DIVIDED SURFACE AND MINERAL ESTATES Survey of Split Estates, Implied Easement,

Accommodation Doctrine, and Select Emerging Issues

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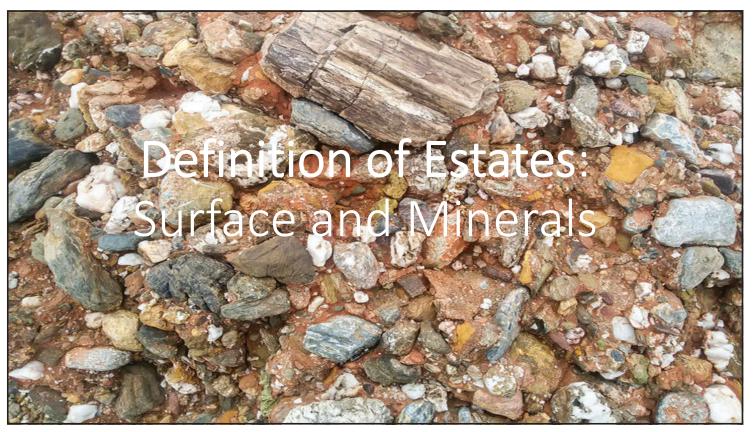
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Overview

- Definition of Estates
- Implied Easement
- Emerging Issues:
 - Off-lease drilling
 - Subsurface freshwater/saltwater
 - Groundwater mining
 - Sand Mining
 - Superadjacent airspace
 - Rock Pore Space







Severed Estates

- Early History Ad Coelum Doctrine
- Modern: Real Estate divisible into parts/rights
- •One division: Surface/Minerals



Defining Scope of the Estates

Surface Destruction Test (Early Texas)

- Early cases: "oil, gas, and other minerals"
- Test: intent-based, balancing test:
 - proximity to surface
 - Whether extraction results in "substantial" destruction
- Severances prior to June 8, 1983
- Problems:
 - Lack of certainty in land titles
 - Not based on nature of substance, common understanding, chemical quality, or composition
 - Some odd results (example: uranium, iron)

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