

## Chapter 9

### Oil & Gas Easements

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### § 9.01. Oil & Gas Rights Are a Collection of Easements.

The oil and gas lease is a collection of easements. So are the rights associated with a mineral interest that has been conveyed separately from the surface estate. Each give the lessee, or mineral owner, the right to enter the grantor's property to search for, develop, extract, possess, and market oil and gas. Whether classified as a fee simple determinable or a *profit à prendre* determinable,<sup>1</sup> the oil and gas “lease” authorizes the lessee to use land owned by others to conduct development operations, and acquire possession and title to the oil and gas extracted from the land. The severed mineral estate, whether classified as a possessory interest in real property, or a nonpossessory right to enter the property to search for and extract oil and gas, also enjoys a number of appurtenant easements to facilitate reasonable, necessary, and convenient development.<sup>2</sup>

Any time more than one owner has the right to use property, there is opportunity for conflict. This chapter examines how courts, and the terms of the *Restatement (Third) of Property: Servitudes*, resolve conflicts associated with oil and gas development. Most land use conflicts are resolved by defining the rights of the easement owner.<sup>3</sup> To properly define easement rights in

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<sup>1</sup> Classification, not labeling, plays an important role in oil and gas law. For example, one of the few uniform concepts among all producing states is that the oil and gas “lease” is not really a “lease.” Instead of a landlord and tenant relationship, the oil and gas lease, for example in Texas, is a transfer of title to the oil and gas in place, a possessory interest in land that cannot be lost through abandonment. *Stephens Cty. v. Mid-Kansas Oil & Gas Co.*, 254 S.W. 290, 293 (Tex. 1923). Contrast the Texas approach with that of Kansas, where the oil and gas lease creates a *profit à prendre*, which is a nonpossessory interest in land that, like any easement, can be abandoned to the holder of the servient estate. *Burden v. Gypsy Oil Co.*, 40 P.2d 463, 466 (Kan. 1935). Classification can also be inaccurate, or at least not fit with traditional property law concepts. For example, although Kansas classifies the oil and gas lease as a *profit à prendre*, which is clearly an interest in land, the Kansas Supreme Court has found it expedient to classify it as “personal property.” See generally 1 David E. Pierce, *Kansas Oil and Gas Handbook* 4-15 (1986).

<sup>2</sup> 1 Eugene Kuntz, *A Treatise on the Law of Oil and Gas* § 2.4 (1987) [hereinafter Kuntz].

<sup>3</sup> The *Restatement* provides: “A servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created.” *Restatement (Third) of Prop.: Servitudes* § 4.1(a) (2000).