

Chapter 7

Evolving Theories of Lease Termination Litigation

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§ 7.01. Introduction.

This chapter is an overview of classic and evolving lease termination theories as reflected in appellate court decisions in various states. Trends and trajectories in American judicial thought on the topic are identified and discussed. This chapter focuses on claims based on the following theories: lease termination litigation based on habendum ending acts or omissions; lease termination litigation based on implied covenant violations; and lease termination litigation based on failure to pay delay rentals in the primary term or failure to pay shut-in royalties in the secondary term.

§ 7.02 Theories of Lease Termination Reliant upon the Habendum Clause.

The first habenda encountered in oil and gas leases were for specific terms. The habendum has evolved into a hybrid consisting of a primary, fixed term in which rent is sometimes paid for the privilege of deferring drilling and a secondary, production based term.¹ Historically, parties seek-

¹ See generally, 3 Howard R. Williams & Charles J. Meyers, *Oil and Gas Law* § 603 (2013).