

FINAL EXAMINATION
MINING, OIL & GAS LAW

P.N. Davis

Wednesday, May 12, 1993

8:30 - 11:00 AM

THIS IS A TWO AND ONE-HALF (2½) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF FOUR (4) PAGES.

THIS EXAMINATION CONTAINS FOUR (4) QUESTIONS.

I = 30 min.

II = 45 min.

III = 45 min.

IV = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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THIS IS A CLOSED BOOK EXAMINATION.

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Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 2 hours, 30 minutes. You will be given 2 hours, 30 minutes to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.
5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.
6. The difference between triumph and disaster may lie in a careful reading of the questions.

I.

(30 minutes)

Harold Page executed an oil & gas lease to Big Oil Corp. containing the following clause:

This lease shall remain in force for a term of 10 years from this date and as long thereafter as oil or gas is produced from said land or land with which said land is pooled.

Nine years and ten months after the lease was executed, Big Oil began drilling a well. It was completed ten years and two months after the lease was executed. It began producing oil in quantities sufficient to defray operating costs. At the end of the first year of operation, production from the well declined to an amount that defrayed 95 percent of operating costs. Three months later, Big Oil began drilling a second well, which was completed six months thereafter. This well produced covered all operating costs up to the time of the lawsuit.

Page brought suit to declare the lease terminated. Should the court so declare? Discuss all relevant legal issues. State a result.

II.
(45 minutes)

First, Anderson conveyed the fee simple in "coal and other minerals" in and under Blackacre to Benson,

SAVE AND EXCEPT an undivided one-sixteenth (1/16th) interest in and to all coal and other minerals produced and saved from said land free of cost.

Second, Benson conveyed a fee simple in Blackacre to Corker, reserving, An undivided one-half (1/2) interest in and to all coal and other minerals in and under said land.

Anderson's reserved interest was not mentioned in Benson's deed to Corker.

Third, Benson executed a lease of "all coal and other minerals" to Diamond Coal Co., subject to a 1/8th royalty.

Fourth, Diamond Coal opened a surface coal mine. In order to reach the coal, Diamond Coal stripped off the overlying limestone (100 feet thick) and sold it to Eureka Concrete Co. as raw material for highway aggregate (gravel).

A.

Diamond Coal paid a 1/16th royalty to Anderson and a 1/16th royalty to Corker; it paid nothing to Benson. Benson brought suit against Diamond Coal for payment of unpaid royalties on coal produced, claiming (1) that he owned a 7/16th mineral interest, that Anderson owned a 1/16th mineral interest, and that Corker owned a 1/2 mineral interest, and (2) that the 1/8th royalty specified in the lease should be so apportioned. Also, he sought a similar share of royalties on limestone sold by the mine.

Who is entitled to what shares of royalties on coal produced by Diamond Coal? Who is entitled to what shares of royalties on limestone produced? Discuss all relevant legal issues. State a result.

B.

EPA sued Diamond Coal to enjoin the sale of the limestone and to require it to replace it in the coal pit after the coal had been removed. Should the court grant that injunction? Discuss all relevant legal issues. State a result.

III.

(45 minutes)

A.

Davis Oil and Steamboat Petroleum held separate oil & gas leases on adjacent properties in the Hulston Field. The State Oil & Gas Commission imposed compulsory pooling much of the Hulston Field, creating several drilling and production units. One pooling unit encompassed all of Davis's lease and half of Steamboat's lease and authorized the drilling of one well on the Davis portion of that unit; the remainder of Steamboat's lease was not included in any pooling unit. Davis invited Steamboat to participate in the drilling of that well, but Steamboat declined. Davis then drilled a well, which proved to be a dry hole. Davis tendered invoices totaling \$50,000 for Steamboat's proportionate share of drilling costs, which Steamboat refused to pay. Davis then sued Steamboat for that sum. Should the court order Steamboat to pay \$50,000 for its share of drilling costs? Assume the compulsory pooling statute does not address this question. Discuss all relevant legal issues. State a result.

B.

Steamboat acquired its lease from O'Riley. Its lease provided:

This lease shall remain in force for a term of 10 years from this date and as long thereafter as oil or gas is produced from said land or land with which said land is pooled.

At the end of the primary term, O'Riley sued Steamboat for failure to produce oil and gas anywhere on its lease. Steamboat defended that under the compulsory pooling order, it was not allowed to drill a well Steamboat's portion of the pooling unit and, therefore, could not produce oil and gas. Should the court declare the lease terminated? Discuss all relevant legal issues. State a result.

C.

Suppose (1) that Davis Oil's well had produced oil and gas in paying quantities, and (2) that Steamboat Petroleum's lease contained a Pugh clause. Should the court grant O'Riley's request for termination of Steamboat's lease? Discuss all relevant legal issues. State a result.

IV.
(30 minutes)

Briefly describe the significant of the following:

- (1) shut-in royalty
- (2) rule of capture
- (3) non-ownership theory
- (4) physical waste
- (5) MER
- (6) accommodation doctrine
- (7) broad form deed
- (8) "unless" clause
- (9) implied covenant to prevent drainage
- (10) executive right

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ANSWER SHEET

I. (30 min.)

primary term/secondary term; no commencement of drilling or continuous operations clauses

- production must begin by end of primary term -- didn't
- production must be in paying quantities -- declined to less than that within 1 yr.
 - define *paying quantities*
- cessation of production cannot exceed 60 days -- cessation continued for 9 months

II. (45 min.)

types of mineral interests conveyed:

- define fractional mineral interest & royalty interest
- discuss typical granting language for each
- Anderson-Benson: mineral fee, reserving nonparticipating royalty
- Benson-Corker: 1/2 mineral fee
 - Benson-Diamond: mineral lease, subject to 1/8 royalty (1/2 to Anderson, 1/2 to Corker; none to Benson)

define minerals:

- Anderson retains limestone - not a "mineral" [this is a debatable point]
- Anderson reservation, Benson royalty reservation, and Benson lease do not cover limestone (is a "common variety")
- surface owner Corker owns limestone (is a "common variety"); gets all of 1/8 royalty, if he ratifies lease *re* limestone

SMCRA requires restoration of approximately original contours

- replacement of limestone overburden is necessary to accomplish such restoration; injunction should be granted

III. (45 min.)

A. compulsory pooling:

nonoperating interest cannot be forced to participate; contribution to drilling costs is made only out of production, if any

B. production from pooling unit:

production from any part of a pooling unit is deemed to be production from all leases within the unit

failure to produce anywhere in the unit causes termination at end of primary term

it is no defense that the other operator within the pooling unit is the only one entitled to drill --

there must be production from somewhere in the pooling unit to save the lease

the pooling clause does not affect the obligation to produce from the unpooled portion of the lease

C. Pugh clause:

define Pugh clause

Pugh clause saves only portion of lease within pooling unit; remainder of lease terminates if there is no production on it

since pooling unit had production, that portion of Steamboat's lease is saved