

FUNDAMENTALS OF OIL, GAS AND MINERAL LAW COURSE

April 19, 2018

BASIC CAUSES OF ACTION AND DEFENSES IN LITIGATING LAND TITLES

Richard F. Brown

© 2018 Brown & Fortunato, P.C.



2

Who Owns this Land?

I. Land equals wealth and security.

- A. For most of human history, until at least the Industrial Revolution, all wealth and security was based on land.
- B. Land was essential for food, water, shelter, plants, animals, and minerals.
- C. Who owned the land was generally decided by might, not right.
- D. As civilization evolved and the rule of law developed, it is not surprising that some of the first and oldest procedures adopted are those designed to answer the question: "Who owns this land?"



II. Oil and gas is real property until severed.

- A. Private ownership of minerals is almost unique to the English-speaking world; everywhere else, minerals are state owned.
- B. “Minerals” in England were rocks and simply a part of the “land.”
- C. Not so simple – streams and wild animals.
- D. Our jurisprudence developed with distinct differences in rights and procedures determined by whether the property involved was real property or personalty.
- E. Oil and gas in Texas.
 - 1. In place – real property.
 - 2. Severed (produced) – personal property.
- F. Therefore, the answer to “Who owns the land?” usually determines who owns the oil and gas.
- G. And, the very old procedures developed for resolving title to land, together with the thousands of real property cases, govern how you must proceed and who will win.



III. The role of the oil and gas lawyer.

- A. Most property rights in the industry are driven by pieces of paper (leases, farmouts, operating agreements, purchase and sale agreements, transportation agreements, processing agreements, etc.)
- B. Lawyers as wordsmiths are key to the value chain.
- C. All of the value in the chain ultimately is dependent upon the ownership of the oil and gas in the ground.
- D. The title examiner, the lawyer(s) who accepts that title, and the lawyer who ultimately tests that title in court, must answer the question: “Who owns this land?”



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: Basic Causes of Action and Defenses in Litigating Land Titles

Also available as part of the eCourse

[2018 Fundamentals of Oil, Gas, and Mineral Law eConference](#)

First appeared as part of the conference materials for the
2018 Fundamentals of Oil, Gas and Mineral Law session

"Basic Causes of Action and Defenses in Litigating Land Titles"