



Split Estate Issues

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Introduction

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

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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

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

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

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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

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[Split Estate Issues \(Mineral, Wind, Solar and Water\)](#)

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