreted as reserving all of the mineral interests in the land, so that means that Bob owns the minerals under Blackacre and Harry owns the surface. Therefore, Bob had every right to enter into the oil and gas lease with Oilco, and when he did so, Oilco took all of the rights he would have in producing the minerals from under Blackacre. As a general rule, when the mineral and surface estates are severed from one another, the mineral estate is dominant, meaning that it has the right to use the surface as reasonably necessary to produce the oil and gas. The ultimate question in this case would then be whether seismic operations are reasonably necessary to produce the oil and gas. There is no evidence in the problem that seismic operations--a well recognized method for determining where the deposits of oil and gas reside--was anything but reasonably necessary, and therefore, Oilco--as the mineral interest holder--had a right to conduct such operations. This is in spite of Harry's objections because as the surface owner, his interests are subordinate to the mineral interest holder. The only way that Harry might be able to stop the seismic operations is with the accommodation doctrine, in which Harry must prove that there is an existing surface use of the land that would be disturbed by the seismic operations and that there was another reasonable alternative by which Oilco could accomplish the same purpose. The facts don't indicate that those facts exist, and as a result, Harry is probably stuck with the seismic operations.

END OF EXAM