

CASES AND MATERIALS ON
OIL AND GAS LAW

Fourth Edition

John S. Lowe
Owen L. Anderson
Ernest E. Smith
David E. Pierce

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CASES AND MATERIALS ON OIL AND GAS LAW

Fourth Edition

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Professors John Lowe, Owen Anderson, Ernest Smith, and
David Pierce dedicate this book to their friend
Eugene Kuntz,
and to his best friend, Rosamund Kuntz.

*

Preface

Law is the long shadow of the people who serve it. There are few absolute rules. For virtually every common law principle, there is a rebuttal or a could-have-been. Ultimately, what becomes *the law* is shaped by the dedication, the skill and the logic of the advocates, jurists and commentators who participate in the legal process.

Eugene Kuntz, who led us in the preparation of the first two editions of this book, and to whom we dedicate this edition, cast a long shadow on oil and gas law. His work as a teacher, as a commentator and—on occasion—as an advocate, had a profound effect upon the development of oil and gas law in the second half of the Twentieth Century. Many of the concepts that we consider in this book, including the accommodation doctrine applied in surface use disputes, the meaning of “minerals,” and the “marketable product” rule of royalty valuation, come from his work. Indeed, Gene Kuntz may have influenced the development of modern oil and gas law more than any other single individual.

We miss Gene, but we were blessed by his friendship and counsel over the years, and we believe that he would have been pleased with this fourth edition of *Cases and Materials on Oil and Gas Law*. Its pages are filled with theoretical enigmas that intrigue legal theorists, yet oil and gas law is practical enough to satisfy the desire for “real law” shared by most second- and third-year law students. This edition contains numerous changes from the first three editions. We have retained the basic structure of the prior editions, but have integrated the consideration of express and implied lease issues, as well as added new cases and edited the old materials. The fourth edition also contains substantially revised materials on Federal and Indian leasing.

We do not labor alone. We continue to be indebted to those who have taught oil and gas law in the past, including especially the late Professors A. W. Walker, Jr., Marion K. Woodard and William O. Huie, whose casebook preceded ours and from whose analyses we drew in preparing the first edition. We are also indebted to the late Professor Victor H. Kulp, Professor Kuntz’s predecessor at the University of Oklahoma and author of West’s first oil and gas law casebook in 1924.

We have also drawn on the analyses of many law professors and lawyers. While we hesitate to list these names for fear of overlooking someone, the list certainly includes Professors Robert E. Beck, Laura H. Burney, Gary B. Conine, Harriet S. Daggett, John S. Dzienkowski, William J. Flittie, Richard W. Hemingway, Bruce M. Kramer, Marla E. Mansfield, Patrick H. Martin, Jr., Wilmer D. Masterson, Jr., Richard C. Maxwell, Maurice Merrill, Charles Meyers, Joshua M. Morse, Phillip E. Norvell, Joseph Shade, Marc I. Steinberg, Rennard J. Strickland, Robert Sullivan, W. L. Summers, Jacqueline Lang Weaver, and Howard R.

Williams, as well as many others who have authored articles and commentaries in a variety of publications cited throughout this book.

We thank those who provided research and assistance in the preparation of the manuscript for the third edition. Professor Lowe appreciates the work of his research assistant, A. Z. Scott Goldberg. Professor Lowe also thanks John B. Attansio, Dean of the Dedman School of Law at Southern Methodist University Law School, and William L. Hutchison, Esq., and the Hutchison Endowment for their support of his work on this project.

Professor Anderson thanks his research assistants: Daniel Nicholson and Brad Williams. In addition, Professor Anderson thanks Andrew M. Coats, Dean of The University of Oklahoma College of Law, for his encouragement and the many friends of Eugene Kuntz for the support provided by the Eugene Kuntz Chair in Oil, Gas and Natural Resources at The University of Oklahoma.

Professor Smith is indebted to the late Rex G. Baker, his son, Rex G. Baker, Jr., and his grandson, Rex G. Baker III, for the support provided by the Rex G. Baker Centennial Chair in Natural Resources Law. He also thanks Dean William C. Powers of The University of Texas School of Law, his research assistants, Sarah Hasib and Paul Turner, and his secretary, Debbie Steed, who provided invaluable assistance in the preparation of the manuscript.

Professor Pierce thanks Dennis R. Honabach, Dean of Washburn University School of Law, for his support. Professor Pierce's work on this project was aided by an academic sabbatical provided by Washburn University.

The editors are especially grateful to Pauline M. Simmons, Esq., for contributing her analytical, writing, and editing talents to enhance the form, style, and content of both the first and second editions. We thank the Rocky Mountain Mineral Law Foundation, which provided financial support for the first two editions of this project, and which has provided each of us with intellectual stimulation over the years. Finally, we thank our families for their support and patience.

We have adopted a number of conventions in the preparation of these materials. We have frequently omitted citations from cases and other quotations without inserting ellipses. Because oil and gas law is largely a matter of state law, we have modified the usual form for citation of federal cases that apply state law by including the state from which the case arose. The names of frequently cited treatises are abbreviated, and all footnotes are consecutively numbered within each chapter.

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