



Split Estate Issues

Robert Park & Ryan Lammert
Uhl Fitzsimons

1

Introduction

- Severable and Lesser Estates in Real Property
- Inter-Estate Conflicts
- Conflicts between “Dominant Estates”
- Intra-Estate Conflicts
- Possible Solutions

2

Severable Estates

- Unsevered Fee Simple includes
 - Surface
 - Minerals
 - Groundwater
- Minerals and groundwater can be severed into separate fee simple estates of equal dignity with the surface estate

3

Surface Estate

- Encompasses much more than just the "surface"
 - All subsurface rock formations
 - Groundwater both fresh and saline
- Surface owner is proper party to grant permission for
 - Injection wells
 - Subsurface gas storage
 - Subsurface easements

4

Mineral Estate

- Severable into fee simple estate
 - Can be severed for each “mineral”
 - Oil estate; gas estate; granite estate; uranium estate; etc. can exist concurrently
 - Can be further subdivided by depth
- Each mineral estate composed of five* attributes
 - Executive right
 - Development right
 - Royalty right
 - Bonus right
 - Delay rental right

5

Mineral Estate

- Mineral estate has implied easement (under development right) to use as much of the surface estate as is reasonably necessary to develop and produce minerals
 - Includes groundwater
 - No payment to the surface owner required
 - No obligation to remove equipment
 - Texas does not have surface damages act
- Mineral estate is “dominant” and surface estate is “servient”
- Mineral development can be surface intensive

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Split Estate Issues

Also available as part of the eCourse

[2020 Ernest E. Smith Oil, Gas, and Mineral Law eConference](#)

First appeared as part of the conference materials for the
46th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Split Estate Issues (Mineral, Wind, Solar and Water)"