INTERPRETATING OIL AND GAS CONVEYANCES: SOME EXAMPLES

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INTERPRETING OIL AND GAS CONVEYANCES: SOME EXAMPLES

By Kraettli Q. Epperson

INTRODUCTION

The purpose of these materials is to assist oil and gas title examiners in their daily task of reviewing and interpreting oil and gas conveyances.

This paper is divided into four parts:

I. Statutory Rules of Construction for Conveyances

II. Oklahoma Cases: Examples of Interpretative Decisions

III. List of Articles by Kraettli Q. Epperson

IV. List of Other Authors' Useful Title Examination Papers

I. STATUTORY RULES OF CONSTRUCTION FOR CONVEYANCES

[NOTE: I do not try in this paper to explain whether a conveyance is a well-bore only assignment. You are directed to review other papers on that subject.]

A title examiner needs to be able to ascertain whether the interest being conveyed is a mineral interest, a non-executory mineral interest, a royalty interest, an overriding royalty interest, a net profits interest, or some other type of interest.

The law provides: "Generally an indenture is a deed or writing containing a conveyance, bargain, contract, covenant or agreement between two or more parties, and in construing an indenture the usual rules for the interpretation of contractual writings apply." K & K Food Servs. v. S & H, Inc., 2000 OK 31, ¶7, 3 P.3d 705, 708.

Therefore, because "conveyances" are "contracts", the statutory rules on contract interpretation apply to conveyances of fee simple, surface and mineral conveyances. Oklahoma's statutes on interpreting contracts are collected in 15 O.S. §§ 151-178.

The provisions of Title 15 include:

15 O.S. § 151
All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by law.

15 O.S. § 152
A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful.

15 O.S. § 153
For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

15 O.S. § 154
The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

15 O.S. § 155
When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this article.

15 O.S. § 156
When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

15 O.S. § 157
The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping interpret the others.

15 O.S. § 158
Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

15 O.S. § 159
A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect, if it can be done without violating the intention of the parties.

15 O.S. § 160
The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

15 O.S. § 161
Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

15 O.S. § 162
A contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

15 O.S. § 163
A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

15 O.S. § 164
However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

15 O.S. § 165
If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

15 O.S. § 166
Particular clauses of a contract are subordinate to its general intent.

15 O.S. § 167
Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

15 O.S. § 168
Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause, subordinate to the general intent and purposes of the whole contract.

15 O.S. § 169
Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

15 O.S. § 170
In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

15 O.S. § 171
Stipulations which are necessary to make a contract reasonable or conformable to usage, are implied in respect to matters concerning which the contract manifests no contrary intention.

15 O.S. § 172
All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

15 O.S. § 173
If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

15 O.S. § 174
Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

15 O.S. § 175
Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

15 O.S. § 176
A promise made in the singular number, but executed by several persons, is presumed to be joint and several.

15 O.S. § 177
An executed contract is one, the object of which is fully performed. All others are executory.

15 O.S. § 178 [NA]

II. OKLAHOMA CASES: SAMPLES OF INTERPRETATIVE DECISIONS

A. General Interpretation Rules

When ascertaining the meaning of a conveyance, the statutes (quoted above) and case law (quoted below) make it clear that such analysis is limited to the "four corners" of the instrument, in the absence of a patent (obvious/visible) ambiguity. This limitation is established in (a) 15 O.S. §155: "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this article.", and (b) The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping interpret the others.

The application of the four corners rule is emphasized in Meeks v. Harmon, 1952 OK 326, ¶31, 250 P.2d 203, 207-208. "Where a written contract is complete in itself, and, viewed in its entirety, is unambiguous, its language is the only legitimate evidence of what the parties intended, and the intention of the parties cannot be determined from the surrounding circumstances, but must be gathered solely from the words used."

"The interpretation of a conveyance and whether it is ambiguous is, of course, a matter of law for the Court to determine and to resolve accordingly. [cites omitted] If the language and terms of a conveyance are clear and unambiguous, then the written deed, and the laws in force at the time of the deed's execution will govern the rights and obligations of the grantor and grantee. [cites omitted] Since the conveyance is complete in itself, the Court's duty to interpret the parties' intention cannot be gathered from the surrounding circumstances or parol evidence; the parties' intention must be ascertained solely from the language used in the conveyance. 15 O.S. 1971 §§ 154 , 155." Messner v. Moorehead, 1990 OK 17, ¶ 9, 787 P.2d 1270, 1273.

According to Colonial Royalties Co. v. Keener, 1953 OK 385, ¶4, 266 P.2d 467, 470. "The intention of the parties must be deduced from the entire agreement, and every provision must be construed so as to be consistent with every other provision if possible, and that construction adopted which gives effect to every part of the contract."

And (¶5):

"That the instrument is labeled 'Royalty Deed' has no bearing upon the intention of the parties, expressed in the body of the instrument. As was said by the Kansas Court in the case of Rutland Sav. Bank of Rutland v. Steele, 155 Kan. 667, 127 P.2d 471, 472, 'The terms of an instrument and not its name determine its nature and character.'"

Oklahoma's case law renders the impact of the parties' disagreement as to the meaning of an instrument a nullity so far as the court's determination as to whether the language of a conveyance is ambiguous:

> *"It is undisputed that Defendants drafted the assignments, and the assignments should be construed most strongly against them. The language of the 2003 Assignments is not ambiguous merely because Plaintiff and Defendants attach different meanings to the unambiguous language used. In this respect, we agree with the trial court that the 2003 Assignments unambiguously convey all of the Defendants' leasehold interests in the Northwest Quarter of the Southeast Quarter of Section 19, Township 21 North, Range 8 West, in Garfield County, Oklahoma, the forty-acre parcel where the Estill Unit No. 1 well is located, and including the Defendants' leasehold rights to produce oil and gas from the Estill Unit No. 1 well."*

Unreported: Fuksa Investments, Inc. v. Twenty-Twenty Oil and Gas, Inc., et al, Oklahoma Court of Civil Appeals, Case No. 111, 462, cert. denied., ¶¶ 17-19

The parties to an instrument are treated as saying what they mean, and meaning what they say: "In accordance with the principle that plain and unambiguous language in a deed is not susceptible of construction to ascertain an intention, the rule is well settled that any secret, subjective, or unexpressed intention or purpose is absolutely of no avail or importance in the

construction of deeds. While all clauses and words in a deed will be considered in construing it, the question is not what the parties meant to say, but the meaning of what they did say." Greenshields v. Superior Oil Co., 1951 OK 155, ¶13, 233 P.2d 959, 962. (emphasis added)

It is also a rule of law that any interpretation of a deed will be construed against the grantor (meaning the deed will be held to convey a greater interest rather than a lesser one.) [Lowery v. Westheimer, 1916 OK 856, ¶0(2); Rogers v. Jones, 40 F.2d 333 (10th Cir. E.D. OK 1930); and Edwards v. Brusha, 1907 OK 12, ¶7]

B. Specific Interpretation Rules

When interpreting what type of interest an instrument is conveying, such as a mineral interest versus a royalty interest, several factors must be considered, including: the precise language used, the existence of a lease, and, to a limited extent, a review of the title to the instrument.

Hemingway et al, Oil and Gas Law and Taxation at 77 (4th ed. 2004) explains

> "The average lawyer often has difficulty in understanding the difference between a royalty and a mineral interest. The Oklahoma cases further complicate such a lawyer's task by requiring him or her to determine which of several meanings a term may have. The inevitable result has been litigation and a small, highly specialized bar.

The attributes of a mineral interest include:

a. Executive right (right to lease)
b. Right to lease benefits (royalty, delay rentals, bonus)
c. Right to develop (cost-bearing)

A royalty interest includes the royalty, but not the right to lease, the delay rentals, and any bonus, and is free from costs.

The following cases provide some insight to this interpretative process:

1. Mineral versus Royalty Interests

As explained in Meeks v. Harmon, 1952 OK 326, ¶0(1), 250 P.2d 203: "Instrument conveying an undivided two-thirds of all royalties, rights and interests to grantor under oil and gas lease, held to be conveyance of royalty interest rather than of mineral interest."

According to Colonial Royalties Co. v. Keener, 1953 OK 385, ¶0(2) and (3), 266 P.2d 467:

"Generally, the term 'royalty' in conveyances of mineral rights with a further specification of the exact amount of the production thereby contemplated, is not ambiguous and will be construed in its popular sense in which the term, unless otherwise specified, does not include the right to the bonus and delay rentals received in consideration for an oil and gas lease of the premises....In these cases, [] the trial court adjudged that the only mineral interest in perpetuity conveyed the grantee by the deed in question was an undivided 1/8th nonparticipating royalty interest."

The components of a non-executory mineral interest exclude:

- Executive right (right to lease)

The components include:

- Right to lease benefits (royalty, delay rentals, bonus)
- Right to develop (cost-bearing)

The existence of a lease matters:

In (¶0(6)) of Melton v. Snead, it was stated: "Where a deed conveyed, in perpetuity, 'one third of all royalties from oil, gas, or other minerals, arising from or out of or produced upon' the lands described, and did not refer to any lease then existing on such land, the deed was ambiguous, and the trial court properly permitted the introduction of evidence to ascertain the intent of the parties, and gave to such language the meaning which the parties intended, and held the instrument a grant of the minerals rather than a conveyance of the royalties only." Or, as the court stated in ¶10, when quoting an earlier case, "The trial court correctly held that the word 'royalty' was used in the grant in its broader sense, as denoting one third of the mineral rights, which would include the right to join in any

lease thereafter made, and the right to demand and receive one-third of the bonus, rents, and royalties thereunder."
Melton v. Snead, 1940 OK 502, 109 P.2d 509

Kuntz explains: "'On the other hand, if the language of the instrument describes the right to participate in oil and gas after extraction, the interest is likely to be classified as a royalty interest. Thus, instruments using the terms 'oil and gas produced and saved,' or 'that may hereafter be produced,' have been construed to create non-participating royalty interests and not full mineral interests." Kuntz, Law of Oil and Gas § 16.2

Surety Royalty Company v. Sullivan, 1954 OK 270, 275 P.2d 259. held:
"The essential difference between a sale of a royalty interest and a sale of a mineral interest in lands is that the purchaser of the royalty interest has no right or interest in the minerals before recovery or in the land, and receives nothing unless production is obtained. Whereas, under a sale of a mineral interest the purchaser is entitled to lease his mineral interest and receive the bonus and rentals therefor and thereunder and is entitled to enter upon the land himself and develop and produce the oil and gas therefrom. Whether a mineral interest or a royalty interest is conveyed or reserved depends on the terms of the instrument." Sur. Royalty Co. v. Sullivan, 1954 OK 270, ¶1, 275 P.2d 259, 260. It was concluded, at ¶12, that "In the case at bar, the McMullin conveyance is not of royalty, but, rather, of an 'interest in and to the Oil and Gas and Oil and Gas Rights', and of the right to share in all future 'bonuses, rents and royalties, and other benefits which may accrue.' No ambiguity exists. Those words are in harmony with, and earmark the conveyance as one of an interest in the minerals before recovery. They are inconsistent and in discord with a conveyance of purely a royalty interest."

Wilson v. Olsen, 1934 OK 52, 30 P.2d 710.
"The phrase, 'an undivided one-third (1/3) interest in and to all of the royalty of the gas, oil and mineral and the rights thereto,' may be said to be ambiguous to the point that it requires additional information from which to determine with absolute certainty its exact meaning. Had the words, 'and the rights thereto,' been omitted, it might be logically concluded that the reservation referred to 'royalty' taken in a strict sense, and as defined by Webster's New International Dictionary as, 'A share of the product or profit reserved by the owner for permitting another to use the property,'" Wilson v. Olsen, 1934 OK 52, ¶11, 30 P.2d 710, 713.

Coker v. Hudspeth, 1957 OK 15, 308 P.2d 291.
"Where a written instrument clearly expresses an intendment by the parties thereto that the instrument is to convey a 1/32nd interest in the oil and gas in the land as limited by the terms of an existing oil and gas lease granting right to take oil and gas from the land reserving, as royalty a 1/8th interest to the owners of the minerals, such conveyance to the grantee is a grant of a 1/32nd of 1/8 of the oil and gas produced from the land under the terms of said lease." Coker v. Hudspeth, 1957 OK 15, ¶1, 308 P.2d 291, 292.

2. Overriding Royalty Interest

The interest known as an Overriding Royalty Interest is carved out of the working interest, and is defined by Williams and Myers, Manual of Oil and Gas Terms as:

> "An interest in oil and gas produced at the surface, free of the expense of production, and in addition to the usual landowner's royalty reserved to the lessor in an oil and gas lease."

According to Olson v. Continental Resources, Inc., 2005 OK CIV APP 13, ¶¶ 11-13, 109 P.3d 351:

> "¶11 An overriding royalty interest is created out of the working interest in an oil and gas lease. It is an interest in the lease out of which it is carved, and cannot be a property interest of greater dignity than the lease itself. *XAE Corp. v. SMR Property Management Co.*, 1998 OK 51, 968 P.2d 1201, 1206-1207. Therefore, the overriding royalty interest does not survive termination of the lease, absent fraud, breach of a fiduciary relationship, or an agreement otherwise. *DeMik v. Cargill*, 1971 OK 61, 485 P.2d 229, 233, and *Probst v. Hughes*, 1930 OK 57,143 Okla. 11, 286 P. 875, 879.
>
> "¶12 The assignment of an overriding royalty interest out of the leasehold interest does not by itself create a fiduciary relationship between assignor and assignee.*Brannan v. Sohio Petroleum Co. (Brannan II)*, 260 F.2d 621, 622 (10th Cir. 1958) (applying Oklahoma law). [1] Therefore, there is no relationship of trust and confidence between assignor and assignee which proscribes the lessee from acquiring a new lease, unburdened by the overriding royalty interest, from the owner of the land to take effect upon the expiration of the assigned lease. *Brannan v. Sohio Petroleum Co. (Brannan I)*, 248 F.2d 316, 318 (10 th Cir. 1957). However, a fiduciary relationship may arise from other factors, such as when no consideration is paid for an assignment at the time of transfer and the assignor is to be paid from production. *Rees v. Brisco*, 1957 OK 174, 315 P.2d 758, 763.
>
> "¶13 The rights of an overriding royalty owner in future leases are protected if the assignment contains a clause providing the override applies to extensions or renewals of the original lease from which it is carved. For example, in *Probst v. Hughes*, 1930 OK 57, 286 P. 875, 876, 143 Okla. 11, the agreement stated the overriding royalty interest would "apply as to all modifications, renewals of such lease or extensions that the assignee, his successors or assigns may secure." The Court held a second lease taken by the lessee from the fee owner before expiration of the first lease was a renewal of the first lease, even though the well had ceased producing and was plugged."

3. Net Profits Interest

The nature of a Net Profits Interest is explained in the footnotes for Hubble v. Shell Western E & P, Inc., 2010 OK CIV APP 61, 238 P.3d 939

FOOTNOTES

[1] The assignment provided in part,

> If said well produces oil or gas in paying quantities, then in that event the party of the second part, as an additional consideration for the assignment, agrees to carry the party of the first part for an undivided one-fourth (1/4) of the seven-eighths (7/8) working interest in said above described oil and gas mining lease; that is to say, the party of the second part shall advance all of the cost of drilling, development and operation necessary or convenient, and shall receive all of the oil and gas produced therefrom until the sales of oil and gas produced from said property shall have reimbursed the party of the second part for all monies so expended in the drilling, development and operation of said lease, including all cost of investment and expense necessary or incident to the proper development and operation of said property, and after the second party has been so reimbursed, then the party of the first part is to receive one-fourth (1/4) of the net profits derived by the party of the second part from said premises.

[2] The treatment of a net profits interest as a royalty interest is consistent with the definition of royalty interest in the Production Revenue Standards Act, 52 O.S.2001 §570.2(6), as a "percentage interest in production or proceeds ... reserved or granted by a mineral interest owner exclusive of any interest defined as a working interest or subsequently created interest." It is not a "subsequently created interest" under §570.2(10) because the assignment reserving the interest did not specify the interest would not be communitized.

C. Absence of Reservation or Exception

The law is clear, as explained below, that, unless a conveyance contains express words of limitation, it conveys all of the interest of the grantor/assignor in the subject property.

16 O.S. § 29: provides: "Every estate in land which shall be granted, conveyed or demised by deed or will shall be deemed an estate in fee simple and of inheritance, unless limited by express words." (emphasis added)

A "fee simple" interest includes both the surface and the mineral interest, because, according to 60 O.S.§ 64: "The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it."

16 O.S. § 18 provides: "A quitclaim deed made in substantial compliance with the provisions of this chapter, shall convey all the right, title and interest of the maker thereof in and to the premises therein described." (emphasis added)

In addition, the courts have held that the statutes provide that a quit claim deed is as effective as a warranty deed to convey whatever interest the grantor currently has in the real property. Tucker v. Leonard, 1919 OK 259, ¶¶ 35-37, 183 P. 907, 914.

Generally speaking, express words that "reserve" an interest, are treated as carving out an interest and as setting such interest aside in favor of the grantors in the instrument. See: Wade v. Roberts, 1959 OK 194, ¶0:

> *1. The words of a reservation clause are considered to be those of the grantor and are construed most strongly against him. 2. A reservation is the taking back of part of that already conveyed; and where a deed recites that it conveys title to a described tract of land containing 32 acres more or less followed by a reservation clause reserving 'an undivided 5/32 interest amounting to an undivided five (5) acre interest' of the mineral rights in the lands conveyed, such clause reserved only an undivided five acres of the mineral rights of said land so conveyed.*

Also, as explained in Whitman v. Harrison, 1958 OK 141, ¶0:

> *When a deed of conveyance provides for an exception, excluding certain interests from the operation of the granting clause, but no apt words are used which would indicate there was an intent on the part of grantor to reserve unto himself any interest in said property, the deed under our statute 16 O.S.1951 § 29 must be construed to convey to grantee all of the interest vested in grantor at the time of the execution of the deed.*

And ¶¶13-15:

> *"To create a reservation it must appear from the instrument that the grantor intended to and by appropriate words expressed the intent to reserve an interest in himself. Otherwise, the exception must be construed as an exception to the warranty."*
>
> *We have not overruled that decision and the rule thereof stands and was followed by the trial court.*
>
> *That rule was followed in Cutright v. Richey, 208 Okl. 413, 257 P.2d 286 , 287, where, in syllabus paragraph 4 we held:*
>
> *"A grantor in a deed in presumed to have made all the reservations he intended to make and he is not permitted to derogate from his grant by showing that some reservation was intended but not expressed. [16 Am.Jur. Deeds, Sec. 406; Tong v. Feldman, 152 Md. 398, 136 A. 822, 51 A.L.R. 1291]."*

Also see: Schnell v. McClure, 1958 OK 234, ¶0(2), which provides:

> "When a deed of conveyance provides for an exception, excluding certain interests from the operation of the granting clause, but no apt words are used which would indicate there was an intent on the part of grantor to reserve unto himself any interest in said property, the deed under our statute, 16 O.S.1951 § 29, must be construed to convey to grantee all of the interest vested in grantor at the time of the execution of the deed."

The law provides that, in construing a conveyance, any uncertainty is always interpreted against the grantor. Edwards v. Brusha, 1907 OK 12, ¶0(5), 90 P. 727, 727: "A conveyance is to be construed most strongly against the grantor." Lowery v. Westheimer, 1916 OK 856; Rogers v. Jones, 40 F.2d 333; Edwards v. Brusha, 1907 OK 12.

As explained in Whitman v. Harrison, 1958 OK 141, ¶0, 327 P.2d 680, 681. "When a deed of conveyance provides for an exception, excluding certain interests from the operation of the granting clause, but no apt words are used which would indicate there was an intent on the part of grantor to reserve unto himself any interest in said property, the deed under our statute 16 O.S.1951 § 29 must be construed to convey to grantee all of the interest vested in grantor at the time of the execution of the deed."

Wade v. Roberts, 1959 OK 194, ¶0(1), 346 P.2d 727,728 provides: "The words of a reservation clause are considered to be those of the grantor and are construed most strongly against him."

Generally speaking, express words that "reserve" an interest, are treated as carving out an interest and as setting such interest aside in favor of the grantors in the instrument.

Schnelle v. McClure, 1958 OK 234, ¶0(2), 330 P.2d 598, 599: provides: "2. When a deed of conveyance provides for an exception, excluding certain interests from the operation of the granting clause, but no apt words are used which would indicate there was an intent on the part of grantor to reserve unto himself any interest in said property, the deed under our statute, 16 O.S.1951 § 29, must be construed to convey to grantee all of the interest vested in grantor at the time of the execution of the deed."

[Also see: Burns v. Bastein, 1935 OK 886, ¶0(8)]

Sanders v. Bell, 1960 OK 60, 350 P.2d 293.

"Defendants assert that the language of the reservation in the Farra-Bell conveyance is clear and for said reason the intention of Farra and Bell must be gathered from the language used in said reservation. We agree. ...As we read the reservation, Farra and Bell must be gathered from the language used in said reservation an undivided 1/16th 'interest in all oil, gas and minerals found and produced from' the property conveyed and did not reserve 1/2 of the usual 1/8th royalty interest." Sanders v. Bell, 1960 OK 60, ¶10-11, 350 P.2d 293, 294.

Pease v. Dolezal, 1952 OK 265, 246 P.2d 757.

"Whether a reservation of oil and gas reserves to the grantor, either expressly or by implication, any rights or interest in the land, or in the minerals in place, appears to be the essential difference between a conveyance of a mineral interest in the land and a royalty interest in the oil and gas produced therefrom." Pease v. Dolezal, 1952 OK 265, ¶10, 246 P.2d 757, 760.

Wilson v. Hecht, 1962 OK 22, 370 P.2d 28.

"Reservation in conveyance of land not leased for oil and gas purposes to effect that grantor 'reserves one-sixteenth (1/16) of *all* oil, gas or minerals of any character or kind produced from the described land' served to reserve 1/16th of *all* oil, gas or minerals produced and not 1/2 of the usual 1/8th royalty interest." Wilson v. Hecht, 1962 OK 22, Syllabus 1, 370 P.2d 28, 29.

"In Sanders v. Bell we emphasized the word 'all' that appeared in the reservation clause. In that case as here, grantor reserved 1/16th of all production. Since the minerals were unleashed as of date of reservation, the grantor in each instance by clear wording of the reservation reserved 1/16 of all (16/16ths) of the production and not 1/2 of the usual 1/8th royalty interest. If the owners of the minerals in either instance had elected to develop the minerals, and such was their privilege, there would have been no so-called royalty interest and plaintiff would be entitled to 1/16th of all production." Wilson v. Hecht, 1962 OK 22, ¶12, 370 P.2d 28, 31.

D. Competing Recording Priorities

A grantor cannot grant an interest they no longer hold. "It is an axiomatic principle of law that a grantor cannot convey an estate greater that that possessed by him." Nilsen v. Tenneco Oil Co., 1980 OK 14, ¶26, 614 P.2d 36, 41.

The decision as to which of several instruments is senior, when they convey the same interest and are executed on the same date, but recorded in reverse order, will be guided by the proper application of the notice statutes and the Recording Act.

The notice statutes provide:

25 O.S. § 10: "Notice is either actual or constructive."

25 O.S.§ 11: "Actual notice consists in express information of a fact."

25 O.S.§ 12: "Constructive notice is notice imputed by the law to a person not having actual notice."

25 O.S.§ 13: "Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself." [i.e., inquiry notice]

The Recording Acts provide:

16 O.S. §15: "Except as hereinafter provided, no acknowledgment or recording shall be necessary to the validity of any deed, mortgage, or contract relating to real estate as between the parties thereto; but no deed, mortgage, contract, bond, lease, or other instrument relating to real estate other than a lease for a period not exceeding one (1) year and accompanied by actual possession, shall be valid as against third persons unless acknowledged and recorded as herein provided. No judgment lien shall be binding against third persons unless the judgment lienholder has filed his judgment in the office of the county clerk as provided by

and in accordance with Section 706 of Title 12 of the Oklahoma Statutes." (underlining added)

16 O.S. §16: "Every conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, encumbrancers or creditors." (underlining added)

Williams v. McCann, 1963 OK 204, ¶0(5), 285 P.2d 788, provides:

> "A grantee, taking deed, whether in form of quitclaim or of grant, bargain, and sale, without notice of grantor's outstanding conveyance of described premises to another or his obligation to make such conveyance or create lien on premises, nor notice of facts which would lead to knowledge of such conveyance or equity if followed, up, is entitled to protection as bona fide purchaser on showing that he paid fair stipulated consideration for claim or interest designated."

Knowles v. Freeman, 1982 OK 89, ¶¶19-20, 649 P.2d 532, provides.

> "In the case now before us, the plaintiffs not only conveyed the mineral interest in the questioned 40-acre tract to Burris, but in addition, Burris conveyed the mineral interest to Homer L. Griffith and the mineral deed was recorded prior to the recording of the purported "corrective deed" from plaintiffs to Burris. Since Griffith had no notice, actual or constructive, that the 40 acre tract was included in the deed to him by mistake, whether mutual or unilateral, Griffith became a bona fide purchaser and owner of the conveyed mineral interest, a status which inured to his widow, Mildred M. Griffith, when she in turn conveyed to defendant.
>
> "Title to the mineral interest having passed to a bona fide purchaser prior to the recording of the "corrective" deed, it becomes of no consequence whether defendant had notice of the claim of plaintiffs that the conveyance included the mineral interest in the 40-acre tract at the time defendant acquired title."

III. LIST OF MINERAL ARTICLES BY KRAETTLI Q. EPPERSON

(at www. eppersonlaw.com)

274. "'Defensible Title' When Examining Oil and Gas Interests: An Overview of the Law in Oklahoma," and "Oklahoma Severed Minerals Affidavit of Heirship", Garfield County Bar Association, Enid, Oklahoma (May 13, 2014)

265. "Oil and Gas Title Examination Basic Terms", Oil & Gas Title Examination – Oklahoma Bar Association, Tulsa, Oklahoma (September 12, 2013) and Oklahoma City, Oklahoma (September 13, 2013)

239. "**Oklahoma's Marketable Record Title Act: An Argument for its Application to Chains of Title to Severed Minerals after *Rocket Oil and Gas Co. v. Donabar***", 82 The Oklahoma Bar Journal 622 (March 12, 2011)

232. "Oil and Gas Title Examination Basic Terms", Energy Law Basics, The National Business Institute, Oklahoma City, Oklahoma (November 18, 2010)

222. "'Defensible Title' When Examining Oil and Gas Interests: An Overview of the Law in Oklahoma", The Real Property Tract, The Annual Oklahoma Bar Association Meeting Continuing Legal Education Program, Oklahoma City, Oklahoma (November 4, 2009)

215. "Well Site Safety Zone Act: New life for Act", The Oklahoma City Mineral Lawyers Society (May 21, 2009)

214. "**Well Site Safety Zone Act: New life for Act**", 80 The Oklahoma Bar Journal 1061 (May 9, 2009)

194. "Marketable Title: What is it? And Why Should Mineral Title Examiners Care?", The 2007 Rock Mountain Mineral Law Foundation Institute, Westminster, Colorado (September 13, 2007)

44. "Oil and Gas Title Examination Standards Update," 1990 Practical Oil and Gas Seminar (with David D. Morgan), Oklahoma City Petroleum Landmen's Association and Oklahoma City University Law School, Fountainhead Resort Hotel, Oklahoma (June 1-2, 1990)

41. "Title Examination Standards Relevant to Oil and Gas Leases," (with Don Laudick David Morgan) Tulsa County Bar Association Mineral Law Section, Tulsa, Oklahoma (December 13, 1989)

38. "Title Examination Standards Relevant to Oil and Gas Leases," Back to Basics-A New Look at Fundamental Oil and Gas Issues, Joint Oklahoma Bar Association and OBA Mineral Law Section, Tulsa, Oklahoma (September 29, 1989) and Oklahoma City, Oklahoma (October 6, 1989)

37. "**Oklahoma Title Examination Standards and Curative Acts Relating to Oil and Gas Interests**," 24 Tulsa L.J. 548 (1989) (with David D. Morgan)

30. "The Application of the Title Examination Standards to Oil and Gas Opinions," (with Don Laudick and David D. Morgan) Tulsa County Bar Association Mineral Law Section, Tulsa, Oklahoma (October 12, 1988)

28. "The Application of the Title Examination Standards to Oil and Gas Title Opinions" (with David Morgan), Presented to: Oklahoma City Association of Petroleum Landmen, Oklahoma City, Oklahoma (April 21, 1988)

25. "The Application of the Title Examination Standards to Oil and Gas Opinions," (with David Morgan) Mineral Lawyers Society of Oklahoma, Oklahoma City, Oklahoma (November 19, 1987)

23. "Oklahoma Title Examination Standards and Curative Acts Relating to Oil and Gas Interests," Oil and Gas Problems and Solutions, Oklahoma City University Law School, Oklahoma City, Oklahoma (October 2, 1987)

3. "**Lenders Mineral Title Insurance: A Mini-Primer**," 53 Oklahoma Bar Journal 3089 (December 1982)

2. "Lender's Mineral Title Insurance," The Troubled Oil Venture, Oklahoma City University Law School, Oklahoma City, Oklahoma (August 20, 1982)

II. LIST OF OTHER AUTHORS' USEFUL TITLE EXAMINATION PAPERS

1. "Oil and Gas Title Opinion Basics," by Rhonda J. McLean, OCRPLA (April 2015)

2. "Oil and Gas Lease Cancellations: Production in Paying Quantities," by Munson - Ritter at Cleverdon Seminar Presentation (2014)

3. "Preparing Title Opinions in the Digital Age," by Donald F. Heath, Jr., Presentation at Mineral Lawyers Society of Oklahoma City (Oct. 18, 2012)

4. "Basis of Opinions, Types of Opinions, and Layout of Opinions," by Allen D. Cummings, Rocky Mt. Min. L. Fdn., Paper no. 3 (2012)

5. "Oil and Gas Title Due Diligence," by John Lee, Rocky Mt. Min. L. Fdn., Paper no. 7, Vol. 48, No. 2 (2011)

6. "Construction of Instruments Creating Interests in Oil and Gas," by Matthew Bender & Company, Inc., Kuntz Law of Oil and Gas, Ch. 16 (2011)

7. "The Oil and Gas Lease in Oklahoma: A Primer," by Ryan A. Ray, 80 Okla. B.J. 1031 (2009)

8. "The Continuing Problem of 'Other Minerals:' Oklahoma Needs a Uniform Rule of Construction," by Sharon J. Bell, 56 Okla. B.J. 2919 (1985)

9. "Determining Mineral Ownership in Texas After Moser v. United States Steel Corp. The Surface Destruction Nightmare Continues," by David A. Scott, 17 St. Mary's L. J. 185 (1985)

10. "Texas Reexamines the Meaning of 'Minerals': Moser v. United States Steel Corp.," by Paul D. Newton, 19 Tulsa L. J. 448 (1984)

11. "Oil & Gas: Retroactive Application of Oklahoma's Statutory Pugh Clause?" By David D. Hunt, II, 53 Okla. B.J. 487 (Feb. 27, 1982)

12. "What Surface is Mineral and What Mineral is Surface," by Don Emery, 12 Okla. L. Rev. 499 (1959)