

Texas Deed Interpretation Roadmap

“A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.”

-Justice Oliver Wendel Holmes

QUESTION FOR COURT AS A MATTER OF LAW

AMBIGUOUS

Extrensic evidence permitted
(It's never ambiguous)

UNAMBIGUOUS

Extrensic evidence not permitted
Four corners doctrine employed



Four corners approach: determine the intent of the parties based on all of the language contained within the instrument.

-**Holistic approach:** Seeks to HARMONIZE and GIVE EFFECT TO ALL PROVISIONS in the 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: 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).

-CASE BY CASE BASIS! No hard and fast rules!

Further Reading:

1. *The Texas Supreme Court's Evolving Mineral-Deed Jurisprudence in the Shale Era: the Implications of Wenske v. Ealy*, Laura Burney, 14 Tex. J. Oil Gas & Energy L. 1, January, 2019.
2. *The Legacy of the 1/8th Landowner's Royalty and the Texas Supreme Court: Has Hysaw v. Dawkins Resolved the "Double Fraction" Dilemma?*, Laura Burney, 58 S. Tex. L. Rev. 115, Fall, 2016.

Court's Definition of Estate Misconception Theory

The Court in *Hysaw* also discussed a related issue in double-fraction cases, known as the "estate misconception" doctrine, which applies to the mineral estate that a landowner retains when he leases his land to an operator, known as the possibility of reverter. *Hysaw*, 483 S.W.3d at 10. When a landowner leases his land to an operator, it is typically through a conveyance of fee simple determinable with a possibility of reverter in the entire mineral estate, which does not become a possessory right until the lease expires. *Jupiter Oil v. Snow*, 819 S.W.2d 466, 468 (Tex. 1991). The possibility of a reverter under a lease is a separate estate, and just like any other mineral interest or estate, the landowner may then convey his possibility of reverter, or a fraction thereof, to a third party. *Id.* ("Texas courts have long recognized that the owner of a mineral estate can sell or assign the possibility of reverter.").

In earlier times, many landowners labored under the misconception that when they leased their mineral estate to an operator, they only retained 1/8 of the minerals in place, rather than a fee simple determinable with the possibility of reverter in the entirety of the mineral estate (*i.e.*, in 8/8 of the mineral estate). *Hysaw*, 483 S.W.3d at 10. Therefore, when the landowner conveyed a mineral interest to a third party in land that was already subject to a lease, he would often use a fraction of 1/8 to express what interest he intended to convey in his possibility of reverter. *See id.* ("For example, a lessor who has leased the entire mineral estate, but desires to sell-one half [sic] of the minerals, would assume that he owned 1/8 of the minerals due to the existing lease ... [and] would use the fraction 1/16, or a double fraction, 1/2 of 1/8, to convey 1/2 of what he perceived he owned."). Since a landowner in reality retains a full 8/8 interest in the reverter, the application of the estate misconception doctrine has tremendous consequences. Under this example, if the grantee is only given a 1/16 mineral interest, he or she only receives 1/16 of any royalty set under a lease; however, if the grantee is given 1/2 of the entire mineral estate in the reverter, he owns a full 1/2 of the mineral interests, and would therefore be entitled to a full 1/2 of any royalty owed under any future lease. *Id.*

Court's Explanation of the Legacy of the Usual 1/8th

...in light of the "ubiquitous" standard 1/8 royalty interest, land owners at the time this *591 deed was executed labored under the mistaken impression that their standard royalty interest would always and forever be a 1/8 interest (*i.e.*, the "legacy of the 1/8th

royalty”), and thereby often used the 1/8 fraction and multiples thereof to express the fraction of their interest that they intended to convey to a third party.

Cited examples:

FIXED (Fractional)	FLOATING (Fraction Of)
<p>(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.</p> <p>(citing 2 PATRICK H. MARTIN & BRUCE M. KRAMER, WILLIAMS & MEYERS, OIL AND GAS LAW § 327.1, at 81 (2014)). Although the wording is different in each of the above conveyances, “the effect is the same in each case: a fraction or percentage of gross production has been granted or reserved as a free royalty.” 2 WILLIAMS & MEYERS, § 327.1, at 81. “The owner of the royalty interest is entitled to a share of gross production, free of costs, in an amount fixed by the fractional size of his interest.” <i>Id.</i> “The amount of production received by the royalty owner will not fluctuate according to the amount of royalty provided for in the lease.” <i>Id.</i> For example, the owner of a 1/6 royalty interest takes 1/6 of gross production whether the lease provides for a 1/8 royalty, a 1/6 royalty, or a 1/4 royalty. <i>Id.</i></p>	<p>(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.</p> <p><i>See Dawkins, 450 S.W.3d at 153; 2 WILLIAMS & MEYERS, § 327.2, at 83–84. Thus, for example, the owner of a 1/16 of royalty takes 1/16 of whatever royalty the lessor reserves. 2 WILLIAMS & MEYERS, § 327.2, at 87.</i></p>

Supreme Court Cases

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”

→Court determined language reserved a **floating royalty interest** equal to 1/2 of any lease royalty covering the property.

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.)²

Ethel further described the royalty interest devised to each child in nearly identical paragraphs: [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.)

[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**. (Emphases added.)

→ Court determined language devised 100% of the royalty estate equally to each of three devisees, thus creating a **floating royalty interest** equal to 1/3 of any lease royalty covering the property in each devisee.

Appellate Court Cases

4th District Court of Appeals, San Antonio – Counties: Atascosa, Bandera, Bexar, Brooks, Dimmet, Duval, Edwards, Frio, Guadalupe, Gillespie, Jim Hogg, Jim Wells, Karnes, Kendall, Kerr, Kimble, Kinney, La Salle, Mason, Maverick, McMullen, Medina, Menard, Real, Starr, Sutton, Uvalde, Val Verde, Webb, Wilson, Zapata, and Zavala

Reed v. Maltzberger/Storey Ranch, LLC, Tex.App.- San Antonio (5/3/2017), 534 S.W.3d 51.

That I, L.V. Chenoweth ... do grant, bargain, sell, convey, set over and assign and deliver unto W.B. Dossett and E.M. Benz, the following to-wit: an undivided one-fourth (1/4) interest in and to all of the oil, gas and other minerals **in and under** and that may be produced from” described lands in La Salle County, Texas.

And said above described lands being now under an oil and gas lease originally executed in favor of L.V. Chenoweth, Trustee and now held by said L.V. Chenoweth, Trustee, it is understood and agreed that this sale is made subject to said lease, **but covers and includes one-fourth *54 (1/4) of all the oil royalty and gas rental or royalty due and to be paid under the terms of said lease**, insofar as it covers the above described property.

In the event the above lease to L.V. Chenoweth, trustee, shall for any reason become cancelled or forfeited, it is agreed that the joinder or consent of grantee, his heirs or assigns, shall not be required to another or new lease upon said property by L.V. Chenoweth, his heirs or assigns, nor shall grantee, his heirs or assigns, be entitled to share in any bonus consideration therefor or delay rentals thereunder, **it being the purpose and intent hereof to grant and convey an undivided one-fourth (1/4) of the one-eighth (1/8) royalty (including any annual gas rentals) under said existing lease and an equivalent royalty interest under any future mineral leases thereon** by the said L.V. Chenoweth, his heirs, administrators or assigns.

→ Court determined language conveyed a 1/4 mineral interest stripped of all attributes except the right to royalty, thus creating a **floating royalty interest** equal to 1/4 of any lease royalty covering the property.

Medina Interests, Ltd. v. Trial, Tex.App.-San Antonio (6/24/2015), 469 S.W.3d 619

There is reserved to each of us signing this deed, except Mrs. Annie Trial, **our 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 hereby** conveyed, and *this royalty interest reserved to each of us* shall be non-participating and perpetual.

It is agreed and here stipulated that *the 1/8 royalties paid the land owner upon production of oil, gas and other minerals is hereby pooled among all the grantors and grantees to this deed*, except the grantor, Mrs. Annie Trial who shall not participate in said royalties, and *in the case of the production of oil, gas and*

other minerals from said tract of land, each of the [T]rial heirs named above, except Mrs. Annie Trial, shall share in said royalties equally.

It is understood that the said Leo Trial and Alex Trial shall have the right to lease said tract of land for oil, gas or other minerals, without the joinder of the grantors herein, or their heirs or assigns, and that said grantees shall have the right to collect the bonus moneys and delay rentals arising out of said mineral leases, ***but in case of production of oil, gas or other minerals from said tract of land in paying quantities each of the Trial Heirs, either grantor or grantee, except Mrs. Annie Trial, shall share equally in said pooled royalties.***

Of course, Mrs. Lysey and her husband shall only receive one share, and Mrs. Barnett and her husband, one share of *said pooled royalties*, and Mrs. Annie Trial shall not receive any part of *said pooled royalties*.

→ Court determined language created a **floating royalty interest** equal to grantors' undivided interests in any lease royalty covering the property.

Graham v. Prochaska, Tex.App.-San Antonio (12/31/2013), 429 S.W.3d 650

SAVE AND EXCEPT, however, there is reserved unto George Prochaska, his heirs and assigns, **one-half (1/2) of the one-eighth (1/8) royalty to be provided in any and all leases for oil, gas and other minerals now upon or hereafter given on said land, or any part thereof, same being equal to one-sixteenth (1/16th)** of all oil, gas and other minerals of any nature, free and clear of all costs of production, except taxes;

AND PROVIDED this reservation is burdened with paying the two outstanding mineral royalty reservations, each of One-Fourth (1/4) of one-eighth (1/8) royalty, one of which reservations is described in the deed from John Hancock Mutual Life Insurance Company to E.S. Joslin, now of record in Vol. 141, page 161, Deed Records of Karnes County, Texas, and the other reservation is described in the deed from E.S. Joslin, et ux to A.W. Powell, Jr., et al now of record in Vol. 165, page 80 of the Deed Records of Karnes County, Texas; And this reservation shall only be effective to *654 the extent that one or both of said outstanding reservations become terminated.

It being **the intent of the parties** hereto that John W. Regmund and wife, Frances E. Regmund, as of the effective date hereof, shall be vested with and entitled to **one-half (1/2) of the usual one-eighth (1/8) royalty** in and to all oil, gas and other minerals in on and/or under the property herein conveyed, and the reservation herein above recited in favor of the grantor herein, shall relate to and cover only the one-half (1/2) of one-eighth (1/8) royalty interest previously reserved in favor of John Hancock Mutual Life Insurance Company and Ennis Joslin, if, as and when said interest in favor of said parties terminate.

→ Court determined language created a **floating royalty interest** equal to 1/2 of any lease royalty covering the property.

7th District Court of Appeals, Amarillo – Counties: Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Garza, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, Kent, King, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Smith, Terry, Wheeler, Wilbarger, and Yoakum.

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.

→Court determined language created a **FIXED royalty interest** equal $1/2 \times 1/8$, or $1/16^{\text{th}}$ of all production from the lands.

8th District Court of Appeals, El Paso – Counties: Andrews, Brewster, Crane, Crockett, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler.

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:

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.

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.

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.

→Court determined language conveyed 1/2 of the mineral estate which would include 1/2 of all future lease royalty.

11th District Court of Appeals, Eastland – Counties: Baylor, Borden, Brown, Callahan, Coleman, Comanche, Dawson, Eastland, Ector, Erath, Fisher, Gaines, Glasscock, Haskell, Howard, Jones, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Taylor and Throckmorton.

Butler v. Horton, Tex.App.- Eastland (10/16/2014) 447 S.W.3d 514

“There is excepted from this conveyance and reserved unto ... grantors, their heirs and assigns, one-half of the usual 1/8th royalty on all oil, gas, casinghead gas, and gasoline, and one-half of the usual and customary royalty on sulphur, coal, uranium, and all other minerals in, on, or under, or that may be produced from the above described land; it being understood and agreed that it shall not be necessary for the Grantors, their heirs or assigns, to join in the execution of any mineral lease or leases on the property, but that the Grantors,*517 their heirs or assigns, shall be entitled to one-half of any bonus payments or

delay rentals which may be paid in connection with any lease on the property, and that in the event of production from said land, either by a lessee, by an owner, or by anyone else, the Grantors, their heirs or assigns, shall be entitled, free of cost, to one-half of the royalty on said minerals, as provided above[.]”

→Court determined language reserved a **floating royalty interest** equal to 1/2 of any lease royalty covering the property.

12th District Court of Appeals, Tyler – Counties: Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity, Upshur, Van Zandt, and Wood.

Coghill v. Griffith, Tex.App.- Tyler (1/18/2012) 358 S.W.3d 834

“[T]his Grantor excepts from this conveyance and reserves unto himself, his heirs and assigns an undivided one-^{*836}eighth (1/8) interest in and to all of the oil royalty [and] gas royalty.... It is understood and agreed that this sale is made subject to the terms of said lease, but the Grantor reserves and excepts unto himself, his heirs and assigns an undivided one-eighth (1/8) of all royalties payable under the terms of said lease, **as well as an undivided one-eighth (1/8) of the usual one-eighth (1/8) royalties provided for in any future oil, gas and/or mineral lease covering said lands or any part thereof....**”

Nevertheless, neither the Grantee herein, nor his heirs, executors, administrators, and assigns of the Grantee shall make or enter into any lease or contract for the development of said land or any other portion of the same for oil, gas or other minerals, unless each and every such lease, contract, leases or contracts, shall provide for **at least** a royalty on oil of the usual one-eighth (1/8) to be delivered free of cost.... [A]nd in the event Grantee, nor [sic] the heirs, executors, administrators and assigns of the Grantee, or as in the status of the fee owners of the land and minerals, or as a fee owner of any portion of the same, shall operate or develop the minerals therein, Grantor shall own and be entitled to receive as a free royalty hereunder, (1) an undivided one-sixty fourth (1/64) (emphasis added).

→Court determined language reserved a **floating royalty interest** equal to 1/8th