

# DIVIDED SURFACE AND MINERAL ESTATES

## Survey of Split Estates, Implied Easement, Accommodation Doctrine, and Select Emerging Issues

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# Overview

- Definition of Estates
- Implied Easement
- Emerging Issues:
  - Off-lease drilling
  - Subsurface freshwater/saltwater
  - Groundwater mining
  - Sand Mining
  - Superadjacent airspace
  - Rock Pore Space



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# Severed Estates

- Early History – *Ad Coelum* Doctrine
- Modern: Real Estate divisible into parts/rights
- One division: Surface/Minerals



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# Defining Scope of the Estates

## Surface Destruction Test (Early Texas)

- **Early cases:** “oil, gas, and other minerals”
- **Test:** intent-based, balancing test:
  - proximity to surface
  - Whether extraction results in “substantial” destruction
- **Severances prior to June 8, 1983**
- **Problems:**
  - Lack of certainty in land titles
  - Not based on nature of substance, common understanding, chemical quality, or composition
  - Some odd results (example: uranium, iron)



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"Emerging and Re-emerging Issues in the Use of the Surface for Oil and Gas Operations"