



# Split Estate Issues

Robert Park & Ryan Lammert  
Uhl Fitzsimons

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## Introduction

- Severable and Lesser Estates in Real Property
- Inter-Estate Conflicts
- Conflicts between “Dominant Estates”
- Intra-Estate Conflicts
- Possible Solutions

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## Severable Estates

- Unsevered Fee Simple includes
  - Surface
  - Minerals
  - Groundwater
- Minerals and groundwater can be severed into separate fee simple estates of equal dignity with the surface estate

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## Surface Estate

- Encompasses much more than just the "surface"
  - All subsurface rock formations
  - Groundwater both fresh and saline
- Surface owner is proper party to grant permission for
  - Injection wells
  - Subsurface gas storage
  - Subsurface easements

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## Mineral Estate

- Severable into fee simple estate
  - Can be severed for each “mineral”
    - Oil estate; gas estate; granite estate; uranium estate; etc. can exist concurrently
    - Can be further subdivided by depth
- Each mineral estate composed of five\* attributes
  - Executive right
  - Development right
  - Royalty right
  - Bonus right
  - Delay rental right

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## Mineral Estate

- Mineral estate has implied easement (under development right) to use as much of the surface estate as is reasonably necessary to develop and produce minerals
  - Includes groundwater
  - No payment to the surface owner required
  - No obligation to remove equipment
  - Texas does not have surface damages act
- Mineral estate is “dominant” and surface estate is “servient”
- Mineral development can be surface intensive

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