

Test Booklet
INSTRUCTIONS

THERE ARE SEVENTEEN PAGES TO THIS EXAM

1. There are four sections to this examination. The first section is short essay and consists of 7 questions. Each of the questions is worth 5 points --a total of 35 points for Section I. The second section of the examination is comprised of 25 true/false questions. Each question is worth 2 points for a total of 50 points for Section II. Section three is composed of 10 short answer questions worth 5 points a piece for a total of 50 points for Section III. The final section of the examination is composed of three longer essay questions. Each of the questions is worth 25 points --a total of 75 points for Section IV. There are a total of 205 points on this examination. The time for completing the examination is three hours.
2. This examination is "closed book."
3. Be sure to answer the specific questions that are asked. Information supplied relating to some unasked question will not increase your score and consumes your time needed to answer the asked questions.
4. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts. This material will not count in the number of lines that you are limited to.
5. Quality, not quantity, is desired. Think through and briefly outline your answers before you begin to write.
6. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to do so will result in an appropriately lower score.
7. Do not seek an interpretation of language in the questions from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial corrections in your answer.
8. ***Other than answers to Section IV, all answers must be written in the appropriate spaces in this booklet. Only answers in this booklet will be graded.*** Do not exceed the designated space for each answer. Only one line of writing per printed line is allowed. Do not write outside of margins, on back, etc. Excess material will not be read and will not count towards your score.
9. If you are using Softest, your answer to the longer essay question must not exceed 150 words. Excess material will not be read and consequently any

overage will not count towards your score. "Excess material" means words which appear at the physical end of the printed version of your answer in excess of the allotted number of words. If you attempt to manipulate the word count to gain an unfair advantage such as by omitting spaces between words, your score will be significantly reduced by an amount to be determined on a case-by-case basis.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefore.

EXAM NUMBER _____

UNLESS OTHERWISE NOTED APPLY TEXAS LAW IN ANSWERING ALL QUESTIONS

TEST BOOKLET

SECTION I

(each question is worth 5 points for a total of 35 points)

State whether you agree or disagree with each of the following statements. Explain fully.

1. A Pugh clause is the same thing as a retained acreage clause.

2. When a deed conveys a royalty interest by the mechanism of granting a fractional mineral estate followed by reservations, what is conveyed is a fixed fraction of total production royalty.

3. The accommodation doctrine has been substantially limited in Texas.

4. When an owner of a fractional interest in minerals conveys away a fractional interest in his estate by way of a mineral deed and the fraction designated in such deed is stated to be a mineral interest in land described in the deed, the fraction conveyed is to be calculated upon the entire mineral interest.

5. A severance of minerals in an oil, gas, and other minerals clause of an oil and gas lease includes uranium.

6. Agreements purporting to indemnify a party against loss or liability resulting from personal injury, death, or property damages that are caused by the party's own negligence in a drilling contract are void in Texas.

7. The interest of the grantee in a term mineral interest retained by a grantor in a mineral deed violates the rule against perpetuities.

SECTION II

(each question is worth 2 points for a total of 50 points)

For each of the following statements state whether the statement is true or false.

1. Absent a contractual provision to the contrary, a lessee has the right to use potable groundwater belonging to the surface owner free of costs for his drilling operations. _____

2. Absent a contractual provision to the contrary, overriding royalties paid out of production are deducted from the calculation of total income for purpose of the "paying quantities calculation". _____
3. A gas well that is capable of producing gas in paying quantities if the well switch were turned on that is ordered shut-in by the Railroad Commission for violating the production allowable, can be maintained by payment of shut-in royalties. _____
4. Division orders bind underpaid royalty owners until revoked. _____
5. A mineral deed that grants an undivided 1/24 of all oil, gas and other minerals in and under and that may be produced and saved from the land conveys a royalty interest. _____
6. A mineral deed that grants an undivided 1/16 interest in and to all of the oil, gas and other minerals in and under and that may be produced from the land, provided the grantee does not participate in any rentals or leases conveys a 1/16 royalty. _____
7. A retention in a mineral deed of a 1/16 interest in and to all of the oil, gas and other minerals in and under and that may be produced from said land without any right to participate in leasing or to share in delay rentals and bonus, provided however, grantor shall receive the royalty retained herein only from actual production, reserves a 1/16 royalty. _____
8. Money received as delay rentals on a oil and gas lease of separate property is separate property. _____
9. A developing co-tenant must grant the carried cotenant a royalty on his share of production. _____
10. Absent language to the contrary in the document creating his interest, a life tenant in land subject to an existing oil and gas lease can unilaterally execute a new lease covering the same property after the original lease expires. _____
11. The open mine doctrine is an established exception to the traditional common law position that treats royalties under an oil and gas lease as income. _____
12. A league contains 4,208 acres. _____

13. If the mineral estate has been severed from the surface by a mineral deed, but such deed is not recorded at the time the limitations period has run, adverse possession for the statutory period of the surface gives adverse possession of the minerals. _____
14. The owner of a nonparticipating mineral fee can enter into a valid oil and gas lease. _____
15. Near surface iron ore is not part of the mineral estate conveyed to the lessee in a lease that covers oil, gas and other minerals. _____
16. A lessee can successful defend against a lessor's claim of breach of the implied covenant to protect against drainage on the ground that the lessee had complied with the existing spacing and density requirements. _____
17. A grantor who owns an undivided 50% of a mineral estate who then executes a mineral deed that states that the intent is to convey one-half of the minerals out of the interest he owns, conveys away his entire mineral interest.

18. A proportionate reduction clause in an oil and gas lease provides for the apportionment of royalties among different owners of a subdivided tract.

19. Absent a lease provision to the contrary, the habendum clause and those provisions that modify it, such as well completion clauses, are indivisible.

20. If the owner of land conveys a mineral interest after adverse possession of the surface has commenced, the conveyance will stop the running of the limitations period as to the conveyed mineral interest. _____
21. In the absence of an extension and renewal clause in the assignment documentation of an oil and gas lease, the assignee can enter into a top lease that is not subject to the overriding royalty reserved in the assignment by an assignor of the original bottom lease. _____
22. The nonapportionment doctrine does not applies in the case where the spacing and density rules of the Railroad Commission prohibit drilling on one of the tracts resulting from the subdivision, and such tract is being drained by the producing well. _____

23. Under the Texas Mineral Interest Pooling Act an offer made by an operator who has drilled or proposed to drill, to a royalty interest is not necessarily fair and reasonable just because it would allow the royalty owner to share on the same basis as all the other owners in the proration unit.

24. A no warranty deed precludes a grantor from asserting a reservation that would reduce the interest purportedly conveyed to the grantee. _____

25. The term "market value" in a royalty provision of an oil and gas lease is a plain term and not ambiguous. _____

SECTION III

(each question is worth 5 points for a total of 50 points)

1. Grantor purports to convey in a mineral deed 100% of the minerals to Grantee, reserving only a 1/16 royalty, but fails to except an undivided one-half of the minerals owned by a third party. What remedy for the Grantee? Briefly explain.

2. A grantor conveyed a terminable royalty for a period of fifteen years and as long thereafter as oil is being produced in paying quantities. Ten years later the grantor executed a second royalty deed which becomes effective only upon the expiration of the initial terminable royalty. Is the second royalty deed valid? Briefly explain.

3. The granting clause of a mineral deed stated that it was conveying a 1/16 interest in the minerals, the existing lease provision of the mineral deed stated that the grantee was to receive 1/16 part of the oil, gas or other minerals produced under the existing lease (which provided a 1/8 royalty) it being the grantors intention to convey one half of the interest they now had in such production, and finally the mineral deed recited that upon termination of the existing lease the grantee was to have and hold 1/2 of all the minerals. What interest in the possibility of reverter is conveyed to the grantee? Briefly explain

4. J. D. McCleave and wife, Lillie Mae McCleave, under a deed dated May 25, 1933, conveyed to Fred D. McCleave, a cousin, a tract of land out of the G. W. Haynes Survey in Morris County, Texas, being described in three parcels aggregating 53 1/5 acres. This deed, which purports to convey the fee simple title with general warranty, contained a reservation or exception, which reads: 'It is understood and agreed that all oil, gas and mineral rights in and to the within described tract of land is herein retained to grantors and their seven children, share and share alike, together with the right of ingress and egress.' What interest do the seven children have?

5. Draft an entireties clause for an oil and gas lease? Briefly explain its purpose.

6. Draft a separate ownership clause for an oil and gas lease? Briefly explain its purpose.

7. Garza owns a 25,000 acre ranch in south Texas. The Encino Oil Company leases 10 acres from her to drill a wildcat well. Can the company get a drilling permit? Briefly explain.

8. A church acquired a three acre tract of land for a church in 1881. The same year they acquired a 2 acre tract of land adjoining the church for a cemetery. In 1931 they leased the 2 acre tract of land and a producing oil well was drilled. The church would like to get an exception to drill on the 3 acre tract of land. Can the church get the exception? Briefly explain.

9. Abrams conveys 160 acres to Bray by a warranty deed that purports to reserve in Abrams the minerals underlying the north 80 acres. Abram's mineral ownership is in fact limited to those minerals underlying the west one-half of the 160 acres; he does not own any of the minerals underlying the east one-half. Can Bray obtain ownerships of the minerals beneath the southeast 40 acres under the *Duhig* doctrine? Briefly explain.

10. The granting and warranty clauses of a royalty deed spoke of a $1/32$ royalty. At the time of the conveyance the land was subject to an oil and gas lease that paid a $1/8$ royalty. A clause addressing the existing lease and another clause dealing with subsequent leases stated respectively, that the grantee "shall receive one-fourth" and "shall be entitle to one fourth" of all royalties. What interest was conveyed to the grantee? Briefly explain.

SECTION III

(each question is worth 25 points for a total of 75 points)

1. In a 1978 deed, G.R. White and wife conveyed to S. Jones certain land in Concho County. A provision in the deed reserved in the grantors an interest in the minerals. That portion of the deed provided as follows:

Grantors herein reserve for themselves, their heirs, assigns and legal representatives an undivided 1/16 interest in and to all minerals of every kind and description, including oil and gas, in, upon and under said land; but the right to control and manage and make any and all gas and oil leases or other mineral leases upon said land is hereby granted exclusively to grantees herein, their heirs, assigns and legal representatives, and they shall be entitled to any and all cash bonus or bonuses paid on any and all oil and gas leases on said land together with all cash rentals under such leases; but an undivided 1/16 of any and all oil and gas and other minerals developed from said land shall be owned by grantors herein, their heirs, assigns and legal representatives.

After acquiring the land, Jones entered into an oil and gas lease that reserves to the lessor a one-eighth royalty. The lessee has completed a producing well. How should all the royalties be apportioned? Explain fully.

2. Smith, as lessor, executed and delivered to the Jones, as lessee, an oil, gas and mineral lease on and to all the premises described as follows: 'All that certain tract of land situated in the County of Yoakum, State of Texas, described as follows, to-wit: The Northwest one-fourth and the West one-half of the Northeast one-fourth of Section 21, Block K, Public School Land in Yoakum County, Texas, and containing 240 acres more or less.' The lease contained a covenant of general warranty and provided in usual and customary language for reservation to the lessor of a one-eighth royalty. The lease contains a clause in the following language:

'If said lessor owns a less interest in the above described land than the entire undivided and fee simple estate therein, then the royalties and rentals herein provided for shall be paid the lessor only in the proportion which lessor's interest bears to the whole and undivided fee.'

The lease also contains another clause reading as follows:

3. In September 1945, Anita Ugarte de Ortiz conveyed to Joe A. Ortiz a nonparticipating royalty interest by a deed ("the Ortiz-Ortiz deed"). In December 1945, Joe A. Ortiz conveyed his entire interest in the nonparticipating royalty to George E. Neel by a deed ("the Ortiz-Neel deed"). The relevant provisions of the Ortiz-Neel deed are as follows:

That I, Joe A. Ortiz, of the County of Webb and State of Texas, hereinafter called Grantor, (whether one or more) for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars cash in hand paid, (and other good and valuable considerations), by Geo. E. Neel, hereinafter called Grantee (whether one or more) the receipt of which is hereby acknowledged, have Granted, Sold and Conveyed, Assigned and Delivered, and by these presents do Grant, Sell, Convey, Assign and Deliver unto the said Grantee an undivided one-half (1/2) interest in and to all of the oil royalty, gas royalty, royalty in casing head gas and gasoline, and royalty in all other minerals in and under and that may be produced and mined from the following described land situated in the County of Webb....

...

All of the above aggregating 2000 acres, on which one-half royalty is hereby conveyed, together with the right of ingress and egress at all times for the purpose of recovering, removing and receiving the same therefrom. This grant shall run forever. If said land is now under an oil, gas and mining lease or leases, it is understood and agreed that this sale is made subject to the terms of said lease or leases, but covers and includes one-half (1/2) of all the oil royalty, gas royalty, casing head gas and gasoline royalty, and royalty from other minerals or products, due and to be paid under the terms of the said lease or leases in so far as said lease or leases covers the herein above described property.

...

In the event the present oil, gas and mineral lease or leases covering the above described property, or any part thereof, if there be any such lease or leases, terminate, lapse or is forfeited, then Grantee shall own and be entitled to receive as a free royalty, (1) An undivided one-sixteenth (1/16th) of all the oil produced and saved from the premises, delivered to Grantee's credit free of cost in the pipe line, (2) An undivided one-

sixteenth (1/16th) interest and portion of the value or proceeds of the sales of natural gas, (3) An undivided one-sixteenth (1/16th) portion of the net amount of gasoline or other products manufactured from gas or casing head gas produced from wells situated on the premises, (4) An undivided (1/16th) of all other minerals produced from the said premises forever, from the above described property. Should a future lease or leases be executed covering the above described property, or any part thereof, then Grantee shall receive the mineral interests described in the preceding paragraph out of the royalty provided for in such leases.

At the time the two 1945 deeds were executed, the land was subject to an oil and gas lease, signed in 1940, which reserved a one-eighth royalty interest in production. The 1940 lease eventually expired, and a new lease was executed on July 1, 1980, which granted a one-fourth royalty in the production of oil and gas. This lease remains in effect. What royalty should Neel receive under the new lease? Fully explain.
