

# **Fundamentals of Oil, Gas and Mineral Law**

The Oil and Gas Lease:  
an economic transaction

“It’s just bidness!”

## **Nature of the Lease**

- Both conveyance and contract
- More deed than lease
  - Right to use land and to take oil and gas
  - Duration is indefinite
  - Lessor and Lessee share benefits
- O&G Lease Classification
  - Fee simple determinable in Texas
  - Profit a prendre in most, e.g., Oklahoma, Kansas, ND
  - Uncertain in many states

### Non-Possessory Interests

- Easement -- right to use land
  - Affirmative or negative.
  - In gross or appurtenant.
- Profit a Prendre -- right to use & exploit
  - In gross
  - Affirmative

### No “Standard” Lease Form

- Many different forms
  - Many older leases are labeled “Producer’s 88”
- Most are drafted by lessees
  - Primarily protects lessee
  - Lessee has few express obligations
  - Courts construe ambiguities against drafter
  - Courts created implied covenants to protect lessor
- Forms drafted by lessors are designed to protect lessor without the need for implied covenants and to assure lessor of maximum benefits—especially royalty

## LESSEE'S GOALS

- Option, not obligation, to drill
- Right to maintain lease for economic life

## Key Lease Clauses for Lessee Traditional Texas AAPL Form

- GRANTING CLAUSE, ¶ 1
- LESSER-INTEREST CLAUSE, ¶ 10
  - Also called Proportionate-Reduction Clause
- HABENDUM CLAUSE, ¶ 2
- DELAY RENTAL, ¶ 5
- SAVINGS CLAUSES
  - DRY HOLE/OPERATIONS/CESSATION-OF-PRODUCTION, ¶ 6
  - SHUT-IN ROYALTY, ¶ 3
  - FORCE MAJEURE, ¶ 11
  - POOLING CLAUSE, ¶ 4

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[The Oil and Gas Lease from A to Z: Classification, Scope of Grant, and Duration; Royalty Clauses; Implied Covenants; and Other Clauses](#)

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"The Oil and Gas Lease, Part I: Classification, Scope of Grant and Duration"