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**SBOT Texas Oil & Gas Pattern Jury Charges**

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## **STATE BAR OF TEXAS - PATTERN JURY CHARGES – OIL & GAS**

The following excerpts are from the current draft of the State Bar of Texas Pattern Jury Charges – Oil & Gas, which will be published in the Spring of 2016. Accordingly, these excerpts are subject to revision. The highlighted portions in the following tables of contents represent the excerpts made a part of this paper. The full table of contents were left to show the full scope of the volume.

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## PJC 301.1

## Adverse Possession (Comment)

The adverse possession statutes apply to recovery of possession of real property, including the minerals underlying the surface of the land. Tex. Civ. Prac. & Rem. Code §§ 16.024–.037; *see Rio Bravo Oil Co. v. Staley Oil Co.*, 158 S.W.2d 293, 295 (Tex. 1942). The adverse possession statutes are statutes of limitations intended to settle land titles. *Natural Gas Pipeline Co. of America v. Pool*, 124 S.W.3d 188, 198–99 (Tex. 2003); *Republic National Bank of Dallas v. Stetson*, 390 S.W.2d 257, 262 (Tex. 1965). Because title vests in the party who establishes the required limitations elements, adverse possession claims may be brought affirmatively or defensively, depending on the situation. Accordingly, the party asserting adverse possession may sometimes be the plaintiff, not the defendant.

The required adverse possession elements are provided by statute. For that reason, the pattern jury charges in this chapter track the statute. Generally, however, the party seeking to establish title by adverse possession must enter the land adversely, that is, without permission or consent of the owner of record title; must occupy the land under a claim of right that is inconsistent with and hostile to the claim of another; and must maintain an actual and visible appropriation of the property continuously for the specified period of time. *See Tran v. Macha*, 213 S.W.3d 913, 914–15 (Tex. 2006); *Rhodes v. Cahill*, 802 S.W.2d 643, 645 (Tex. 1990); *Ellis v. Jansing*, 620 S.W.2d 569, 571 (Tex. 1981); *Calfee v. Duke*, 544 S.W.2d 640, 642 (Tex. 1976); *see also Pool*, 124 S.W.3d at 188, 193, 198. The time periods under the adverse possession statutes vary, depending on the nature of the claim and the indicia of title in the adverse possessor. See Tex. Civ. Prac. & Rem. Code §§ 16.021–.037; Tex. R. Civ. P. 783–809. The trespass-to-try-title statute is “the method [of] determining title to . . . real property.” *Martin v. Amerman*, 133 S.W.3d 262, 267 (Tex. 2004) (quoting Tex. Prop. Code § 22.001(a)) (emphasis added); *see Tex. Prop. Code § 22.001; Tex. R. Civ. P. 783–809.*

Adverse possession of the surface estate results in adverse possession of the mineral estate unless the two estates have been severed. *Grissom v. Anderson*, 79 S.W.2d 619, 621 (Tex. 1935). Once severed from the surface estate, the mineral estate may be acquired only by adverse possession of the mineral estate but not by adverse possession of the surface estate. *Pool*, 124 S.W.3d at 192–93, 198; *Theford v. Union Oil Co. of California*, 3 S.W.3d 609, 615 (Tex. App.—Dallas 1999, pet. denied); *Barfield v. Holland*, 844 S.W.2d 759, 767 (Tex. App.—Tyler 1992, writ denied); *Watkins v. Certain-Teed Products Corp.*, 231 S.W.2d 981, 985 (Tex. Civ. App.—Amarillo 1950, no writ). The severed mineral estate can be adversely possessed only by drilling and production operations for the statutory period of time. *Pool*, 124 S.W.3d at 193; *Sun Operating Ltd. Partnership v. Oatman*, 911 S.W.2d 749, 757 (Tex. App.—Amarillo 1995, writ denied); *Barfield*, 844 S.W.2d at 767; *Webb v. British American Oil Producing Co.*, 281 S.W.2d 726, 734 (Tex. Civ. App.—Eastland 1955, writ ref’d n.r.e.). The surface owner’s possession of the severed surface estate is not adverse to the owner of the mineral estate. *Grissom v. Anderson*, 79 S.W.2d 619, 621 (Tex. 1935).

Producing minerals after an oil and gas lease expires is similar to the permissive possession by a holdover tenant and therefore cannot be adverse until the title holder has notice that the permissive tenancy has been repudiated and become hostile to the interests of the title

holder. *Pool*, 124 S.W.3d at 194. However, actual notice is not required; instead, “notice can be inferred, or there can be constructive notice.” *Pool*, 124 S.W.3d at 194; *see also BP America Production Co. v. Marshall*, 342 S.W.3d 59, 72 (Tex. 2011); *Glover v. Union Pacific Railroad Co.*, 187 S.W.3d 201, 215 (Tex. App.—Texarkana 2006, pet. denied). For what may constitute notice, *see Pool* and *Marshall*.

If the lessee establishes the elements of adverse possession, the lessee acquires the same interest adversely possessed; that is, the oil and gas leasehold estate as defined by the original lease. *Pool*, 124 S.W.3d at 199; *see also Marshall*, 342 S.W.3d at 72. If the landowner prevails, title to the mineral estate remains in the landowner free of the leasehold.

The questions in this chapter should be appropriately modified, as discussed in the following pattern jury charges, to reflect whether the adverse possession claim involves an unsevered surface and mineral estate, a severed mineral estate, or a leasehold estate.

### **PJC 301.5 QUESTION AND INSTRUCTIONS ON ADVERSE POSSESSION— TWENTY-FIVE-YEAR LIMITATIONS PERIOD**

Did [*Don Davis/Paul Payne*] hold the property in peaceable and adverse possession for a period of at least twenty-five years before [*date cause of action was filed*]?

“Peaceable possession” means possession of real property that is continuous and is not interrupted by an adverse suit to recover the property.

“Adverse possession” means an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and hostile to the claim of another person.

“Claim of right” means an intention to claim the real property as one’s own to the exclusion of all others.

A claim of right is hostile only if either (1) it provides notice, either actual or by implication, of a hostile claim of right to the true owner; or (2) the acts performed on the real property, and the use made of the real property, were of such a nature and character that would reasonably notify the true owner of the real property that a hostile claim is being asserted to the property.

[*For this question,*] To establish peaceable and adverse possession, a claimant must also have cultivated, used, or enjoyed the property.

Answer “Yes” or “No.”

Answer \_\_\_\_\_

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