

Question 10 – February 2014 – Selected Answer 1

1) No, Rob is not entitled to deny Ace access to Blackacre.

Under Texas law, a valid oil and gas lease transfers a fee simple determinable mineral estate to the lessee. This interest is deemed to be the dominant estate, while the surface estate is considered the servient estate. A lessee therefore has rights to reasonable use of the surface estate in order to conduct valid oil-and-gas operations.

Here, Rob validly granted Ace an oil and gas lease, therefore granting Ace reasonable use and access to the surface. Rob infringed upon this right by installing a locked gate across the new road and refusing to provide a key to Ace. Rob was not entitled to do this, given the valid dominant interest he had conveyed to Ace in the lease. Therefore, Rob's actions were inappropriate.

2) Rob can sue Ace for damages and injunctive relief.

Under Texas law, and as noted above, the mineral estate is considered the dominant estate vis-a-vis the surface estate. This means that a lessee may make reasonable use of the surface, even without further permission from the surface estate owner. However, this right to reasonable use is subject to an important limitation embodied in the accommodation doctrine. Under this doctrine, a mineral estate owner must accommodate a surface owner's use of the surface if the following conditions are satisfied: the surface owner must have a prior use; there must be a feasible alternative for oil-and-gas operations that does not impair the surface owner's prior use; and the alternative must be available on the particular land in question.

Here, these elements of the accommodation doctrine are satisfied. First, Rob's road to the water well existed prior to Ace's construction of its road and Ace's creation of the large mounds of dirt on Rob's road. Second, there is a feasible alternative to leaving large piles of dirt on a pre-existing road: namely, moving it away from the road into an area without a road. Finally, this alternative is available on Rob's property: Ace could easily move the dirt to another area, and could likely do so without undue expense. It is relatively inexpensive to move dirt, making it a sensible and reasonable alternative to leaving it on Rob's road. Indeed, the facts make clear the road could easily have been located a short distance away from the road. Consequently, Rob can validly sue Ace for any damages he suffered for Ace's failure to accommodate Rob's prior use of the surface, as well as injunctive relief requiring Ace to move the dirt off of Rob's road.

3) No, Big is not entitled to a share of the water-sale proceeds from Blackacre. The issue is whether water is part of the surface estate or the mineral estate.

Under Texas law, there are a number of substances that are deemed, as a matter of law, to be part of the surface estate. These include sand, lignite, and, as relevant here, water. If a substance is not deemed part of the surface as a matter of law, then the court applies one of two tests. If the conveyance of the property occurred prior to 1983, then the court asks whether any reasonable extraction of the materials would cause destruction to the surface. If so, the substance belongs to the surface estate. This is known as the "surface destruction" test. If the conveyance occurred after 1983, then the court applies the ordinary meaning test, which asks whether the substance fits within the ordinary meaning of "minerals." If so, the substance belongs to the mineral estate.

Here, water belongs to the surface estate as a matter of law. Regardless of whether the conveyance of the estates occurred before or after 1983, Texas law maintains that water belongs to the surface owner. Consequently, Big's acquisition of Sean's mineral estate has no bearing on its entitlement to proceeds from the water. Rob, as the surface estate owner, owns the interest in the water, and thus is not obligated to share the proceeds with any royalty interest owner.

Question 10 – February 2014 – Selected Answer 2

1. Rob was not entitled to deny Ace access to Blackacre.

The issue is whether Rob could but the locking gate across the access road to block Ace from access to Blackacre. The rule is that the mineral estate is the dominant estate and may use whatever part of the surface as is necessary to explore for and produce oil and gas. Additionally, being the dominant estate, that includes the rights of ingress and egress as well as access to water, sand, rocks, caliche, and other things on the surface estate so as to effectuate the production of oil and gas.

Here Rob had granted Ace the mineral lease in Blackacre. Ace has the dominant estate and has the right of ingress and egress as well as the use of the surface as is necessary to extract the minerals from the estate. Even though Rob was upset about Ace dumping dirt blocking one of his roads, his remedy is to sue for damages or an injunction, not to block access. Because Rob's surface estate is servient to the mineral estate, Rob was not entitled to block Ace's access to Blackacre.

2. Rob has the right to injunction on the dumping of piles of dirt on his road as well as damages for lost profits. The issue is what rights does Rob have against Ace for blocking the road. As stated above, the mineral estate is the dominant estate and he has the right to use the surface estate as necessary to extract the minerals. However, that rule is subject to some limitations. Specifically, if there is a preexisting use of the land, the mineral lease holder must accommodate the surface use if it is reasonable to do so, and they can still operate on the leased area.

Here the facts show that Ace was just blocking the road with piles of dirt. The facts further show that they could have just put the dirt a short distance away. That would not be unreasonable for them to do. Rob needs to make a showing of good faith and unlock the gate, then he needs to make a request of Ace to move the piles of dirt, citing how the piles make his road impassible and that it would not be a burden to put the piles of dirt just a short distance away. Ace should move the piles of dirt to accommodate the preexisting use of the surface estate and because the remedy is reasonable and located on the leased land, this would fall into the exception of the mineral estate's dominance over the surface estate. Rob also can sue for damages for the loss of income from the blocked roads. However, because he resorted to self-help by constructing and locking a gate, he may not be able to recover. A court likely will find he acted in bad faith and that may stifle his recover of damages. In conclusion, if Ace doesn't willing move the piles of dirt, Rob should ask the court for an injunction and damages.

3. Big is not entitled to a share of water-sale proceeds from Blackacre. The general rule is that if it looks like a mineral and the common usage of the term, the thing is a mineral, then it's a mineral. However, other rules preclude this assumption. Anything 200 feet below the surface and above is considered part of the surface estate. Water is generally assumed to be part of the surface estate, this is bolstered by the fact that the dominant estate is allowed to use the water of their surface estate as necessary to extract the minerals. Also, a reserved nonparticipating interest in oil gas and other minerals is simply that, an interest in the minerals. There is no right to sever, to execute or even explore for and produce. That right is only an interest in the profits made from the production of oil and gas and other minerals in paying quantities.

In this case, Big purchased Sean's reserved 1/8 royalty interest in oil, gas, and other minerals. This means they are entitled to receive 1/8 of the value of the oil and gas at the well head. There are no facts to indicate how deep the water well is located. Water is generally assumed to part of the surface estate. Because Big only owns the 1/8 non-participating royalty interest in the minerals, they do not have a claim to the profits of the selling of water on Rob's land.

Question 10 – February 2014 – Selected Answer 3

1. Rob was not entitled to deny Ace access to Blackacre. The issue is whether a surface owner may obstruct the mineral interest holder from developing the minerals if they have frustrated your use of the land. The mineral estate is the dominate estate over the surface estate. The surface estate and surface owner must allow the mineral owner reasonable use of the surface estate to develop the minerals in the ground. As Ace has entered into oil and gas lease with Rob, Ace was entitle to reasonable use of the surface estate to develop those minerals. Building a road that did not obstruct Rob's use of the land (other than the piles of dirt which will be addressed shortly) was a sufficient and reasonable use. This use should have been allowed and Rob was not entitled to block access to the road. By blocking access, Rob was in breach of the oil and gas lease and violated the law. The law does not favor or allow self-help remedies or retaliation if the oil and gas company does not follow the accommodation doctrine. Rob should seek a judicial remedy rather than self-help.

2. Rob is entitled to have Ace move the piles of dirt and is entitled to damages that Ace caused as a result of the temporary blockage. The issue is whether the accommodation doctrine applies and whether Ace violated the accommodation doctrine with its actions. The accommodation doctrine applies if: (1) there is a prior existing use of the surface estate, (2) there is a reasonable and economic alternative to the mineral owner's desired use or practice, and (3) that reasonable alternative is available in the area of the oil and gas lease. Here, there was a prior use of the land. Rob received income from the land based on the sale of water located on Blackacre. This use was in progress when Rob entered into the oil and gas lease with Ace. Second, there was a reasonable and economical alternative to dumping the dirt on Rob's roads. The facts specifically state the dirt could have been easily located a short distance away from the road. This would be reasonable and this would require little effort or money on the part of Ace. Finally, that reasonable use could be employed on Rob's land. It was entirely possible. As a result, the accommodation doctrine should have applied an Ace should have accommodated Rob's surface use. As a result of violating it, Rob is entitled to an injunction to make Ace move the dirt and to damages that resulted from Ace's behavior.

3. Big is not entitled to a share of the water-sale proceeds. The issue is whether a non-participating royalty interest holder gives the holder a right to the royalties from the sale of water. Though Big acquired Sean's interest in "oil, gas, and other minerals" under Rob's surface, the water is not a part of this interest. Water is not a mineral as a matter of law. Though it is below the physical surface of the land, Texas law deems it to belong to the surface estate. As a result, the surface holder (Rob) is entitled to all of the proceeds that result from its sale. Big has no claim to this money.