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## **The Oil and Gas Lease, Part II: The Royalty Clause in an Oil and Gas Lease**

***2017 Fundamentals of Oil, Gas, and  
Mineral Law***

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### **Overview**

- What is the lease royalty?
- How is royalty calculated?
- Post-production costs
- Market value
- Other issues arising in royalty

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## What is the lease royalty?

- Mineral interest owner v. lessor
- Working interest owner v. lessor
  - Cost bearing v. non-cost bearing interests
- Royalty interest owner
  - Lease royalty
  - Nonparticipating royalty interest
  - Overriding royalty interest
- Shut-in royalty is not a royalty



## What is the lease royalty?

- Royalty interest is a non-possessory interest in real property
  - *Sheffield v. Hogg*, 77 S.W.2d 1021 (1934)
- Subject to Statute of Frauds
- After production, royalty interest becomes personal property



## What is the lease royalty?

- What does mineral interest owner receive if oil and gas lease executed?
  - Bonus & royalty
  - Delay rentals & shut-in payments
- Is incentive for mineral interest owner to execute the oil and gas lease and convey mineral interest to lessee



## What is the lease royalty?

- Royalty is lessor's principal form of compensation if hydrocarbons are produced
- Royalty is a cost-free share of production
  - *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118 (Tex. 1996)
- Negotiated between the parties
- Critical component of negotiation because may be perpetual (i.e., production does not cease)

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