

MINERAL OR ROYALTY INTEREST? FIXED OR FLOATING?

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JUST WHEN YOU THINK YOU HAVE THE PUZZLE FIGURED OUT...



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BE AWARE OF ...



**Potential Pitfalls when
interpreting mineral
and royalty rights.**



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Is the Conveyance/Reservation of the Minerals or of the Royalty?

WHY DO I CARE?

- ⌘ Do I need to take a lease?
- ⌘ Who has the right to execute the lease?
- ⌘ Who has the right to receive the royalties?

WHEN IN DOUBT... TAKE THE LEASE

- ⌘ Make it a royalty payment issue for the client
- ⌘ Protection lease
- ⌘ Interpret broadly and inclusively



Estate Misconception

WHO

WHAT

WHY

Conflicting

Fractions



Estate Misconception

Turn of the century, courts grapple with lease benefits.



Caruthers v. Leonard, 254 S.W. 779
(Tex. Comm'n App. 1923).

Held conveyance of
minerals subject to
existing lease did not
entitle grantee to share
royalties and lease
benefits.



Estate Misconception

Understanding the Legacy



Estate Misconception

Stephens County v. Mid-Kansas Oil & Gas Co., 113 Tex. 160 (Tex. 1923)

Lease is a *fee simple*
determinable interest.

Lessee owns fee in entire
mineral estate.

The lessor retains a
possibility of reverter.

The lessor has right to
royalties and other economic
benefits.



Estate Misconception



Prior to 1970,
leases provided
for a 1/8 royalty.



Early drafters and courts misunderstood
fee simple determinable and assumed it
meant:

Lessee owns fee simple *in only 7/8 of the
minerals*, and

Lessor *retained a 1/8 mineral* interest.



Estate Misconception

This misconception stems from:



failure to distinguish
between the mineral
estate owner's right to
receive royalties

the value placed
on that right in
the lease.



Estate Misconception

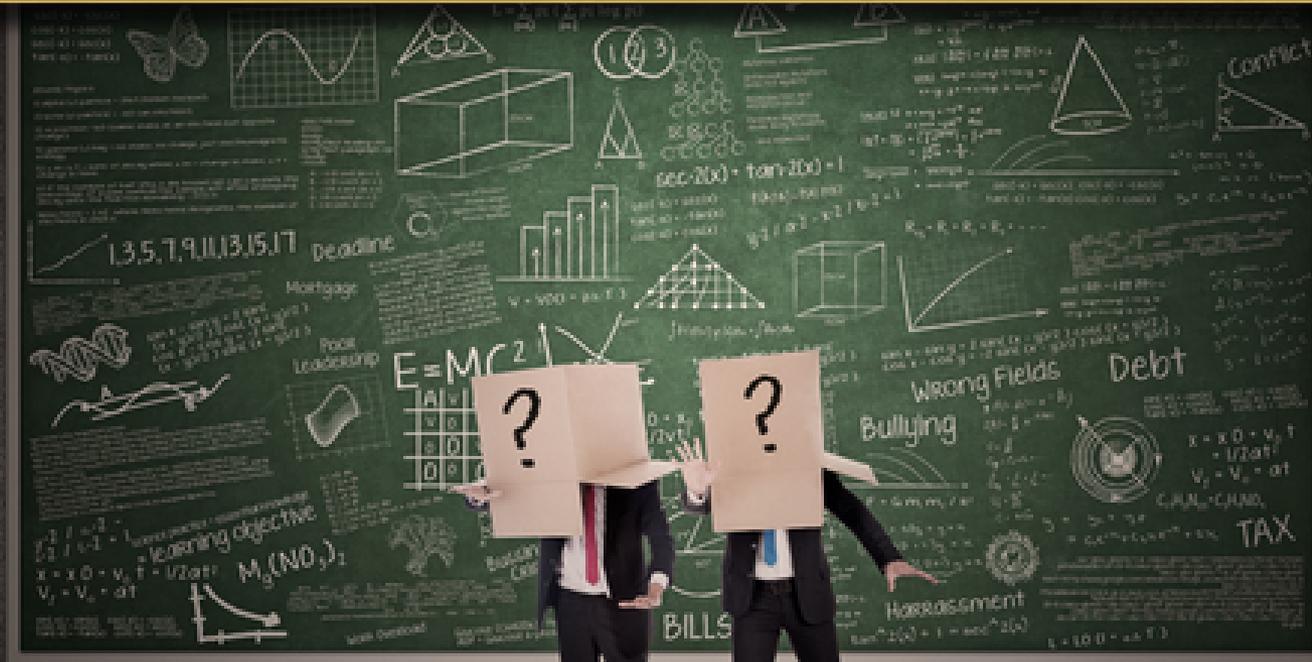
Lessor retains a $1/8$ *royalty* interest, not a $1/8$ mineral interest.

Lessee owns a fee simple determinable in $8/8$, 100%, of the *mineral estate*.



Estate Misconception

The estate misconception led to the use of conflicting and double fractions in a multiclause deed.



Estate Misconception

Example:



1. Lessor leases mineral estate,
2. Lessor sells $\frac{1}{2}$ the minerals, assumes he owns $\frac{1}{8}$ of minerals due to lease.
3. Lessor uses the fraction $\frac{1}{16}$, or a double fraction, $\frac{1}{2}$ of $\frac{1}{8}$, to convey $\frac{1}{2}$ of what he thinks he owns.
4. He uses the fraction $\frac{1}{2}$ to give grantee royalties under existing lease.
5. He uses the fraction $\frac{1}{2}$ in the future lease clause.

What has he conveyed -- $\frac{1}{2}$ of the minerals or $\frac{1}{16}$ of the minerals?



Estate Misconception



ISSUE

#1



Conflicting

Fractions



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Two-Grant Problem

⌘ *Alford v. Krum*, 671 S.W.2d 870 (Tex. 1984).

⌘ *Luckel v. White*, 819 S.W.2d 459, (Tex. 1991).

⌘ *Concord Oil Co. V. Pennzoil Expl. & Prod. Co.*, 966 S.W.2d 451 (Tex. 1998)



Two-Grant Problem

Alford v. Krum, 671 S.W.2d 870 (Tex. 1984).



Granting
clause
prevailed



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Two-Grant Problem

Luckel v. White, 819 S.W.2d 459, (Tex. 1991).

Overruled



Harmonize the intent of the parties within the four corners of the document.



Two-Grant Problem

Concord Oil Co. V. Pennzoil Expl. & Prod. Co., 966 S.W.2d 451 (Tex. 1998)



- ⌘ Grantor owns 1/12 mineral interest;
- ⌘ Grantor conveys undivided 1/96 interest to Grantee;
- ⌘ conveyance subject to existing lease, expressly covering 1/12 of all rentals and royalties;
- ⌘ At time of dispute, lease had long expired
- ⌘ No provision in deed for future leasing



Two-Grant Problem

*Concord Oil Co. V. Pennzoil Expl. & Prod. Co.,
966 S.W.2d 451 (Tex. 1998)*

**Court held
grantee entitled
to 1/12 of the
minerals;**

- ⌘ Reasoning: “Four Corners” doctrine
 - Prevailing royalty rate at time of deed was 1/8th
 - 1/8th times 1/12th equals 1/96th.
- ⌘ Conflict resolved in favor of the 1/12th of whatever the fraction of lease benefits are expressed in future leases.



ISSUE

2

Mineral or Royalty?



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Mineral or Royalty?

🔗 *Watkins v. Slaughter*, 144 Tex. 179, 189 S.W.2d 699 (1955),

🔗 *Altman v. Blake*, 712 S.W.2d 117 (Tex. 1986),

🔗 *French v. Chevron U.S.A. Inc.*, 896 S.W.2d 795 (Tex. 1995).

🔗 *Temple-Inland Forest Products Corp. v. Henderson Family Partnership, Ltd.*, 958 S.W.2d 183 (Tex. 1997).

Read the case law!!!



French v. Chevron U.S.A. Inc.,
896 S.W.2d 795 (Tex. 1995).



- a. granting clause clearly conveyed a mineral interest
- b. but it then expressly “stripped the interest” by stating the grantee would have no leasing rights and would receive no leasing revenue or rentals
- c. Lastly, the deed specifically stated that “this conveyance is a royalty interest only.”
- d. the court reasoned that the mention of the leasing, rental and bonus rights retained by the grantor would have been redundant if the deed was only conveying a royalty interest.
- e. HELD: The deed granted a non-executive mineral interest that carried with no right to bonuses or delay rentals.



*Temple-Inland Forest Products Corp. v.
Henderson Family Partnership, Ltd.,
958 S.W.2d 183 (Tex. 1997).*



⌘ The deeds at issue conveyed an undivided mineral interest

⌘ Grantor reserved a 1/16 interest, expressly stating said reservation "shall always be a royalty interest," would not bear any of the cost of exploration, development and production, that "Grantor's one-sixteenth (1/16) royalty interest" was to be delivered free of cost, and would include no leasing rights or share in bonus or delay rentals.

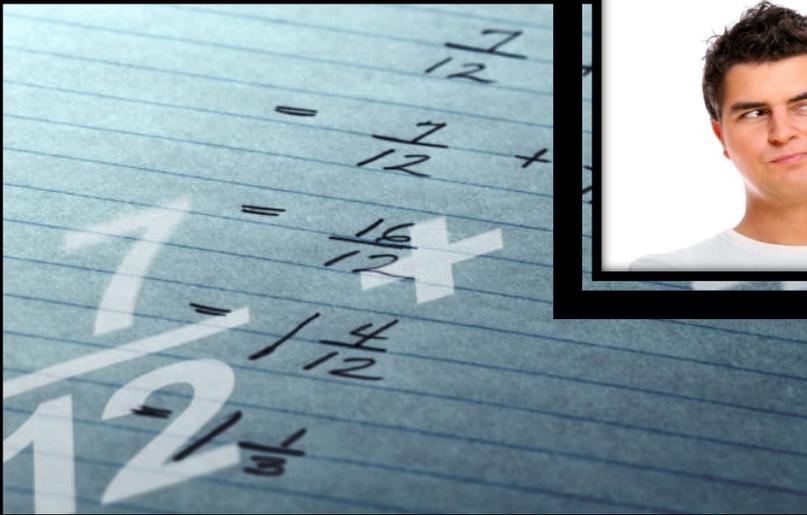
⌘ Considering the language of the deed in its entirety, and particularly noting the numerous times the deeds referred to the reserved interest as a royalty, the court held the grantor reserved a royalty interest of a full 1/16 of total production.



ISSUE

3

Royalty Calculation



Royalty Calculation



**FIXED FRACTION of
TOTAL
PRODUCTION
(FIXED)**

vs.

**FRACTION of THE
ROYALTY
(FLOATING)**





“Fixed” Royalty

a conveyance or reservation phrased as a fractional royalty interest

EXAMPLE:
a "1/32 royalty interest" in oil and gas produced

owner entitled to stated fraction of total production

This interest in production is fixed and does not vary with the fractional royalty that may be payable under a particular lease.



Floating Royalty



A conveyance or reservation of a fractional portion "of" or "in and to" the royalty consists of the stated fraction times whatever royalty may be provided for in the lease covering the land.

The owner's interest depends on royalty payable to the lessor under the current oil and gas lease.



“Fixed” or “Floating” Royalty?

EXAMPLES



“Fixed” or “Floating” Royalty?



Clause to Examine:

Grantors herein reserve and except to themselves from this conveyance one-half of one-eighth of the oil, gas and other mineral royalty that may be produced from said land.



“Fixed” or “Floating” Royalty?

Harris v. Ritter, 279 S.W.2d 845 (Tex. 1955).

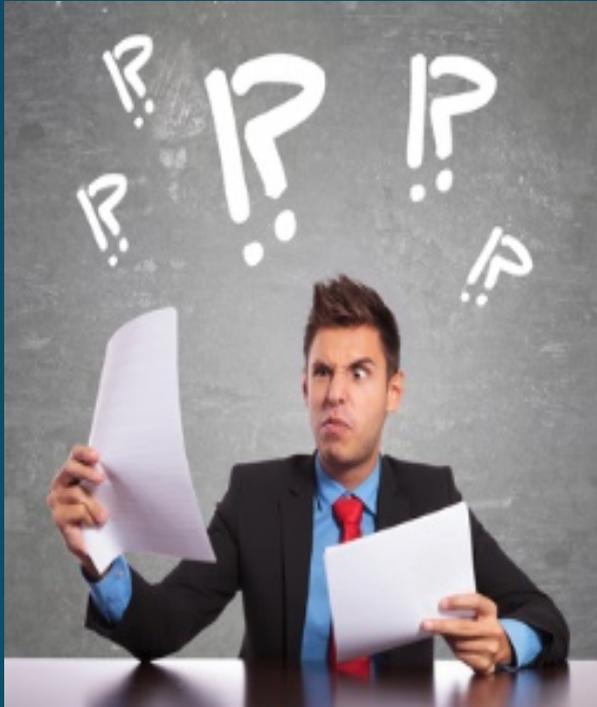


“Fixed” or “Floating” Royalty?

Clause to Examine:

An undivided one-half (1/2) interest in and to all of the oil, gas and other minerals in and under the [Property] ... said land is under an Oil and Gas Lease made by Grantor providing for a royalty of 1/8th of the oil and certain royalties or rentals for gas and other minerals and that Grantee herein shall receive one-half (1/2) of the royalties and rentals provided for in said lease.

That Grantee shall receive under such lease or leases one-sixteenth (1/16th) part of all oil, gas and other minerals taken and saved under such lease or leases, and he shall receive the same out of the royalty provided for in such lease or leases.



“Fixed” or “Floating” Royalty?

Garza v. Prolific Energy Co., 195 S.W.3d 137
(San Antonio 2006, pet denied).

FLOATING



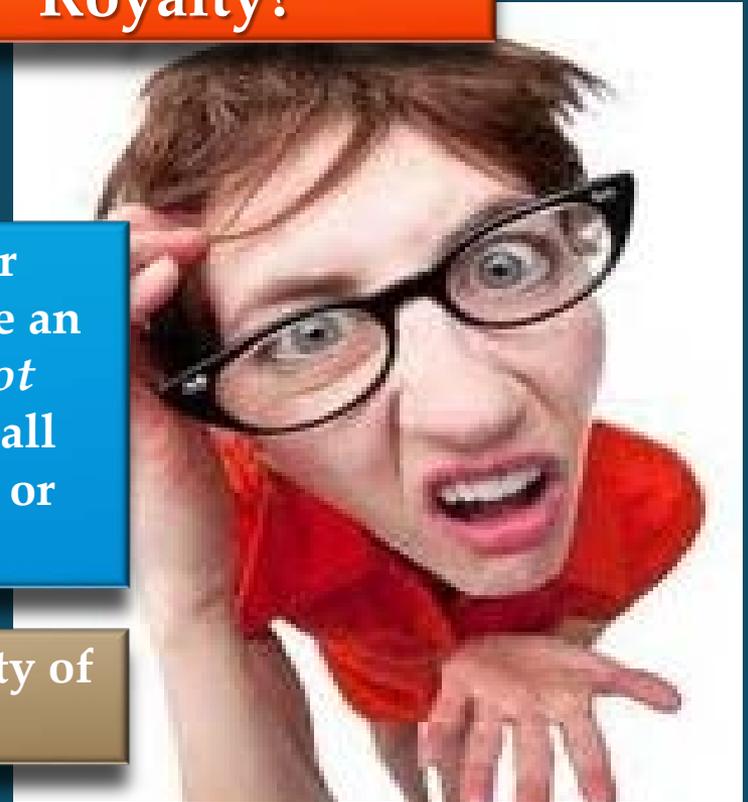
“Fixed” or “Floating” Royalty?

Clause to Examine:

The Grantors herein reserve unto themselves, their heirs and assigns, and except from this conveyance an undivided one-half (1/2) Royalty (*Being equal to not less than an undivided one-sixteent[h] (1/16)[l]] of all the oil, gas and/or other minerals in, to, and under or that may be produced from said ...*

however, [all future leases] shall provide for royalty of *not less than one-eighth (1/8):*

In the event oil, gas or other minerals are produced from said land, then said Grantors, their heirs and assigns, shall receive *not less than one-sixteenth (1/16) portion (being equal to one-half (1/2) of the customary one-eighth (1/8) Royalty) of the entire gross production and/or such net proceeds as hereinabove provided*



“Fixed” or “Floating” Royalty?

Range Resources v. Bradshaw, 266 S.W.3d 490
(Forth Worth 2008, pet denied).

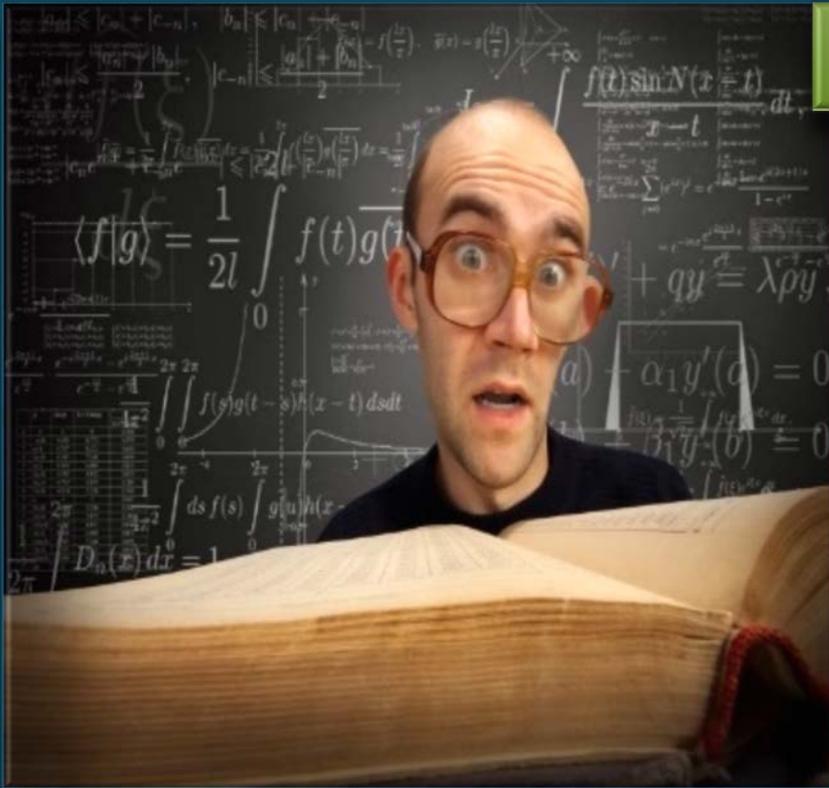
FLOATING



“Fixed” or “Floating” Royalty?

Clause to Examine:

Grantors herein retain and reserve under said First Tract 1/2 of the 1/8th royalty (same being a 1/16th of the total production) of oil, gas and minerals, same being a non-participating royalty interest here retained by grantors.



“Fixed” or “Floating” Royalty?

Helms v. Guthrie, 573 S.W.2d 855
(Fort Worth 1978, writ ref'd n.r.e.).



Hysaw v. Dawkins, 483 S.W.3d 1 (Tex. 2016).



- a. *Hysaw* involved the construction of a will.
- b. testatrix had owned three tracts of land at her death.
- c. She devised fee simple interests of various sizes in these tracts to her three children.
- d. Each child was further devised an “undivided one-third (1/3) of an undivided one-eighth (1/8)” non-participating royalty interest under all three tracts.
- e. A successor of one of the children who received 600 acres from the testatrix executed a lease with a 1/5 Lessor’s royalty.
- f. The dispute arose between the successor-in-interest and the other two children as to whether the other two children were to receive a 1/3 of 1/8 royalty or whether they, too, were entitled to a 1/3 of 1/5 of the royalties.



Hysaw v. Dawkins, 483 S.W.3d 1 (Tex. 2016).

APPELLATE COURT HOLDING:

interpreted the royalty clause as a fixed percentage of total production and held that the other two devisees were entitled to only a 1/24 ($1/3 \times 1/8$) royalty interest. This holding was supported by the previous cases that construed such language as creating a fixed royalty.



Hysaw v. Dawkins, 483 S.W.3d 1 (Tex. 2016).

The Texas Supreme Court Holding:

🔗 In looking at the royalty clause in the context of the four corners of the entire will, the high court held that each of the three children under the will were expressly entitled to equal shares of royalty. In order to harmonize the testatrix's intent, the only way that all three devisees acquired an equal royalty was to interpret the "1/3 of 1/8" as being a variable 1/3 – with the 1/8th simply describing the usual and customary lease royalty amount at the time the will was created.



Hysaw v. Dawkins, 483 S.W.3d 1 (Tex. 2016).

& *Hysaw* is not a complete departure from general rule regarding fixed royalties, but dicta relies heavily on the fact that prior to the 1970s, leases routinely provided for a 1/8th landowner's royalty.

& The Estate Misconception



Leal v. Cuanto Antes Mejor LLC, 2015 WL 3999034
(Tex. App. --- San Antonio 2015, no pet.)

Clause at Issue:

There is reserved and excepted unto Grantors...all of the...minerals...except an undivided one-fourth (1/4) non-participating royalty interest hereinafter specifically conveyed to Grantees...There is specifically conveyed to Grantees herein. ...an undivided one-fourth (1/4) interest in and to all of the royalty paid on the production ...of oil, gas and any and all other minerals. ...Grantees shall not be required to join in the making of any oil, gas or other mineral lease...but shall be entitled to a non-participating interest in and to any royalty paid from the production...of oil, gas and any and all other minerals.



*Leal v. Cuanto Antes Mejor LLC, 2015 WL 3999034
(Tex. App. --- San Antonio 2015, no pet.)*

FLOATING



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Dragon v. Harrell, 2016 WL 1238165 (Tex. App. – San Antonio 2016, pet. denied).

Clause at Issue:

...a free non-participating interest in and to the royalty on oil, gas and other mineral in and under the hereinabove described property consisting of ONE-HALF (1/2) of the interest now owned by Grantors together with ONE-HALF (1/2) of the reversionary rights in and to the presently outstanding royalty in on and under said property. ...



Dragon v. Harrell, 2016 WL 1238165 (Tex. App. – San Antonio 2016, pet. denied).

FLOATING



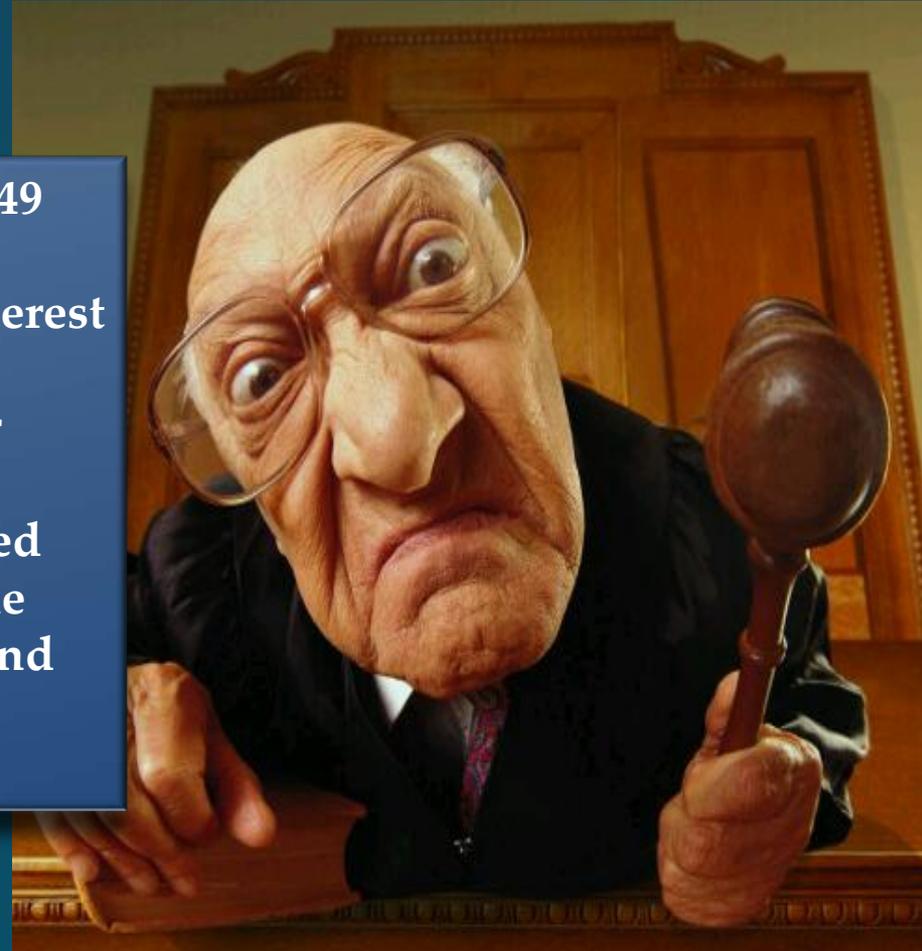
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Medina Interests, Ltd. v. Trial, 69 S.W.3d 619
(Tex. App. --- San Antonio 2015, pet. denied)

Language in Deed:

By warranty deed dated September 1, 1949 (“the deed”), Mrs. Trial and six of her children sold all their “right, title and interest in and to” a 278-acre tract of land to Alex Trial and Leo Trial, Mrs. Trial’s two other children. The deed reserves to the six children, but not Mrs. Trial, an “undivided interest in and to the 1/8 royalties paid the land owner upon production of oil, gas and other minerals from said 278 acre tract of land.”



Medina Interests, Ltd. v. Trial, 69 S.W.3d 619
(Tex. App. --- San Antonio 2015, pet. denied)

FLOATING



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Medina Interests, Ltd. v. Trial, 69 S.W.3d 619
(Tex. App. --- San Antonio 2015, pet. denied)

One of the benefits of this case is that the court lists examples from prior cases as to what is a fixed and what is a floating royalty.



Medina Interests, Ltd. v. Trial, 69 S.W.3d 619
(Tex. App. --- San Antonio 2015, pet. denied)



EXAMPLES OF FIXED



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Medina Interests, Ltd. v. Trial, 69 S.W.3d 619
(Tex. App. --- San Antonio 2015, pet. denied)

A one-fourth
royalty in all oil,
gas and other
minerals in and
under and
hereafter
produced;

An undivided one-
sixteenth royalty
interest of any oil,
gas or minerals that
may hereafter be
produced

1% royalty of
all the oil and
gas produced
and saved.

A fee royalty
of 1/32 of the
oil and gas;

An undivided 1/24
of all the oil, gas
and other
minerals
produced, saved,
and made
available for
market;

One-half of the
one-eighth
royalty interest



Medina Interests, Ltd. v. Trial, 69 S.W.3d 619
(Tex. App. --- San Antonio 2015, pet. denied)

EXAMPLES OF FLOATING



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Medina Interests, Ltd. v. Trial, 69 S.W.3d 619
(Tex. App. --- San Antonio 2015, pet. denied)

1/16 of all
oil royalty;

The
undivided
2/3 of all
royalties;

One-half
interest in all
royalties
received from
any oil and gas
leases;

An undivided
one-half
interest in and
to all of the
royalty;

One-half of
one-eighth of
the oil, gas and
other mineral
royalty that may
be produced

One-half of
the usual one-
eighth royalty.



CONCLUSION

Hysaw and the 3 recent court of appeals cases all reaffirm the 4-corners approach.

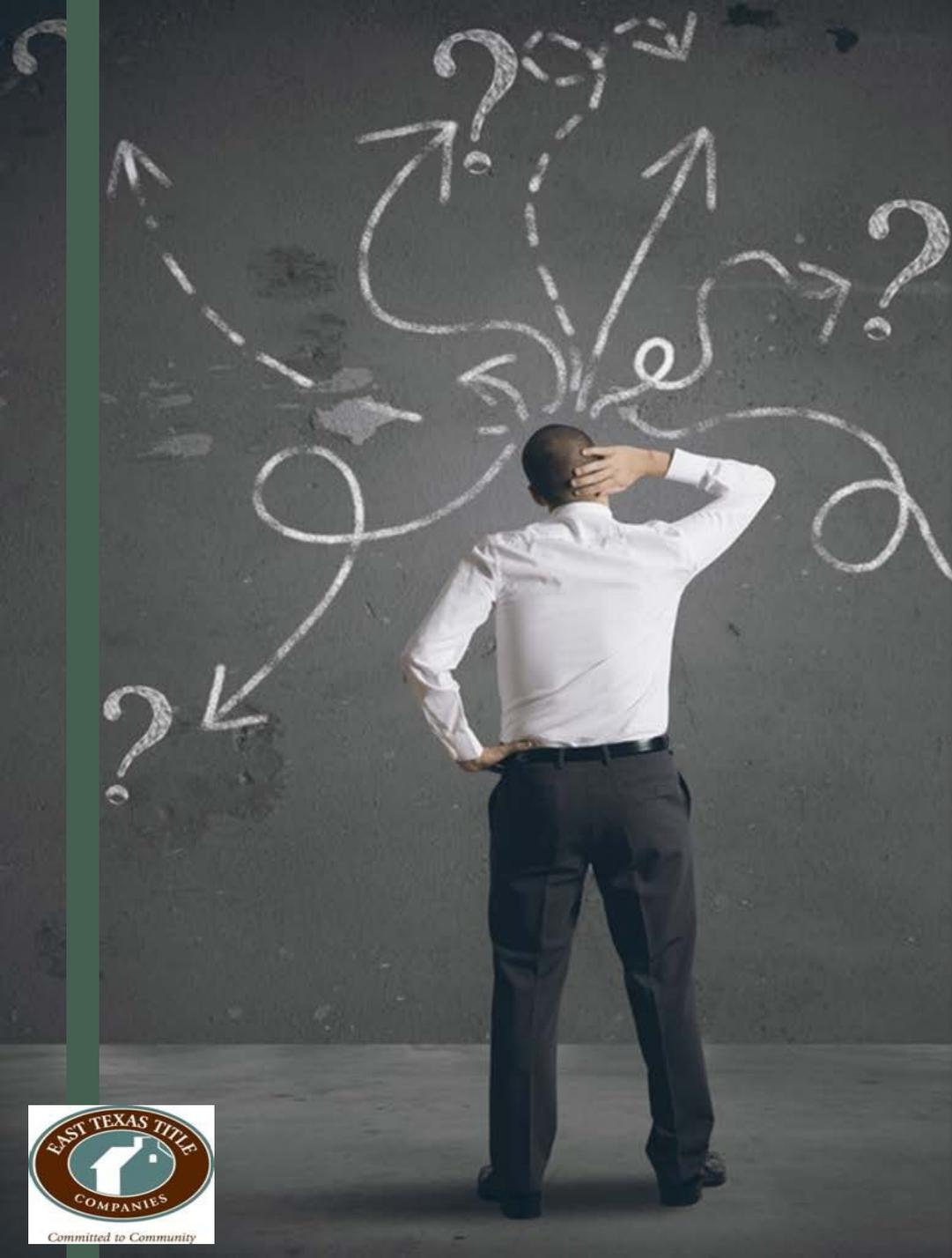
These decisions have not ended the “fixed or floating” interpretative issue in Texas.

Courts, drafters, and title examiners must still take into consideration every provision of the entire document and read those provisions together to determine the parties’ intent.



Where do we
go from here?





Q
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New Conveyance Documents You Should Know



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New Conveyance Documents You Should Know

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

WARRANTY DEED

(LADYBIRD DEED RESERVING LIFE ESTATE AND OTHER RIGHTS)

Date: _____, 2016

Grantor: *

Grantor's Address: _____

Grantee: *

Grantee's Address: _____

Consideration:

TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, ALL IN CASH, the receipt and sufficiency of which is hereby acknowledged

Property (including any improvements):

All that certain tract or parcel of land lying and situated in * County, Texas containing * acres of land, more or less, situated in the * Survey, A-*, being more particularly described by metes and bounds on Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Reservations from Conveyance and Warranty:

For Grantor and Grantor's assigns, a reservation of the full possession, benefit and use of the Property for the remainder of the life of Grantor, as a life estate. Grantor retains complete power, without the joinder of any person, to mortgage, sell, and convey the Property and to spend any proceeds; to exchange it for other property, to lease the surface and subsurface of the Property; to execute and deliver oil, gas, and other mineral leases for any term of years and for a term based on the continuing production of oil, gas or other minerals from the Property, ending either before or after Grantor's death; and to invest and reinvest all proceeds from the sale or other disposition of the Property. This life estate carries with it the right to possess and consume all bonuses, delay rentals, royalties, and other benefits payable on any mortgage, sale, or conveyance under oil, gas, and other mineral leases covering the Property at the inception of this life estate without any duty to the remainderman and without liability for waste.

Exceptions to Conveyance and Warranty:

Liens described a part of the consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from and existing by reason any governmental or other entity authorized to establish regulations and assess taxes and liens, including, but not limited to, the county where the property is located and water improvement districts; applicable zoning regulations; and taxes for the current year, which Grantee assumes and agrees to pay; and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantor assumes.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and to hold it to Grantee, Grantee's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

Lady Bird Deed



New Conveyance Documents You Should Know

REVOCABLE TRANSFER ON DEATH DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

IMPORTANT NOTICE TO OWNER: You should carefully read all the information included in the instructions to this form. You may want to consult a lawyer before using this form.

MUST RECORD DEED: Before your death, this deed must be recorded with the county clerk where the property is located, or it will not be effective.

MARRIED PERSONS: If you are married and want your spouse to own the property on your death, you must name your spouse as the primary beneficiary. If your spouse does not survive you, the property will transfer to any listed alternate beneficiary or beneficiaries on your death.

Date: _____, 2016

1. Owner (Transferor) Making this Deed:

*

Owner's Mailing Address (including county):

2. Legal Description of the Property (including any improvements):

All that certain tract or parcel of land lying and situated in * County, Texas containing * acres of land, more or less, situated in the * Survey, A-* , being more particularly described by metes and bounds on Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

3. Address of the Property (if any) (including county):

4. Primary Beneficiary (Transferee) or Beneficiaries (Transferees):

*

Primary Beneficiary's Mailing Address (including county):

5. Alternative Beneficiary or Beneficiaries (Optional)

If no primary beneficiary survives me, I designate the following alternative beneficiary or beneficiaries:

Alternative Beneficiary Printed Name: *

Alternative Beneficiary's Mailing Address (including county):

6. Transfer on Death

At my death, I grant and convey to the primary beneficiary or beneficiaries my interest in the property, to have and hold forever. If at my death I am not survived by any primary beneficiary, I grant and convey to the alternate beneficiary or beneficiaries, if designated, my interest in the property, to have and hold forever. If the primary and alternate beneficiaries do not survive me, this transfer on death deed shall be deemed canceled by me.

7. Printed Name and Signature of Owner Making this Deed:

*

Date

Transfer on Death Deed

