

OIL AND GAS

CASES AND MATERIALS

NINTH EDITION

PATRICK H. MARTIN

BRUCE M. KRAMER

FOUNDATION PRESS

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THE LAW OF OIL AND GAS

NINTH EDITION

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Dedications

To Ann, my loving wife, and my seven children, Patrick, Shannon, Michelle, Andrew, Luke, Thomas, and Helen. Without their patience and support, this work could not have been done.

Pat Martin

To Marilyn, Cassie, Marissa, Hannah & Danielle, my wife and daughters who have taught me more than my years of research and whose support and kindness have been immeasurable over the years.

Bruce Kramer

PREFACE TO NINTH EDITION

Although fundamental principles of contract and property law do not change in so short a period as a decade, there are enough variations on existing themes in the new cases to warrant a new edition. This edition builds upon the foundation of the eight prior editions. It retains most of the organizational structure of the prior works, but updates the material to reflect recent developments and trends in oil and gas case law.

The first chapter introduces the student to oil and gas geology and development. It has now incorporated discussion of new exploration, drilling and production techniques, including 3-D seismic, horizontal drilling, coal methane gas production, hydraulic fracturing, the locations of new shale gas plays, and Outer Continental Shelf developments, together with several new diagrams.

Chapter 2 in several earlier editions was on energy policy. The topic of energy policy remains very important to United States law, but the demise of price controls of earlier decades has rendered much of the materials dated, though the ghosts of natural gas regulation haunt the royalty materials of Chapter 3. Chapter 2 provides the foundation for understanding the role that basic property law, concepts and policy play in oil and gas law. It notes the different approaches taken to some fundamental questions about the ownership of oil and gas and how those approaches have led to different results to common questions among the oil and gas jurisdictions. New cases have been substituted or added on subsurface storage of natural gas (p. 30), on subsurface trespass in relation to hydraulic fracturing (p. 75), and on concurrent ownership after exercise of a pooling clause (p. 129). To reflect the current emphasis on the relations of parties involving split estates, the materials from earlier editions on surface easements has been moved to Chapter 2 (p. 159) and updated.

Chapter 3, on oil and gas leases, has been modified with many of the cases contained in the earlier editions being retained. Throughout the chapter emphasis may be found on how courts characterize the property interests created by an oil and gas lease. These characterizations have important ramifications in dealing with such issues as payment of delay rentals, interpretation of leasehold savings provision, the availability of equitable defenses in actions seeking to terminate the lease and the application of the temporary cessation of production doctrine. Recent developments pertaining to lease termination for failure to produce in paying quantities (p. 270), royalty calculation on post-production costs, and class actions, as well as cases focusing on calculation of overriding royalties, are reflected in this edition.

The chapter on implied covenants, Chapter 4, incorporates newer dis-

cussion of the implication of covenants and the application of this analysis to oil and gas leases and other contracts, together with recent common lessee developments. The section added to Chapter 4 in the eighth edition to discuss the obligation to restore the surface that is found in some leases and in some cases as an implied covenant has been updated to reflect the most recent developments.

Chapters 5 and 6 on conveyancing and transfers subsequent to a lease have incorporated new cases to reflect developments in the interpretation of the word "minerals", the problems of fractional interests, the Mother Hubbard clause (579), the "two-grant" theory, and an effort to "wash-out" an overriding royalty (p. 765). The chapter on pooling and unitization, Chapter 7, has been updated primarily in the notes following the cases.

The final chapter, on public lands, has been revised. The description of the leasing process after 1987 has been rewritten, two older cases have been replaced by a newer case on environmental aspects of leasing (p. 997) and another on the relationship of state and federal authority (p. 1048).

The book is a bit longer than the ninth edition, and we believe it can still be conveniently used in a one semester, three hour course. The cases and other materials have been pruned and footnotes, where retained, have been renumbered. Editing of opinions has not always been indicated.

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