FINAL EXAMINATION

MINERAL LAW

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Monday, April 27, 1998
1:00 - 3:30 PM

THIS IS A TWO AND ONE-HALF (2½) HOUR EXAMINATION.
THIS EXAMINATION CONTAINS SIX (6) PAGES.
THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 20 min. II = 50 min. III = 30 min. IV = 30 min. V = 20 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 2½ hours. You will be given 2½ hours to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.
5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.
6. The difference between triumph and disaster may lie in a **careful** reading of the questions.

I.

(20 minutes)

Edward and Dorothy Janeway owned the interest in oil, gas and other minerals in 162 acres of land. In March 1992, they executed an oil, gas and mineral lease to Drillers, Inc., as lessee. The lease provided in part:

> 2. Subject to the other provisions herein contained, this lease shall be for a term of 3 years from the date (hereinafter called the "primary term") and as long thereafter as oil, gas, or other minerals are produced from said land.
>
> . . .
>
> 12. Provided this lease is held by production at the expiration of the primary term, Lessee will have 1 year after the expiration of the primary term to drill an additional well, and if no such well is drilled, then this lease will expire except as to 40 acres around each producing oil well and 80 acres around each producing gas well.

During the primary term of the lease, Drillers drilled an oil well. It produced oil in large quantities. During the fourth year, Drillers drilled a second well. This second well produced a small quantity of oil, but did not cover its operating costs.

Interpreting the lease to have been terminated by its own terms, because Drillers did not have two producing wells by one year after the end of the primary term, the Janeways executed a new lease to Steven Edmunds. They together then demanded a release of its lease by Drillers, except for 40 acres around its first oil well. Drillers refused, understanding the lease to continue if it had successfully drilled one producing well and drilled one other well within 1 year after the end of the primary term.

In a suit by the Janeways and by Edmunds against Drillers, should the court declare the lease terminated, except for 40 acres around the first well? Discuss all relevant legal issues. State a result.

II.

(50 minutes)

Missouri Lead Corporation owned a fee simple (complete title) to a large tract. In 1962, it conveyed a 620-acre portion of that tract to William Pomeroy, subject to the following reservation:

> Missouri Lead Corporation reserves unto itself all coal, oil, gas, lead, zine and other minerals in, upon or underneath the lands herein described, together with all mining rights connected therewith, including the right to enter upon said lands, prospect for, dig and remove any and all minerals in, upon or contained in said lands, with the right to use so much of the surface of said lands as may be necessary for prospecting, mining and milling purposes, it being understood and agreed that Missouri Lead Corporation shall have the right to purchase such part of the surface of said lands as it may require for mining and/or milling purposes at the reasonable market value thereof.

In 1988, William Pomeroy executed a warranty deed conveying the subject tract to Sapp Contruction Company. Sapp's purpose in acquiring the tract was threefold. First, it wished to remove the topsoil and sell it to landscapers. Second, it wished to remove the immediate subsurface layer, consisted of a mixture of clay and gravel called "Missouri dirt," and use it to construct a highway overpass embankment for the Missouri Department of Transportation. Third, it wished to use the stripped site for storage of bulk construction materials, like limestone and gravel, and to operate a permanent limestone kiln and concrete mixing plant. The limestone would be brought in from a quarry a few miles away.

A.

(20 minutes)

In 1990, Missouri Lead brought a lawsuit against Sapp Construction, claiming that it owned the clay and gravel and that Sapp had removed them without its consent, sustaining damages of about $ 80,000. At that time, Missouri Lead had done no mining on the tract or in the area. The clay and gravel was comprised of 80 percent silica dioxide, 11 percent ferric (iron) oxide, and 9 percent other chemical components; there was no lead, zinc, other metals, or hydrocarbons. Basically, the clay and gravel were was comprised mostly of silica rock.

Should the court grant damages to Missouri Lead for removal of the clay and gravel by Sapp? Discuss all relevant legal issues. State a result.

B.

(30 minutes)

In 1995, Missouri Lead gave Sapp notice that it intended to begin surface mining a lead ore deposit beneath the surface in 1996, and that Sapp should remove the concrete plant and construction materials storage piles by that time. Missouri Lead proposes to develop a deep open pit mine on the tract. Sapp's concrete plant and storage piles are located in the middle of the tract and would have to be removed if an open pit mine were to be developed anywhere on the tract. Sapp brought a lawsuit seeking a declaratory judgment that Missouri Lead had no legal right to use surface mining methods. In the alternative, Sapp asserted that Missouri Lead could surface mine only those portions of the tract not occupied by its concrete plant and storage piles.

Lead mining in Missouri throughout the last half of the 20th century has been conducted exclusively by open pit mines, which can reach one-quarter mile in depth and have a diameter close to one mile. However, there are no lead mines within 100 miles of the subject tract.

Assume that, in 1990, the Missouri legislature enacted a statute requiring permits for the underground and surface mining of all types of minerals and that the statute requires submission of the following as a prerequisite to obtaining a permit for surface mining:

> In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the commission:
>
> (a) The written consent of the surface owner to the extraction of coal by surface mining methods; or
>
> (b) A conveyance that expressly grants or reserves the right to extract the minerals by surface mining methods; or
>
> (c) If the conveyance does not expressly grant the right to extract minerals by surface mining methods, the surface-subsurface legal relationship shall be determined by a final court decree . . . .

Should the court grant either of Sapp's requests for declarative relief? Discuss all relevant legal issues. State a result for each of the two requests.

III.

(30 minutes)

In 1925, Taylor Haden conveyed 10 acres of land to the City of Carter for a park. In 1982, the City leased the oil, gas and mineral rights to Great Central Petroleum Co. The lease had a term of 5 years "and for as long thereafter as oil, gas or minerals are produced." In 1984, under a lease provision so providing, Great Central voluntarily pooled 5 acres of the tract with other tracts into a single spacing unit and produced oil and gas from a well located on other land in that spacing unit. The unpooled 5 acres of the City's tract was never pooled in another spacing unit, and Great Central did not drill a well there.

In 1988, the City sued Great Central (1) seeking damages for allowing oil and gas to be drained from the unpooled portion of the leased tract to the pooled portion, and (2) seeking a declaration terminating the lease for failure to drill a well on the leased tract. Should the court grant either form of relief? Discuss all relevant legal issues. State a result as to each form of relief.

IV.

(30 minutes)

In 1995, George White and other conveyed a fee simple absolute to Northern Coal Corp., subject to the following reservation:

> Grantors herein reserve for themselves, their heirs, assigns and legal representatives an undivided 1/2 interest in and to all minerals of every kind and description, including coal, oil and gas, in, upon and under said land.

In 1996, White executed a lease of oil & gas rights to Great Central Petroleum, in consideration for a 1/8th royalty.

When Great Central attempted to move an oil rig onto the land, Northern denied access to the tract. In a suit by Great Central against Northern for an injunction granting access to the well site, Northern argued (1) that it had *not* joined White in leasing the oil and gas rights, and (2) that it was entitled to deny access because the existence of oil well(s) on the tract would interfere with its plan to begin surface mining the coal on the tract. Are those adequate defenses entitling Northern to deny access to Great Central? Discuss all relevant legal issues. State a result.

V.

(20 minutes)

Define briefly the following terms:

(1) ownership-in-place
(2) negative rule of capture
(3) open mine doctrine
(4) secondary term
(5) unitization
(6) maximum efficient rate prorationing
(7) delay rental

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I. (20 min.)

- lease extended into secondary term by drilling a "producing well" by the end of the 3-year primary term and by drilling one other well within 1 year thereafter.

- lease does not specify whether that second well must be a "producing well," since the word "producing" is omitted.

- a "producing well" is one which produced oil/gas in "paying quanitites." *Clifton*, DS.

> - "paying quantities" are those which are sufficient on average to yield enough revenue to cover the operating costs of that well. *Clifton*, DS.

- the second well is not a "producing well," since its revenues do not cover operating costs.

- but since the lease does not specify that the second well must be a "producing well," the most reasonable interpretation of the second-well clause is that it is intended to encourage further exploration.

- drilling the second well, even though it does not produce in "paying quanitites," satisfies the second-well clause.

- Drillers is entitled to kept the entire lease.

IIA. (20 min.)

- what are "minerals" under Mo.Lead's mineral reservation?

> - are they all traditional minerals? -- metallic ores, jewels, hydrocarbons, useful rocks, & certain other materials? or
>
> - are they minerals similar in character to those listed in the reservation (*ejusdem generis* rule)? -- metallic ores & hydrocarbons?

- under either definition, do "minerals" include clay & gravel lying near the surface?

- generally, soil & subsoil located near the surface are not considered minerals, because they are materials commonly used by the surface owner. *Moser*, CB 54.

> - *Aden v. Dalton* (Mo. 1937).

- Missouri has no state decisions defining what are minerals.

- *bonus:* but there is a federal case suggesting Missouri might follow the Texas "near surface minerals" rule in *Acker* and *Reed*, CB 26, 42.

- that case was handed down before Texas overruled its adoption of that rule in *Moser*, CB 54.

- the federal decision probably is not good law.

- therefore, Sapp has not removed the surface clay & gravel in violation of Mo.Lead's mineral rights.

IIB. (30 min.)

common law:

- the reservation gives Mo.Lead "all mining rights" to "all" the enumerated & other minerals, the right to enter the land "to ... dig and remove any and all minerals," and the right to "use so much of the surface ... as may be necessary for ... mining ...."

-this is typical broad form deed language. *Martin*, CB 223.

- while this language authorized surface mining in many states in the past, no state today holds that surface mining is authorized by such language, unless it was used in the area at the time of severance (and thus would have been contemplated by the parties). *Stearns*, CB 241, 247.

- there are no Mo. cases in point.

- therefore, a court today would hold that this reservation does authorize surface mining.

- since that has been the exclusive method of lead mining in Missouri for the past one-half century, and must have been in the contemplation of the parties.

surface owner consent statute:

- this statute was enacted in 1990, after severance in 1962, and after conveyance of surface rights to Sapp in 1988.

- clearly, Sapp has refused express written consent; there is no express authorization in the severance deed.

- therefore, in order to satisfy the statute, Mo.Lead must show that Missouri law authorizes surface mining under "broad form deed" language of the type used in the severance deed. *Cf.*

North American Coal, CB 255.

- since there are no Missouri cases in point, this is cannot do.

- *bonus:* a court decree in favor of Mo.Lead in this lawsuit would satisfy the permit prerequisite.

- surface purchase clause applies and should be exercised.

- *bonus:* accommodation doctrine -- miner must use least disruptive method of mining and mine location.

III. (30 min.)

<u>drainage</u>:

- a lessee has an implied obligation to prevent drainage to off-site wells. *Amoco v. Alexander*, DS.

    - this is done by drilling offset wells which intercept the drainage.

- but there is no obligation to prevent drainage across boundary lines located within a single pooled spacing unit. *Amoco v. Alexander*, DS.

    - pooling combines several working & royalty interests into one spacing unit containing one well.

    - because production from the off-site well is distributed proportionately to all acreage within the pool -- pooling protects the correlative rights of all the interests within the pool boundaries.

- however, because none of the production from the off-site well is attributed to drainage from outside the spacing unit, lessee does have an obligation to prevent drainage from the portion of the tract outside the spacing to the portion within it. *Amoco v. Alexander*, DS.
- the court should grant damages corresponding to value of the drained oil and gas.

<u>termination</u>:

- production of oil and gas from any part of the leased tract saves the entire leased acreage. *Bibler Bros.*, DS.

    - in an unpooled situation, there is an implied covenant to produce oil and gas from the leased tract by drilling at least one well. *Baldwin*, DS.

- the rules change when a leased tract, in whole or in part, is joined with others into a pooled spacing unit.

- production of oil and gas from an off-site well in a spacing unit which contains a portion of the leased tract is treated as production from the leased tract. *Biblier Bros.*, DS; *Wells*, DS.

- such off-site production saves the entire lease.

    - off-site production is treated as the equivalent of on-site production.

- *bonus:* if the lease contains a *Pugh* clause, only the portion of the leased tract within the spacing unit is saved, the remainder is terminated (absent a well on that portion). *Bibler Bros.*, DS.

- the court should declare that the lease has not terminated.

IV. (30 min.)

- a conveyance of a fraction of minerals "in, on and under" land usually is considered a fractional mineral interest. *Barker*, DS.

    - a mineral interest carries with it the rights to develop the minerals, to have access to the minerals, and to lease the minerals (and receive bonuses, delay rentals, and royalties).

- hence, White and Northern each have a 1/2 interest in the minerals, while Northern has all of the surface rights.

<u>Leases by co-tenants</u>:

- states are divided whether one cotenant can lease the entire mineral interest.

    - the majority rule is that a cotenant can do so, subject to an obligation to account for net profits. *Prairie Oil*, DS.

        - not merely to royalties, because the nonconsenting cotenant did not agree to accept merely a royalty interest.

        - nonconsenting cotenant may not be excluded.

    - the minority rule is that all cotenants must join in a lease; independent leasing constitutes waste. *Chosar*, CB 102.

- here, probably Northern is entitled to 1/2 of the net profits obtained by Great Central.

Relationship between lessees of different minerals:

- mineral owners may separately lease different minerals.

- the upper mineral owner or lessee's title is servient to the lower mineral owneror lessee's right of access.

    - the lower mineral owner/lessee is entitled to a way of necessity.

- generally, a lessee of one mineral may not exclude a lessee of another mineral.

    - they must cooperate to develop & produce the minerals each is entitled to.

    - *Chartier Block Coal*, CB 63.

V. (20 min.)

Definitions:

(1) *ownership-in-place* -- surface owner owns all minerals (including oil & gas) beneath the surface
(2) *negative rule of capture* -- no liability for penetration of injected water or gas under adjacent land as result of secondary recovery operations; no trespass
(3) *open mine doctrine* -- life tenant or cotenant can continue operation of a mine opened before severance of life estate or creation of cotenancy; need not share porofits with remaindermen, but must account to other cotenants
(4) *secondary term* -- mineral lease continues after expiration of primary term "as long as production continues"
(5) *unitization* -- operation of whole oil & gas field as a single entity by designated unit operator; proportionate division of production among the various working interests (who then pay their respective royalties to their royalty interests)

(6) *maximum efficient rate prorationing* -- limitation of oil & gas production to that which will achieve maximum ultimate yield
(7) *delay rental* -- payment for extension of time to begin production; has effect of extending primary term