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## **Annual Oil and Gas Update**

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## **Annual Case-Law Update**

Owen L. Anderson<sup>1</sup>

This paper summarizes most Texas oil and gas related cases decided during 2023 and early 2024.<sup>2</sup> The paper is organized consistent with where the cases are likely to be cited or discussed in TEXAS LAW OF OIL AND GAS. The briefs use the following abbreviations: NPRI for a nonparticipating royalty interest, ORRI for an overriding royalty interest; MI for a mineral interest; OGL for oil and gas lease, and RRC for Texas Railroad Commission. Occasionally, an editorial “Comment” is included in the case summaries. A good-faith effort has been made to insert appropriate petition histories as of February 29, 2024.

### **PART 1 COMMON LAW**

#### **CHAPTER 1 OWNERSHIP OF OIL AND GAS**

##### **1.1 THE RULE OF CAPTURE**

###### **A. The Origin of the Rule of Capture**

###### **B. Common Law Restrictions on Production and the Correlative Rights Doctrine**

###### **1. Improper Methods of Production**

###### **2. The Correlative Rights Doctrine**

###### **C. Limitations Imposed by Statutes and Administrative Regulations**

###### **D. Contractual Modifications: Pooling and Unitization**

###### **1. Pooling**

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<sup>1</sup> Distinguished Oil and Gas Law Scholar and Co-Academic Director of the Kay Bailey Hutchison Energy Center at The University of Texas at Austin. Professor Anderson is also the Eugene Kuntz Chair in Oil, Gas & Natural Resources Emeritus and George Lynn Cross Research Professor Emeritus at The University of Oklahoma College of Law.

<sup>2</sup> Professor Anderson sincerely thanks his Research Assistants for preparing drafts of the case briefs summarized in this update: Sarah Milocco, Kristal Bird, Jinhua Zhang, Hugh Rennie, and Will Bledsoe. Sarah Milocco also assisted in editing this paper. Most OGERL Section Reports also contain updates on Texas energy cases. Professor Anderson thanks Bill Burford who provided incites in his Texas case updates done for the *Mineral and Energy Law Newsletter*, published by the Foundation of Natural Resources and Energy Law, which covers recent cases, statutes, and regulatory changes throughout the United States. For yearly comprehensive online national case surveys see *Oil and Gas, Nat. Resources & Energy J.*, published by students at the University of Oklahoma College of Law.

## **2. Unitization**

### **E. The Current Status of the Rule of Capture**

#### **1.2 THE OWNERSHIP-IN-PLACE DOCTRINE**

##### **A. Rationale for the Doctrine**

##### **B. Legal Significance**

#### **1.3 OWNERSHIP OF PRODUCTION**

##### **A. Legal Status of Production**

##### **B. Legal Consequences of Classification as Personalty**

##### **C. Rights in Natural Gas Injected into Underground Reservoirs**

### **CHAPTER 2 TYPES OF INTERESTS IN OIL AND GAS**

#### **2.1 THE MINERAL ESTATE AND THE SURFACE ESTATE**

##### **A. Legal Effect of a Severance**

###### **1. The Mineral Estate**

###### **a. Adverse Possession.**

###### **Adverse possession by a non-operator:**

*PBEX II, LLC v. Dorchester Minerals, L.P.*, 670 S.W.3d 374 (Tex. App.—Amarillo 2023, pet. filed.)

**Facts and Procedural History:** In 1982, Felmont Oil Corp. owned 25% of the working interest in Section 4 by reason of its Willis OGL. In 1983, Felmont entered a JOA with other owners. Thereafter, the operator, not Felmont, drilled and completed two producing gas wells.

In 1989, Plaintiff/Appellant Torch acquired Felmont's interest. In 1990, Torch conveyed its interests in certain properties to Dorchester's predecessors, but the sales agreement was not clear about whether the Willis OGL was included. Nevertheless, the operator issued a new division order, which Torch signed, that reduced Torch's share in the Willis OGL to zero. From 1990 to 2016, Dorchester and its predecessors performed all functions of a non-operating working interest owner regarding with Willis OGL.

In 2016, Torch assigned its interests in the Willis OGL to Third Party Defendant/Appellant PBEX and sent a letter to Dorchester stating that Torch had mistakenly allowed Dorchester's predecessors to "take possession of Torch's interest" and that Torch "rescind[ed] and cancel[ed]

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