

Fundamentals of Oil, Gas and Mineral Law

The Oil and Gas Lease:
an economic transaction

“It’s just bidness!”

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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-à-prendre in most, e.g., Oklahoma, Kansas, ND
 - Uncertain in some states
- **Lease forms are often poorly organized**

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Non-Possessory Interests

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

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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 maximum benefits—especially royalty

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LESSEE'S GOALS

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

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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, Part I: Classification, Scope of Grant and Duration"