

What Were They Thinking?!

Making Sense of Idiosyncratic Language
in Title Instruments

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Making Sense of Idiosyncratic Language in Title Instruments

On a daily basis, title examiners are faced with questions about how to interpret title instruments that contain non-standard contract language. This presentation aims to address those questions by giving examples of idiosyncratic language from actual title instruments, determining the issues that arise from each provision in question, and providing a legal analysis on how to construe each instrument.

Document: Deed
Date: October 6, 1875
Grantor: L. L. Mobley
Grantee: Fanning F. E. Taylor and Company

In a nutshell: This deed conveys a one-half interest in 160 acres of land in Montague County, Texas. However, the deed was executed prior to the patent.

Problem Language:

- I, Grantor, “...release and convey unto the said Fanning F. E. Taylor and Company **one-half of the mineral that has or may be discovered** on said described land with all and singular the right to and privileges of erecting any and all buildings and machinery necessary on said land for working said mineral...”

Document: Deed
Date: October 6, 1875
Grantor: L. L. Mobley
Grantee: Fanning F. E. Taylor and Company

Issues with the Instrument's Language:

1. Does a deed being executed prior to the patent have any bearing on the situation?
2. Does the language used in this deed make it a valid mineral deed?

Examining Attorney's Interpretation:

1. The fact that a mineral deed is executed prior to a patent does not necessarily invalidate the mineral deed. This assumes the subsequently executed Patent does not reserve minerals to the State. *Elliot v. Nelson*, 251 S.W. 501 (Tex. 1923).
2. This is a valid mineral deed, assuming the references on the ground and to the surveyor's records are good. The phrase "one-half of the mineral that has or may be discovered" is strange, but it still constitutes a one-half (1/2) mineral deed.

Document: Deed
Date: August 30, 1941
Grantor: W. Z. Parsons
Grantee: Annie Parsons Miller

- **In a nutshell:** This deed conveys an undivided interest to the Captioned Land, being 35.6 acres in Tyler County, Texas.
- **Problem Language:** Grantor does “sell and convey unto the said Mrs. Annie Parsons Miller an undivided one-half royalty in and to all of the oil royalty, gas royalty and other royalty minerals in and under that may be produced and mined” from the Captioned Land... “It is agreed and understood that the lease interest and all described tract of land for oil, gas, and mineral shall be owned by Grantees herein, each owning a one-half royalty interest in all oil ...”

Document: Deed
Date: August 30, 1941
Grantor: W. Z. Parsons
Grantee: Annie Parsons Miller

Issue with the Instrument's Language:

- Is Grantor conveying a mineral interest or only a royalty interest?

Examining Attorney's Interpretation:

This is a conveyance of a one-half ($1/2$) of royalty NPRI, plus one-half ($1/2$) of the delay rentals. This, however, would be subject to a requirement for a stipulation of interest.

Document: Warranty Deed
Date: April 24, 1974
Grantor: Randy DeFoor, et al.
Grantee: Mack Burns

In a nutshell: This deed conveys all of Grantor's interest in a 186.41 acre tract of land in Montague County, Texas, subject to the reservations therein.

Problem Language: "This conveyance is made subject to the following:

1. One-half ($1/2$) of all the oil, gas and mineral interest in and to said land, the royalties, bonuses, rentals and all other rights reserved byrecorded in...
2. Grantors herein reserve unto themselves, their heirs and assigns, one-fourth ($1/4$) of all the royalty, bonuses, rentals in and to said land."

Document: Warranty Deed
Date: April 24, 1974
Grantor: Randy DeFoor, et al.
Grantee: Mack Burns

Issue with the Instrument's Language:

- What effect does the second reservation have?

Examining Attorney's Interpretation:

Assuming that we do not have any Duhig (overconveyance) issues and that the Grantors owned a one-half ($1/2$) mineral interest, Grantors reserved a one-fourth ($1/4$) of royalty NPRI as well as a right to one-fourth ($1/4$) of the bonus and delay rentals.

Document: Mineral Deed
Date: March 25, 1931
Grantor: L. A. Spencer and wife
Grantee: D. D. Austin and V. R. Rea

In a nutshell: This deed conveys a one-sixteenth (1/16) mineral interest in and to 32 acres in Houston County, Texas.

Problem Language: “In the event that the said above described lease for any reason becomes canceled or forfeited, then and in that event the lease interests and all future rentals on said land for oil, gas and mineral privileges shall be owned jointly by D. D. Austin & V. R. Rea and L. A. Spencer and wife, each owning one half interest in all oil, gas and other minerals in and upon said land, together with one half interest in all future rents.”

Document: Mineral Deed
Date: January 20, 1937
Grantor: V. R. Rea
Grantee: George Wilmoth

In a nutshell: This deed conveys one-half (1/2) of Grantor's interest in and to 32 acres in Houston County, Texas.

Problem Language: "It is agreed and understood 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 George Wilmoth, and in the event that the said above described lease for any reason becomes, cancelled or forfeited, then and in that event, the lease interests in all future rentals on said land, for oil, gas, and mineral privileges shall be owned jointly by George Wilmoth and V. R. Rea each owning one-eighth interest in all oil, gas..., together with one-eighth interest in all future rents."

Document: Mineral Deed
Date: January 20, 1937
Grantor: V. R. Rea
Grantee: George Wilmoth

Issue with the Instrument's Language:

- Grantors of the first deed owned 100% of the minerals. In this deed, there is a statement that one of the grantees of the first deed and the grantee of this deed will each own a one-eighth ($1/8$) mineral interest. Who owns what?

Examining Attorney's Interpretation:

- The language concerning the springing additional $7/16$, being outside the grant, and not containing granting language, is a problem – it most likely fails.
- What they were probably trying to do was convey a $1/2$ of $1/8$ royalty interest during the term of the lease, and a $1/2$ MI thereafter.
- But ultimately, it operates as a grant of $1/16$ MI.

Document 1: Assignment and Bill of Sale
Date: September 1, 1988
Assignor: A. Ray Davis
Assignee: Robert B. Ross & Associates

Document 2: Assignment and Bill of Sale
Date: September 1, 1988
Assignor: Robert B. Ross & Associates
Assignee: Exxon Corporation

◆————◆
In a nutshell: The first document purports to convey all of Assignor's right, title and interest of whatever nature in and to the Pembroke Unit. The second document assigns that same interest to Exxon.

Problem Language: "The Subject property conveyed to Assignee shall include all of Assignor's right, title and interest of whatever nature in and to the Pembroke Unit... Notwithstanding the foregoing, it is understood and agreed that the intent of this instrument is to convey to Assignee all of Assignor's right, title and interest, which is within and is part of said Unit, whether such interest is correctly described herein, mis-described or not described at all, and that Assignor will retain no revisionary rights to the interest conveyed."

Document 1: Assignment and Bill of Sale
Date: September 1, 1988
Assignor: A. Ray Davis
Assignee: Robert B. Ross & Associates

Document 2: Assignment and Bill of Sale
Date: September 1, 1988
Assignor: Robert B. Ross & Associates
Assignee: Exxon Corporation

Issue with the Instrument's Language:

- Does the interest conveyed include all depths or only the depths limited to the Pembroke Spraberry Unit? If the Assignment is interpreted to assign only depths limited to the Pembroke Unit, then would the Assignor still retain a working interest in the other depths?

Examining Attorney's Interpretation: Given that the Pembroke Unit is depth limited, the conveyance only assigns those depths in the Pembroke. Had they wanted to assign all depths, they should have assigned "the leases committed to the Pembroke Unit."

Document: Oil, Gas and Mineral Lease
Date: November 1, 2008
Grantor: Tom Bloxom
Grantee: Pioneer Natural Resources USA, Inc.

In a nutshell: This deed leases to Lessee all of Section 18, Block B in the HE&WT Ry. Co. Survey, Upton County, Texas.

Problem Language: Pugh clause states, “Within thirty days after a partial termination of this lease as provided above, Lessee shall execute and deliver to Lessor a recordable Release as to all lands affected by such partial termination. Notwithstanding the termination of this lease as to a portion of the lands covered hereby, Lessee shall nevertheless continue to have all rights of ingress and egress from the land still subject to this lease together with easements...”

Document: Oil, Gas and Mineral Lease
Date: November 1, 2008
Grantor: Tom Bloxom
Grantee: Pioneer Natural Resources USA, Inc.

Issue with the Instrument's Language:

- Is this a “one-time” Pugh clause? Is it “safer” to take the stance that each well only holds its allocated acres, or is it still capable of being interpreted to where one well holds “everything”?

Examining Attorney's Interpretation: In the case of this poorly written clause, it is safer to say each well controls only its own acreage.

Document: Third Party Deed
Date: April 12, 1984
Grantor: Azalee Johnson
Grantee: L. B. Herring, et al.

In a nutshell: This deed conveys all of Grantor's interest to 18.60 acres of land in Tyler County, Texas, and purports to reserve a one-half (1/2) mineral interest.

Problem Language: Grantor conveys to Grantee "all that certain lot, tract or parcel of land...SAVE and EXCEPT herefrom, one-half (1/2) of the oil, gas and other minerals which is expressly reserved to the Grantor herein..."

Document: Third Party Deed
Date: April 12, 1984
Grantor: Azalee Johnson
Grantee: L. B. Herring, et al.

Issue with the Instrument's Language:

- Duhig/Over-conveyance problem!

Examining Attorney's Interpretation: The Grantor, who only owns a one-half (1/2) mineral interest, did not put Grantee on notice of a one-half (1/2) prior reservation. So when Grantor attempted to reserve a one-half (1/2) interest, this cannot be effectuated because the Grantor would breach the warranty in the deed. Thus, the deed is interpreted in favor of the Grantee, who gets a one-half (1/2) interest, while the Grantor is left with nothing.

Document: Oil, Gas and Mineral Lease
Date: October 5, 2011; Primary Term of 3 Years
Grantor: Quanah Exploration, LLC.
Grantee: Range Texas Production, LLC.

In a nutshell: The Continuous Development Clause of this lease is confusing and not easily interpreted. The Lessee's last well was completed in March of 2014.

Problem Language: "Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the end of the primary term and the commencement of actual drilling operations of the next succeeding well. On the completion of a well at or after the primary term, which is capable of producing in paying quantities, Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the completion of one well and the commencement of operations for the drilling of the next succeeding well."

Document: Oil, Gas and Mineral Lease
Date: October 5, 2011; Primary Term of 3 Years
Grantor: Quanah Exploration, LLC.
Grantee: Range Texas Production, LLC.

Issue with the Instrument's Language:

- When does the next well need to be drilled?

Examining Attorney's Interpretation: With a 3 year primary term, the term will expire on October 5, 2014. The last well was drilled in March 2014, which is more than 180 days prior to the end of the primary term. Thus, Lessee has 180 days from October 5, 2014 to “commence” the drilling of a well. → April 03, 2015

Document: Assignment of Overriding Royalty Interest

Date: October 5, 2011; Primary Term of 3 Years

Grantor: Ronna Robertson Cole

Grantee: GOHO Properties, a Partnership of Larry Godwin and Gerald W. Hohfeld,
and John E. Rhoads

In a nutshell: This assignment purports to assign a 12.5% ORI to Grantee(s). The examining attorney credited the entire 12.5% interest to GOHO, the partnership. John E. Rhoads claims that he should be credited with an individual interest.

Problem Language: Grantor for the sum of ten dollars and other valuable considerations in hand “paid by GOHO Properties, a Partnership of Larry A. Godwin and Gerald W. Hohfeld, whose address is [...] and John E. Rhoads, whose address is [...] (Grantees)... does hereby grant, bargain, sell and convey unto the said Grantees in equal shares, all of Grantors interest in and to the oil, gas and other minerals, royalties and overriding royalties on, in and under that may be produced in Montague County, Texas, including...”

Document: Assignment of Overriding Royalty Interest
Date: October 5, 2011; Primary Term of 3 Years
Grantor: Ronna Robertson Cole
Grantee: GOHO Properties, a Partnership of Larry Godwin and Gerald W. Hohfeld,
and John E. Rhoads

- **Issue with the Instrument's Language:**
 - Who is/are the Grantee(s)? Is it just the partnership, which consists of 3 partners? Or is it the partnership, which consists of 2 partners, and an another Grantee individually?
- **Examining Attorney's Interpretation:** A conveyance into multiple parties as “partners” creates a de facto partnership, regardless of whether one existed previously. Because of the lack of punctuation denoting that there are multiple Grantees, it could be interpreted as all 3 individuals being partners. Had there been an intent to convey to multiple parties, then a semi-colon would have been useful in making such intent clear. → *continued on next slide*

Document: Assignment of Overriding Royalty Interest
Date: October 5, 2011; Primary Term of 3 Years
Grantor: Ronna Robertson Cole
Grantee: GOHO Properties, a Partnership of Larry Godwin and Gerald W. Hohfeld,
and John E. Rhoads

Examining Attorney's Interpretation (*continued*): Other interpretations include:

- One Grantee, being the Partnership; the other Grantee, being John E. Rhoads.
- The Grantees are Larry Godwin, Gerald Hohfeld, and John Rhoads, all individually, as GOHO Properties is only recited as paying the consideration.

Regardless, to resolve this issue, John E. Rhoads and GOHO Properties should execute a Stipulation of Interest agreeing to one interpretation (i.e., GOHO gets 1/2 interest and John Rhoads gets 1/2 interest).

Document: Mineral and Royalty Deed, Assignment and Conveyance
Date: August 1, 2002
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust
Grantee: Kelly H. Baxter

In a nutshell: This deed conveys all of Grantor's interest to the lands described in Exhibit "A", being Section 31, Block 31, Range 3N in Howard County, Texas.

Problem Language:

- "That James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collins Underwood Trust, called 'Grantor'... does convey unto Kelly H. Baxter, a single man... 100% of his interest in and to all the lands and oil, gas, royalty... from the following described lands in Howard County, Texas..." →
continued on next slide

Document: Mineral and Royalty Deed, Assignment and Conveyance
Date: August 1, 2002
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of
Ruth Collins Shook for The Carolyn Collin Underwood Trust
Grantee: Kelly H. Baxter

Problem Language (*continued*):

- “Notwithstanding the specific descriptions set out herein, grantor conveys to grantee all lands and interests in lands of any kind, type and nature which grantor legally or equitably owns in Howard County, Texas and in addition to the foregoing, Grantor does hereby Transfer, Assign and Set Over unto Grantee all of Grantor’s interest in and to all monies, proceeds, income and other personal properties now on hand, or in the possession of any third party, bank, trustee or pipeline company, which have heretofore accrued to the mineral and/or royalty interest of Grantor in said land that has been herein conveyed to Grantee.”

Document: Mineral and Royalty Deed, Assignment and Conveyance
Date: August 1, 2002
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust
Grantee: Kelly H. Baxter

Issues with the Instrument's Language:

- Ruth Collins Shook inherited an undivided one-half (1/2) interest in the Captioned Land from her husband.
- In her will, Ruth Collins Shook appoints her son, James Thomas Collins, as Executor and devises the property one-half (1/2) to James Thomas Collins, and one-half (1/2) to James Thomas Collins, Trustee of the Carolyn Collins Underwood Trust . However, there is no executor's deed to either of them.
- There is an instrument conveying the subject lands to Kelly H. Baxter by Carolyn Underwood and husband around or even before the attached document.
- Does this instrument convey all of James Thomas Collins' interest in the Captioned Land, or does it just convey his interest and Carolyn's interest in and to the property that they inherited from Ruth Collins Shook, even though he did not execute the instrument in an individual capacity?

Document: Mineral and Royalty Deed, Assignment and Conveyance
Date: August 1, 2002
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust
Grantee: Kelly H. Baxter

Examining Attorney's Interpretation:

- Upon her death in 1997, the interest owned by Ruth Collins Shook devolved according to her Last Will and Testament (1/2 to James Thomas Collins and 1/2 to James Thomas Collins, Trustee of the Carolyn Collins Underwood Trust u/w/o Ruth Collins Shook.
- In 2002, James Thomas Collins, Independent Executor and Trustee, conveyed the Subject Property, as well as other under a “catch-all” to Kelly H. Baxter under a Mineral Deed; assuming the estate was not closed and he did not deed his interest in the property from the estate to himself individually, the Mineral Deed conveyed everything owned by Ruth Collins Shook. → *continued on next slide*

Document: Mineral and Royalty Deed, Assignment and Conveyance
Date: August 1, 2002
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust
Grantee: Kelly H. Baxter

Examining Attorney's Interpretation (*continued*):

- We would not credit the conveyance from Carolyn C. Underwood because she did not, and never would, own an interest under the documents provided.
- The Family Agreement, which is executed prior to the Mineral Deed, was filed after the Mineral Deed. Thus, Kelly H. Baxter did not have notice and is a bona fide purchaser.
- Assuming the Estate was not closed on the date of the Mineral Deed, it conveys everything owned by Ruth Collins Shook.

Document: Mineral Deed
Date: April 15, 1947
Grantor: Ray E. Hemphill and wife.
Grantee: X. B. Cox, Jr.

- **In a nutshell:** This deed conveys all of Grantor's right, title and interest in the property described therein, including Section 17, the Captioned Land, and other lands not under examination. At the time of the deed, Grantor owned 100% of the surface and 1/2 of the mineral interest.
- **Problem Language:** The deed conveys all of Sections 9, 17, 19, 20, "and all of Section 12... save and except 100 acres out of the S. E. corner of Section 12...This conveyance is **subject to** any outstanding mineral interest now owned by us and Grantors convey the above described lands, together with all minerals owned by us, EXCEPT one-half of the Section 20, above described, is reserved unto Grantors, their heirs and assigns, but such reservation is non-participating in any bonuses or delay rentals and shall participate only in production of oil..."

Document: Mineral Deed
Date: April 15, 1947
Grantor: Ray E. Hemphill and wife.
Grantee: X. B. Cox, Jr.

Issue with the Instrument's Language:

- What do Grantor and Grantee own in the Captioned Land after this deed?

Examining Attorney's Interpretation:

- “Subject to” language is not reservation language. Coupled with the subsequent language that they are conveying the above-described land “together with all minerals owned by us,” Grantors conveyed all of the surface and their one-half mineral interest in Section 17.
- Also, the express granting language is subsequent to the “subject to” language, and there is no mineral reservation in that deed (other than the of royalty NPRI).

Document: Gift Deed
Date: November 1, 2013
Grantor: Nancy Jan Daugherty Kemp, a single woman.
Grantee: Patrick Chase Kemp and his wife, Ellen Claire Kemp

In a nutshell: This “gift deed” purports to convey a gift, of all of Grantor’s interest to the Captioned Land, to Grantees, as ***community*** property.

Problem Language: “For and in *consideration of the love and affection* which Grantor bears for Grantees, Grantor has GIVEN, GRANTED, BARGAINED, SOLD and CONVEYED, and does hereby GIVE, GRANT, BARGAIN, SELL and CONVEY to Grantees, as their *community property*, the following described properties...”

Document: Gift Deed
Date: November 1, 2013
Grantor: Nancy Jan Daugherty Kemp, a single woman.
Grantee: Patrick Chase Kemp and his wife, Ellen Claire Kemp

Issue with the Instrument's Language:

- Is the interest conveyed community or separate property?

Examining Attorney's Interpretation:

- The law in Texas has long been settled that an attempted gift by a third party to the community estate vests each marital partner with a one-half undivided interest in the subject matter of the gift as his or her separate property. In the case of *Bradley v. Love*, 60 Tex. 472 (Tex. 1883), the facts were almost identical to those of the case at bar. There the wife's father made a gift of realty to the husband and wife jointly. The court concluded that such a conveyance would result in each marital partner having an undivided half interest in the land as separate property. *McLemore v. McLemore*, 641 S.W.2d 395, 397 (Tex. App. 1982).

Document: Mineral Deed

Date: 2006

In a nutshell: Property in Texas. Mineral Deed from 2006 grants a “three-fourths of an undivided one-half mineral interest” (3/8) MI.

Problem Language: “Out of said grant and from this conveyance there is excepted, saved and reserved a life estate, with executive rights, in said three-fourths of Grantor’s one-half interest in all mineral interests and in all royalty interests in the above-described property in favor of Grantor for his life, a life estate, without executive rights, in one-third of said three-fourths of Grantor’s one-half interest in all mineral interests and in all royalty interests in the above-described property in favor of (Grantor’s son) for his life, should Grantor predecease him, and a life estate, without executive rights, in one-third of said three-fourths of Grantor’s one-half interest in all mineral interests...”

→ *continued on next slide*

Document: Mineral Deed
Date: 2006

Problem Language (*continued*): ...and in all royalty interests in the above-described property in favor of (Grantor's other son) for his life, should Grantor predecease him, which shall entitle said life estate holders to their proportionate share of rentals, profits and other benefits attributable to said surface estate during the term of said life estates in all oil, gas and other minerals of every kind and description, together with the non-exclusive right of ingress and or egress which may be necessary or convenient for the purpose of exploring, testing, drilling, mining, operating producing, storing, treating, handling, transporting or marketing said minerals lying, in, on or under lands adjoining or in the vicinity of the above-described lands."

Document: Mineral Deed

Date: 2006

Issue with the Instrument's Language:

- What is the language of the deed trying to accomplish?

Examining Attorney's Interpretation:

- Basically, the Grantor reserved a life estate with executive rights in a 3/8 MI as well as the right to receive royalties.
- The life tenant will have full control to execute leases, and the joinder of the remaindermen would not be necessary.
- The safest thing to do is to have them sign a joint lease and payment directive.

Document: "Royalty Contract"
Date: October 10, 1932
Grantor: Chas. Gill and wife
Grantee: Emson Smith

In a nutshell: This deed conveys a one-half ($1/2$) interest in and to two tracts of land in Tyler County, Texas.

Problem Language: Grantor conveys to Grantee "an undivided one-half interest in and to all of the oil, gas and other minerals in and under the following described tract of land..."

"It is distinctly understood that said land is under an Oil and Gas Lease made by Grantor providing for a royalty of $1/8$ of the oil and certain royalties or rentals for gas and other minerals, that Grantee herein shall reserve one-half of the royalties and rentals provided for in said lease; but he shall have no part of the annual rentals paid to keep said lease in force until drilling is begun.

→ *continued on next slide*

Document: "Royalty Contract"
Date: October 10, 1932
Grantor: Chas. Gill and wife
Grantee: Emson Smith

Problem Language (*continued*):

It is further agreed that Grantee shall have 1/2 interest in any bonus money received by Grantor in any future lease or Lessees given on said land, and that it shall receive under such lease or leases 1/16th part of all oil, gas and other minerals taken and saved under any such lease or leases, and he shall receive the same out of the royalty provided for in such lease or leases, but Grantee shall have one-half part in the annual rentals paid to keep such lease or leases in force until drilling is begun."

Document: "Royalty Contract"
Date: October 10, 1932
Grantor: Chas. Gill and wife
Grantee: Emson Smith

Issue with the Instrument's Language:

- What is the deed trying to accomplish?

Examining Attorney's Interpretation:

- Despite this being called a Royalty Contract, Chas. Gill and wife convey to Emson Smith a one-half (1/2) mineral interest.
- If the current lease is held by production (HBP) from that lease, the Grantee does not receive any rentals. However, after the expiration of that lease, the Grantee has a full 1/2 mineral interest.
- Regarding the 1/16th interest, that is just part of the 1/2 MI granted and does not limit the grant; it is just being more descriptive and utilizing the old "1/8" royalty number demonstrating what the Grantee is receiving.