

INSTRUMENT INTERPRETATION: NEW MEXICO & TEXAS

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ROADMAP

- New Mexico Instrument Interpretation Roadmap
- New Mexico examples: Royalty Dispute and Duhig
- Texas Instrument Interpretation Roadmap
- Texas Examples: fixed vs floating NPRI

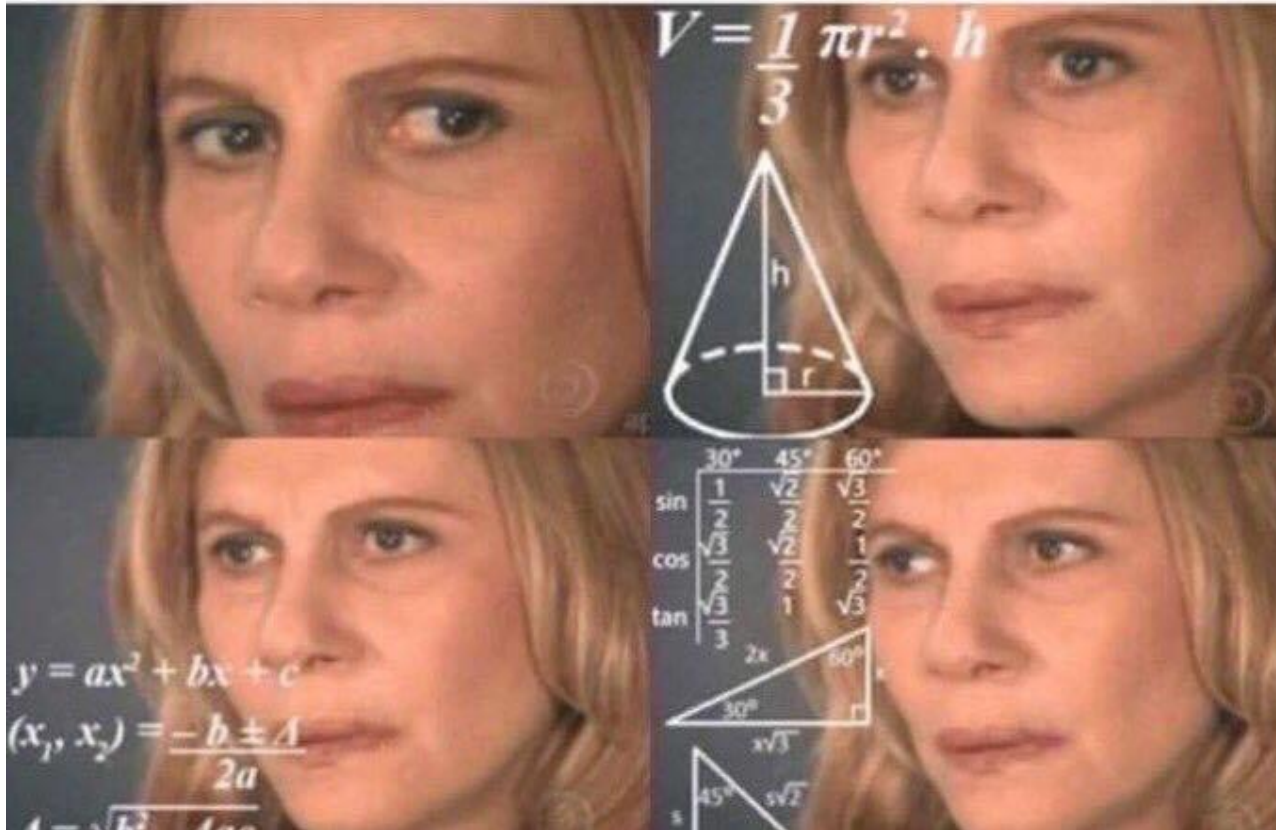
INCLUDED IN MATERIALS

- New Mexico and Texas Instrument Interpretation charts
- New Mexico and Texas articles on instrument interpretation
- Relevant New Mexico and Texas cases

NEW MEXICO



TEXAS



NM INSTRUMENT INTERPRETATION

Ambiguous vs. Unambiguous

Question of law for the court

ANSWER DOESN'T MATTER



NM INSTRUMENT INTERPRETATION

Contextual (“modern”) approach: role of the court is to determine the intent of the parties at the time they made the contract.



NM INSTRUMENT INTERPRETATION

The court can hear the following extrinsic evidence (regardless of ambiguity):

1. Circumstances surrounding the making of the contract;
2. Relevant usage of trade (terms);
3. Course of dealing of the parties (past actions);
4. Course of performance (what the parties did);



NM INSTRUMENT INTERPRETATION

The Process:

Question of ambiguity decided by the trial court;
clarified by review of extrinsic evidence

Unambiguous: No reasonable person could hold any way but one.

Ambiguous: Court determines instrument is reasonably and fairly susceptible to different constructions.



NM INSTRUMENT INTERPRETATION

Example: royalty lease payment dispute

Court reviewed the following:

1. Assignments of the Lease
2. Unit Agreements
3. Division Orders
4. All communications between the parties prior and during negotiations, including public oral statements at administrative hearings
5. Course of performance between the parties



NM INSTRUMENT INTERPRETATION

Practical Example: Duhig

New Mexico has adopted the duhig rule: In the event of an over-conveyance, reduce the grantor's interest to make the grantee whole.

Smith: ½ minerals, 100% surface

1. Smith: All RTI reserved: 1/2 OGM → Jones & Turner (Deed 13/218)
Not subject to prior reservations; classic duhig
= Jones and Turner: 100% surface, 1/2 minerals, half to each;

2. Jones: All RTI reserved: 1/4 OGM → Turner (Deed 25/482)
Not subject to prior reservations; classic duhig

RESULT NM: Jones: 1/4 minerals; Turner: 100% surface, 1/4 minerals; (contextual approach)

Result TX: Jones 0 minerals, Turner: 100% surface, 1/2 minerals (mechanical application of duhig)



NM INSTRUMENT INTERPRETATION

Why different result in New Mexico:

1. **Context:** Jones and Turner both understood they owned $\frac{1}{4}$ of the minerals prior to the Jones to Turner conveyance.
2. **Course of performance:** the parties signed leases and accepted royalties on $\frac{1}{4}$ of the minerals each for 30 years.
3. Contextual approach does not mechanically apply the duhig doctrine.



NM INSTRUMENT INTERPRETATION

New Mexico Title Requirement:

New Mexico applies the Duhig doctrine to over-conveyances of minerals. Unlike Texas, however, New Mexico does not follow the “four corners” rule of instrument interpretation, and instead relies on a contextual approach. As a result, a New Mexico court may look at any evidence to assist its interpretation of an ambiguous or unambiguous instrument.

FINALLY, we note that only a court of competent jurisdiction can definitively determine the characterization of an instrument.



NEW MEXICO



TX INSTRUMENT INTERPRETATION

Ambiguity is a question of law for the court

Ambiguous: extrinsic evidence permitted. Hint: it's never ambiguous.

Unambiguous: extrinsic evidence not permitted



TX INSTRUMENT INTERPRETATION

Four Corners Doctrine: determine the intent of the parties based on all of the language contained within an instrument.

-**Holistic approach:** seeks to HARMONIZE and GIVE EFFECT TO ALL PROVISIONS in an instrument

-**Rejects** mechanical rules of construction like *magic words* and *primacy of one clause over another, headings, etc.*

-Considers words used in light of the facts and circumstances surrounding the instrument's execution so long as they inform, rather than vary or contradict.

EG: estate misconception theory and the legacy of the “usual” 1/8th lessor's royalty



TX INSTRUMENT INTERPRETATION

Estate Misconception Theory: Early lessors believed they retained 1/8 of the mineral estate instead of 100% of the possibility of reverter (the estate misconception). As a result, conveyances of portions of the whole were termed in fractions of 1/8 (eg: 1/2 x 1/8, instead of just 1/2).

Legacy of the “usual” 1/8: Early lessors believed 1/8 to be the only royalty available. Thus, 1/8 = 100% of the royalty estate. Similarly, as a result, conveyances of portions of the whole were termed in fractions of 1/8 (eg: 1/2 x 1/8, instead of just 1/2).



TX INSTRUMENT INTERPRETATION

Bottom line for the Estate Misconception Theory and the Legacy of the “usual” 1/8:

$$1/8 = 100\%$$

$$\text{Thus, } 1/2 \times 1/8 = 50\%$$



TX INSTRUMENT INTERPRETATION

HOWEVER!

EVERYTHING IS ON A CASE BY CASE BASIS!
NO MECHANICAL RULES OF CONSTRUCTION.
INTERPRETER BEWARE!



TX INSTRUMENT INTERPRETATION

Fixed vs. Floating sample language:

FIXED:

- (1) A one-fourth royalty in all oil, gas and other minerals in and under and hereafter produced;
- (2) A fee royalty of 1/32 of the oil and gas;
- (3) An undivided one-sixteenth royalty interest of any oil, gas or minerals that may hereafter be produced;
- (4) **One-half of the one-eighth royalty interest;**
- (5) An undivided 1/24 of all the oil, gas and other minerals produced, saved, and made available for market;
- (6) 1% royalty of all the oil and gas produced and saved.



TX INSTRUMENT INTERPRETATION

Fixed vs. Floating sample language:

FLOATING

- (1) 1/16 of all oil royalty;
- (2) The undivided 2/3 of all royalties;
- (3) One-half interest in all royalties received from any oil and gas leases;
- (4) An undivided one-half interest in and to all of the royalty;
- (5) One-half of one-eighth of the oil, gas and other mineral royalty that may be produced;
- (6) **One-half of the usual one-eighth royalty.**



TX INSTRUMENT INTERPRETATION

**U.S. Shale Energy II, LLC v. Laborde Properties, L.P., Tex.,
(6/29/2018) 551 S.W.3d 148**

“There is reserved and excepted from this conveyance unto the grantors herein, their heirs and assigns, an undivided **one-half (1/2) interest in and to the Oil Royalty,** Gas Royalty and Royalty in other Minerals in and under or that may be produced or mined from the above described premises, **the same being equal to one-sixteenth (1/16) of the production.** This reservation is what is generally [sic] termed a nonparticipating Royalty Reservation ...”



TX INSTRUMENT INTERPRETATION

FLOATING!

“1/2 interest in and to the oil royalty” denotes $1/2 \times 100\%$ of the royalty estate

PLUS

$1/16^{\text{th}}$ is harmonized using the legacy of the “usual $1/8^{\text{th}}$ ”

Eg: $1/2 \times 1/8$ equals $1/2 \times 100\%$, or half of the royalty estate.



TX INSTRUMENT INTERPRETATION

Hysaw v. Dawkins, Tex. (1/29/2016) 483 S.W.3d 1

That *each of my children* shall have and hold an undivided *one-third (1/3) of an undivided one-eighth (1/8) of all oil, gas or other minerals in or under or that may be produced from any of said lands*, the same being a non-participating royalty interest;.... (Emphases added) **FIXED?**

[T]hat is to say, that ... [the named child] shall not participate in any of the bonus or rentals to keep any lease or leases in force; that it shall not be necessary for the said [named child] to execute any oil, gas or mineral lease over the lands of [the siblings], and that it shall not be necessary for [the named child] to obtain the consent either orally or written of the said [siblings], to lease any portion of said land so willed to [the named child] for oil, gas or other minerals, *but that the said [named child] shall receive one-third of one-eighth royalty, provided there is no royalty sold or conveyed by me covering the lands so willed to [the child], ...* (Emphases added.) **FIXED?**

[A]nd should there be any royalty sold during my lifetime then [the three children], *shall each receive one-third of the remainder of the unsold royalty.* (Emphasis added.) **FLOATING?**



TX INSTRUMENT INTERPRETATION

FLOATING!

Court relied on the legacy of the “usual” 1/8th royalty

PLUS

Third clause that granted each devisee 1/3 of the remainder of the unsold royalty

$1/3 \times 100\% = 1/3$ of royalty estate to each devisee.



TX INSTRUMENT INTERPRETATION

Moore v. Noble Energy, Inc., Tex.App.- Amarillo (7/17/2012) 374 S.W.3d 644

THERE IS RESERVED unto the Grantor herein, his heirs and assigns a **one-half non-participating royalty interest (one-half of one-eighth of production)**. It being understood that the grantor herein, his heirs and assigns, shall not be required to join in any lease, bonus money or delay rentals, but shall only participate in production.



TX INSTRUMENT INTERPRETATION

FIXED!

Court listed numerous examples of floating royalty language and continually concluded “no such language exists in this deed.” The court did not explain WHY the language was fixed, but rather the absence of floating language was dispositive.

2012 case! Could easily be considered floating under modern interpretation guidelines.



TX INSTRUMENT INTERPRETATION

Greer v. Shook, Tex.App.- El Paso (10/19/2016), 503 S.W.3d 571

1. THAT I, LYNN EDDINS ... do grant, sell, convey, assign and deliver unto the said Grantee [John Borden], an undivided one sixteenth (1/16) interest in and to all of the oil, gas and other minerals in and under, and that [which] may be produced from the following described land situated in REEVES County, Texas, to-wit: (*FIXED*)

4. Be it expressly understood between the parties that the vendor is the owner of all of the royalty and that the grantee is purchasing one half (1/2) of the royalty [] one half (1/2) of the minerals, produced in and from wells or other operations situated on the specific tract of land described in this instrument. (*FLOATING*)



TX INSTRUMENT INTERPRETATION

Greer v. Shook, Tex.App.- El Paso (10/19/2016), 503 S.W.3d 571

5. [S]aid land being now under an oil and gas lease executed in favor of John Ross, it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes one half (1/2) of all of the oil royalty, and gas rental or royalty due and to be paid under the terms of said lease. (FLOATING)

6. It is understood and agreed that none of the money rentals which may be paid to extend the term within which a well may be begun under the terms of said lease is to be paid to the said Grantee and in [the] event that the above described lease for any reason becomes cancelled or forfeited, then and in that event an undivided one sixteenth (1/16) of the lease interest and all future rentals on said land for oil, gas and other mineral privileges shall be owned by said Grantee, he owning one sixteenth of all oil, gas and other minerals in and under said lands, together with no interest in all future rents. (FIXED)



TX INSTRUMENT INTERPRETATION

FLOATING!

Court ruled deed conveyed interest in mineral estate

PLUS

Harmonized conflicting fractions by relying on the legacy of the “usual” 1/8th



TEXAS



TAKEAWAYS

- New Mexico takes a contextual approach to instrument interpretation and reviews extrinsic evidence at will.
- Texas employs the four corners doctrine to harmonize all provisions in an instrument and leans heavily on the estate misconception theory as well as the legacy of the “usual” 1/8th royalty, among other canons of construction.
- Both employ a case by case analysis, but Texas provides more definite guidelines.

Thank you!

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