

**AUSTIN BRISTER** 



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## Overview

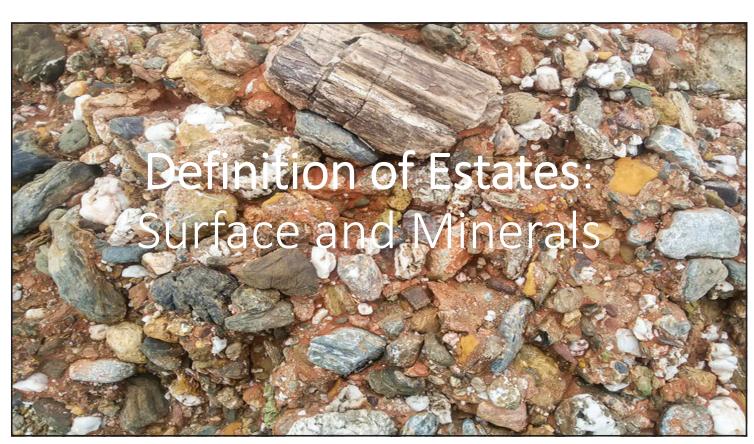
- Definition of Estates
- Implied Easement
- Emerging Issues:
  - Off-lease drilling
  - Subsurface freshwater/saltwater
  - Groundwater mining
  - Sand Mining
  - Superadjacent airspace
  - Rock Pore Space



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### Severed Estates

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



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# **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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Title search: Divided Surface and Mineral Estates - Survey of Split Estates, Implied Easement, Accommodation Doctrine, and Select Emerging Issues

Also available as part of the eCourse

Emerging and Re-emerging Issues in the Use Surface for Oil and Gas Operations

First appeared as part of the conference materials for the 2020 Fundamentals of Oil, Gas and Mineral Law session
"Emerging and Re-emerging Issues in the Use of the Surface for Oil and Gas Operations"