

The Limits to Certainty in Title Examination; Bright Lines and Sharp Corners vs. Holistic and Harmonizing, and Those Pesky Fact Questions

TERRY I. CROSS
McClure & Cross LLP
4600 Greenville Ave., Suite 126
Dallas, Texas 75206

46th Annual Ernest E. Smith
Oil, Gas and Mineral Law Institute
March 27, 2020
Houston, TX
March 27, 2019

1

Fact Questions- The Usual Suspects

fraud; forgery; duress; undue influence; incapacity or incompetency of parties due to mental condition, minority, or marital status; delivery; recorded but not delivered; altered after delivery; and unrecorded instruments, such as mechanic's and materialman's liens, that are valid without a filing

2

Parties in Possession vs. Perfected Limitation Title

Republic Nat. Bank of Dallas v. Stetson, 390 S.W.2d 257, 259 (Tex. 1965) (once title by adverse possession vests, it is a good title without a recording and cannot be abandoned).

affidavits and disclaimers from OWNERS do not work

Parties in Possession vs. Perfected Limitation Title

No current possession and no record title.

The insufficiency of a one-time inspection of the premises to negate adverse possession claims is illustrated by the case of *McGregor v. Thompson*, 26 S.W. 649 (Tex. App.-Galveston 1894, no writ).

Statutes can limit or increase the factual determinations

- Intestate Succession – Judicial determination vs. affidavits
- Old oil and gas leases not recorded

5

Fact Questions- The Presumptions

- Rule of Law Presumptions

TS14.10. Community Property Presumption

codified as Tex. Fam. Code § 3.003. The presumption is rebuttable by clear and convincing evidence that the property is separate property. Tex. Fam. Code § 3.003; e.g., *Janes v. Gulf Production Co.*, 15 S.W.2d 1102 (Tex. Civ. App.—Beaumont 1929, writ ref'd).

6

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: The Limits to Certainty in Title Examination; Bright Lines and Sharp Corners vs. Holistic and Harmonizing, and Those Pesky Fact Questions

Also available as part of the eCourse

[2020 Ernest E. Smith Oil, Gas, and Mineral Law eConference](#)

First appeared as part of the conference materials for the

46th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session

"The Limits to Certainty in Title Examination; Bright Lines and Sharp Corners vs. Holistic and Harmonizing, and Those Pesky Fact Questions"