

# **The Basics of Texas Oil and Gas Law: An Overview**

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## **THE BASICS OF TEXAS OIL AND GAS LAW: AN OVERVIEW**

The purpose of this course is to provide a basic introduction to oil and gas law for attorneys who are unfamiliar with this complex and extensive body of law. Additional courses dealing with specific areas, such as the oil and gas lease and conveyancing, are available for the lawyer who wants a refresher course in one or more of these subjects or desires to pursue the subjects in greater depth than the overview provided here.

### **I. INTRODUCTION: SOME FUNDAMENTAL CONCEPTS**

Any discussion of the basics of oil and gas law must begin with the underlying concepts of ownership. These are the rule of capture, the doctrine of correlative rights, and ownership-in-place.

#### **A. THE RULE OF CAPTURE**

In Texas as in all other oil and gas producing states the most fundamental doctrine of oil and gas law is the rule of capture. Without it, most of the elaborate regulatory structure that governs the industry, much of the language of the oil and gas lease and many of the most complex industry arrangements would be unnecessary. The same would probably be true of this course as well.

##### **1. The Rule of Capture**

Stated simply, the rule of capture provides that a person owns all of the oil and gas produced from a well bottomed on his own land, regardless of the substances' original location – regardless, indeed, of the fact that the well may have been deliberately located at a spot that would cause the maximum drainage of neighboring land.

The original bases of the rule of capture were judicial convenience and protection of the infant oil industry. The modern oil industry was born in Titusville, Pennsylvania on August 29, 1859 when Colonel Drake brought in his first oil well. At that time and for many decades thereafter geologists – to say nothing of lawyers and judges – knew relatively little of the mechanics of underground reservoirs or the drainage area of oil wells. In fact many people assumed that oil flowed beneath the soil in underground rivers. Landowners who complained that a neighbor's oil lessee had drilled a well a few feet from the property line in order to drain their land were told that proof of a well's drainage area was simply too speculative. This reasoning was bolstered by another consideration that court today might still find persuasive: Almost any traditional judicial remedy would be highly injurious to the initial company that took the risk of drilling. An injunction against draining wells would probably shut down almost every oil field. A recovery in damages for the value of oil drained would allow a nondrilling landowner to get part of the benefit of the oil beneath his tract without

risk, research or out-of-pocket expense. Moreover, the plaintiff whose land was being drained was not without a remedy. He could drill his own well to prevent further loss of oil and, perhaps, even cause counter-drainage from the adjacent tract.

Although Texas courts now occasionally speak of the rule of capture as a rule of property, its origin suggests that it might be more accurately characterized as a rule of non-liability for drainage.

## **2. Limitations on the Rule of Capture**

Few legal doctrines are absolute, and the same is true of the rule of capture. The most obvious limitation is contained in the rule itself. The well must be bottomed on the operator's own tract. If the operator slants the well so that it is bottomed on neighboring property, the operator has trespassed. The neighboring landowner can enjoin further production from the trespassing well and hold the operator liable in damages.

Negligent drilling that results in destruction of a neighbor's oil and gas may also result in liability. The leading Texas case is *Elliff v. Texxon Drilling Co.*, 210 S.W.2d 558 (Tex. 1948). A negligently drilled well blew out, and the resulting fire consumed enormous quantities of gas and oil drained from neighboring land. Although the destruction took place entirely on the defendant's land, the Texas Supreme Court ruled that the defendant was not shielded from liability by the rule of capture. The rule applies only to "legitimate operations"; it does not protect an operator who causes the negligent waste or destruction of a neighbor's oil and gas.

In addition to these common law doctrines, drilling and production are closely regulated by the Texas Railroad Commission, which acts pursuant to its statutory duty to protect the property interests of landowners and prevent waste of the state's natural resources. The Commission prescribes how close to a property line a well can be drilled, how much acreage must be assigned to a well and, with some exceptions limited primarily to gas wells, how much a well can produce. (Such limitations on production are often referred to as **well allowables** or proration orders.)

Railroad Commission regulations apply state-wide; but as with most regulatory orders it is possible to obtain exceptions. For example, statewide density regulations require that at least 40 acres be assigned to a well; but conditions in a particular reservoir may indicate that a well will drain substantially more than 40 acres. In this event, the Railroad Commission issue special fieldwide rules that apply to that specific reservoir. Individualized exceptions are also possible. These are most commonly sought as exceptions to statewide Rule 37, which requires a well to be drilled at least 467 feet from the property line. A **Rule 37 exception** can be sought either to prevent waste or to prevent

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