

FINAL EXAMINATION
MINING, OIL & GAS LAW

P.N. Davis

Tuesday, May 10, 1994

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 = 75 min.

II = 45 min.

III = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

* * * * *

THIS IS A CLOSED BOOK EXAMINATION.

* * * * *

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.

**DON'T FORGET ANNULAR SOLAR ECLIPSE AT 11:48-11:55 AM
TODAY.**

I.

(75 minutes)

Maggie Brooks owns land in the State of Fremont which apparently contains both natural gas and sulphur. She executed an oil and gas lease of 239 acres to Branson Oil company on March 15, 1978. The leasehold was located in the Ozark Sands gas field. The lease was for a primary term of 3 years and *"as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days"*.

The lease defined "operations" as follows:

[O]perations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, or other minerals, excavating a mine, production of oil, gas, or other mineral, whether or not in paying quantities.

The lease also provided:

In the event a well is shut-in for any reason, lessee shall have the right to pay to lessor the sum of one thousand dollars (\$1000.00) within ninety (90) days after the day that the well is shut-in, and within ninety (90) days of each anniversary of that day, for a period not to exceed three (3) calendar years, and while such royalty is so paid such well shall be considered as a producing well.

The lease also contained a Pugh clause.

The lease also contained a non-standard typewritten clause which provided, *"Lessee agrees to drill wells only during the summer months."*

A single well was drilled on the leased tract in 1980, and natural gas was produced thereafter. During this period, Union Fremont Pipeline Co. purchased gas.

In 1984, the Fremont Oil and Gas Commission issued an order establishing 200 acre spacing units in the Ozark Sands gas field and requiring pooling of the production in each spacing unit. Two hundred acres of Brooks's 239-acre leasehold was located in Unit 12. The remaining 39 acres was located in Unit 13. The Branson Oil gas well was located in Unit 12. Ryder Oil Co. operated a gas well in Unit 13 on land leased from a third party.

Union Fremont stopped purchasing gas from the single well on the Brooks's leasehold in Unit 12 after October 1, 1987. Branson Oil shut-in the gas well at that time. Union Fremont permanently disconnected that well from its gas pipeline system on June 2, 1989. Ryder Oil's well on Unit 13 continues to produce gas to the present time.

On January 15, 1988, Branson Oil tendered to Brooks a check for \$ 1000.00, which Brooks cashed the next day. On the same day in 1989, Branson Oil tendered to Brooks another check for \$ 1000.00, which she cashed the next day. Branson Oil did not tender any further checks to Brooks.

On January 2, 1990, Branson Oil sought Brooks's consent for access to another part of Unit 12 in order to drill a new well. Brooks refused to grant access. Branson Oil made no further requests to drill.

Now in 1994, Brooks seeks your legal advice. She wants to know (1) whether she can require Branson Oil to drill a new well on Unit 12, (2) whether she can recover another \$ 4000.00 from Branson Oil, (3) whether she can terminate the lease, and (4) whether she can lease the tract to a sulphur mining company without first terminating the gas lease. Discuss all relevant legal issues. Consider the effects, if any, of the provisions of the State of Fremont Oil and Gas Conservation statute; *see* Appendix, below. State a conclusion for each question.

II.

(45 minutes)

In 1938, the Federal Land Bank of Coal City conveyed to Nan Shaw a warranty deed to a certain farm in the State of Jefferson. The deed contained the following clause:

SAVE AND EXCEPT an undivided one-sixteenth (1/16th) interest (same being one half (1/2) of the usual one eighth (1/8) royalty) in and to all of the coal and other minerals in, to and under and that may be produced from the land herein conveyed to be paid or delivered unto said Bank as its own property free of cost to it from royalty coal and/or other minerals FOREVER, together with the right of ingress and egress, at all times for the purpose of storing, treating, marketing and removing the same therefrom. Said interest shall not participate in the bonus paid for any coal or other mineral lease covering said land, nor shall it participate in the money rentals which may be paid to extend the time within which a mine may be begun under the terms of any lease covering said land. In the event coal and/or other minerals are produced from said land, then said Bank shall receive a full one-sixteenth (1/16th) portion thereof as its own property, to be paid or delivered to said Bank free of cost to it.

In 1964, Nan Shaw convey to Leonard Young the following interest in the farm:

An undivided one-half (1/2) interest in and to all of the coal and other minerals in and under, and that may be produced from said land.

Leonard Young in 1982 executed a lease to St. Paul Coal Corp. of coal and other minerals in and under the farm. The lease had a term of 15 years "*and so long thereafter as coal and other minerals are produced.*" The lease specified a royalty of one-eighth (1/8) of coal and other minerals produced. Shaw was not asked to join the lease.

The lease contained the following provision:

Lessor hereby authorizes lessee the full free and unrestricted right and privilege to mine and remove coal and other minerals from under said land, without liability for any damage that may arise to the surface of said land or any improvements thereon, by reason of said mining and removal of said coal and other minerals

In 1993, St. Paul Coal opened a surface mine on the leasehold. It used equipment previously used in a surface coal mine it owned about 10 miles away; that mine had been in operation for 15 years. It gave notice to Young requiring him to vacate the farmhouse on the farm by July 1994, so that it could remove the coal beneath it.

Young seeks your legal advice on the following questions:

- (1) Is the Federal Land Bank entitled to a 1/16th or 1/128th share of the coal

produced by St. Paul Coal? Does the Bank's share reduce the share payable to Young?

- (2) Is Shaw entitled to a 1/2 or 1/16th share of the coal and other minerals produced by St. Paul Coal? Does Shaw's share reduce the share payable to Young?
- (3) Is Young's lease to St. Paul Coal valid without Shaw's signature?
- (4) Does Shaw have the right to execute a separate coal lease?
- (4) Does St. Paul Coal have the right to use surface mining technology to mine the coal under the lease?
- (5) Does St. Paul Coal have the right to mine coal under the farmhouse?
- (6) Must St. Paul Coal restore the surface after mining is completed?

STATUTORY APPENDIX TO QUESTIONS I AND II.

STATE OF FREMONT OIL AND GAS CONSERVATION STATUTE

§ 6. To encourage orderly development, the Fremont Oil and Gas Commission may establish the size and shape of development units for all known Reservoirs. Such units should be of approximately uniform size and shape for the entire Reservoir. The size of a development unit should be the area that can be efficiently and economically drained by one well. ...

The Commission may establish development units of different sizes or shapes for different parts of a Reservoir or may grant exceptions to the size and shape of any development unit or units. ...

An order establishing development units shall specify the location for the drilling of wells on those units, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time the notice of hearing was issued. ...

An order establishing development units for a Reservoir shall cover all lands determined or believed to be underlain by that Reservoir, and may be modified by the Commission from time to time to include additional lands determined to be underlain by the Reservoir or to exclude lands determined not to be underlain by the Reservoir.

...

§ 7. When two or more separately owned tracts are embraced within an existing or proposed development unit, or when there are separately owned interests in all or a part of a unit, the Persons owning such tracts or interests may voluntarily pool their tracts or interests. In the absence of voluntary pooling and on application by any Owner within a unit on which there is no existing well or by any Person owning an interest or tract in a unit on which there is an existing well, the Commission may enter an order pooling all tracts and interests within the unit.

All operations, including, but not limited to, the commencement, drilling, operation, or production of a well upon any portion of a pooled unit shall be deemed for all purposes the commencement, drilling, operation, or production of a well upon each separately owned tract or each separately owned interest in the unit. That portion of the production allocated to a separately owned tract or separately owned interest included in a unit shall be deemed to have been produced from such tract or interest.

Each pooling order of the Fremont Oil and Gas Commission shall specify which Owner will drill, complete and operate a well on the pooled unit. All Owners shall share in the reasonable costs of drilling, completing, and operating the well. Any Owner whose tract or interest has been involuntarily pooled shall be permitted, at his option, to pay his share of costs out of production

Production and costs associated with a pooled unit shall be allocated among the Owners in the same proportion each Owner's acreage in the unit bears to the total acreage in the unit

III.
(30 minutes)

Briefly define the following:

1. waste
2. subjacent support
3. paying quantities
4. Form 88 lease
5. maximum efficient rate
6. "or" clause
7. nonownership theory
8. delay rental
9. *Texaco Co. v. Short*
10. commencement lease

Mining, Oil & Gas Law
May 10, 1994

ANSWER SHEET

I. (75 minutes)

1. production: production or other "operations" required to preserve lease
 - 90 day cessation period; vastly exceeded
 - any production, not just "paying quantities" will preserve lease; no production at all after 1987
 - production anywhere on lease preserves lease
2. effect of spacing order: limits numbers of wells to 1 per unit
 - production anywhere in spacing unit preserves lease
 - compulsory pooling accompanies spacing unit
 - production in Unit 13 is partially attributable to lease; hence lease is preserved
3. effect of Pugh Clause: preserves only portion of lease within producing spacing unit
 - that is alteration of usual rule
 - portion of lease in Unit 13 is preserved
 - portion of lease in Unit 12 (where gas well was shut-in) is subject to termination
4. implied covenant to explore & drill further: define
 - enforceable only if "reasonable prudent operator" would do additional exploration or drill additional wells
 - could be enforced by specific performance
 - failure to comply is grounds for partial or full cancellation of lease
5. shut-in royalty clause: allows lessee to preserve lease after production ceases
 - \$1000 must be paid within 90 days after production ceased
 - here, it was tendered more than 90 days afterwards
 - late payment accepted; that waives 90 day limit
 - clause effective only for 3 years
 - Branson Oil exercised it for 2 years
 - payment is at discretion of lessee; lessor cannot require payment
 - at end of 2 years + 90 days following cessation of production, lessor has right to terminate lease
6. continuous operations clause: lessee may drill new wells
 - but only during summer months (because of non-standard clause)
 - offer to drill during January was properly refused by lessor
7. "other minerals": interpretation - all minerals or only similar minerals?
 - can lease sulphur only under latter definition of "minerals"
8. conclusions:
 - (1) lessor cannot require lessee to drill, unless "reasonable prudent operator" would do so; too late--lessee exercised option to abandon lease; lease terminated automatically not later than 90 days after 1-15-90
 - (2) lessor cannot require payment of shut-in royalty; that is in lessee's

discretion (besides, clause is only good for 3 years, not 6 years)

(3) lessor can terminate portion of lease in Unit 12--Pugh clause; portion on Unit is preserved by pooling clause + production

(4) lessor can lease sulphur--sulphur not a mineral similar to petroleum

II. (45 minutes)

1. Bank-Shaw reservation: retains a 1/16th nonparticipating royalty
 - specifies payment out of production
 - excludes bonuses and delay rentals
 - but, uses "in, under and that may be produced" language; that clause looks like an undivided fractional mineral interest
 - on balance, looks like a royalty
 - Bank is entitled to 1/16th share of gross production, free of production costs
2. Shaw-Young reservation: retains a 1/2 fractional mineral interest
 - uses "in, under and that may be produced" language
 - is a fractional mineral interest
 - Shaw retains right to execute lease of her 1/2 mineral interest
 - Shaw is entitled to 1/2 of gross production; must pay 1/2 of production costs
3. Young-St. Paul Coal lease:
 - is lease by one tenant in common of coal mineral right
 - in most states, one fractional mineral owner may lease minerals, subject to accounting
 - 1/8 royalty under lease goes 1/2 each to Young and Shaw; Bank gets 1/16th royalty, free of production costs
4. surface mining technology:
 - in all states today, surface mining may be used only if it was a common method in the region (or state) at the time of lease execution
 - no state continues to enforce traditional "broad form" deed language
 - surface mining had been conducted 10 miles away when the lease was executed
 - surface mining technology can be used
5. removal/destruction of farmhouse:
 - "accommodate doctrine" requires lessee to avoid impinging on curtilage during mining operations, if other mining methods could be used
 - here coal was under the farmhouse
 - probably, the house can be removed/destroyed to remove the coal
6. restoration of surface:
 - lease contains no clause imposing liability for surface damage
 - only one state (Ark.) imposes an implied covenant to restore the surface
 - but SMCRA and state statutes require reclamation to approximate original surface use, contour, and vegetation
 - restoration is required