

# EXAM SPECIFICATIONS FOR OIL, GAS AND MINERAL LAW

**PURPOSE OF THE EXAM.** The purpose of the certification exam is to require an oil, gas, and mineral law applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in oil, gas and mineral law.

**REQUIRED KNOWLEDGE, SKILLS AND ABILITIES.** An applicant in oil, gas and mineral law is expected to understand the legal principles relevant to ownership and use of interests in oil, gas and other minerals. An applicant is also expected to understand land titles, surface rights and use, contracts and regulations affecting oil, gas and other minerals. The knowledge, skills and abilities required of an oil, gas and mineral law applicant are set out on the following pages.

**EXAM FORMAT.** The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple choice questions (10 of which involve professional ethics) each worth 2 points. The required passing score is **350**. The essay portion of the exam may be taken by laptop (supplied by the examinee) or by writing. Answers to the multiple choice questions will be documented by the applicant on a scantron answer sheet supplied by TBLs.

**EXAM GRADING.** All exam materials are confidential and not available for review. Essay answers are graded anonymously and identified only by an assigned examinee number. Multiple choice answers are computer graded. Successful examinees are notified that they passed but are not provided with the specific score. Unsuccessful examinees are notified of the exam score. Exams that score 10 points below the passing grade are automatically regraded. Exam results are final.

**ESSAY QUESTIONS.** Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an applicant to answer. Essays are designed to require an applicant to recognize and analyze issues in the fact pattern and explain how those issues would be appropriately resolved under applicable law. The fact patterns will involve situations you would likely encounter in your practice. Essays typically involve issues of ownership of mineral estates, rights and obligations of parties to mineral leases, and conveyances of mineral interests. Applicants should make sure to include in their essay answers the specific information and analysis necessary for proper resolution of each question presented, and to communicate as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. In order to pass the exam, applicants must demonstrate that they are able to clearly express answers in a manner that would be understood by a client and persuasive to an adverse party and/or the decision-maker in a case.

**MULTIPLE CHOICE QUESTIONS.** These questions are designed to test a breadth of issues in the specialty area and require an applicant to select the **best** available answer option.

***NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. APPLICANTS WILL BE TESTED ON RULES AND LAW IN EFFECT AT THE TIME OF THE EXAM UNLESS OTHERWISE SPECIFIED.***

## **1. Ownership of Oil, Gas and Minerals**

- a. Nature of the ownership
- b. Surface rights of the mineral owner and the surface owner
- c. Subsurface rights controlled by the mineral owner or the surface owner
- d. Horizontal and vertical trespass, surface and subsurface
- e. Access, easements by prescription, necessity, etc.
- f. Adverse possession
- g. Rights of concurrent owners
- h. Rights of owners of successive interests
- i. Rights to lease
- j. State and other public lands
- k. Relinquishment Act
- l. Sales Act
- m. State's "free royalty" Lands
- n. Expansion or contraction of the areal boundary of minerals owned through erosion, accretion, reliction, and whether natural or man-induced – distinguish avulsion and subsidence

## **2. Conveyancing**

- a. Formalities
- b. Adequacy of description of lands/interests conveyed
- c. Meaning of "minerals"
- d. Grants and reservations
- e. Term interests
- f. Construction of deeds and contracts that burden or "run with the land"
- g. Probate and intestate succession
- h. Unambiguous/ambiguous terms
- i. Canons of Construction

## **3. Oil, Gas and Mineral Lease**

- a. Habendum clause, including the primary term and the continuation of the lease through production
- b. Delay rental clause
- c. Maintenance of the lease through operations
- d. Impact of a cessation of production
- e. Royalty clauses
  - (1) Deductibility of post-production costs
  - (2) Computation of royalty
  - (3) Non-payment of royalty
  - (4) Division orders
  - (5) Transfer orders
  - (6) Letters in Lieu
  - (7) Shut-in royalty
- f. Other clauses
  - (1) Mother Hubbard Clause
  - (2) Warranty Clause
  - (3) Pugh Clause

- (4) Force Majeure Clause
- (5) Retained Acreage Clause
- (6) Continuous Development Clause
- (7) Non-standard clauses added to lease exhibits
- g. Implied covenants
  - (1) Covenant to develop the leased premises
  - (2) Covenant to protect the leased premises from drainage
  - (3) Covenant to manage and administer the lease, including the covenant to market production
  - (4) The reasonable prudent operator standard
- h. Community Leases
- i. Co-tenants and their effect on the oil and gas lease
  - (1) Unleased mineral co-tenants
  - (2) Non-participating working interest co-tenants

#### **4. Transfers Subsequent to a Lease**

- a. Transfers by lessor
  - (1) “Subject to” clause; “two-grants” theory
  - (2) Assignment clause; apportionment of royalties; entirety clause
- b. Transfers by lessee
  - (1) Relationship of transferor and transferee
  - (2) Relationship of lessor and transferee and with transferor
  - (3) Distinctions between assignment and sublease
  - (4) Reserved interests

#### **5. Pooling and Unitization**

- a. Creation of voluntary and compulsory pooled units; unit agreements
- b. Creation of fieldwide units, including the significance of obtaining Railroad Commission approval
- c. Non-joining owners; joinder by owners of non-operating interests
- d. Effect of pooling and unitization upon lease terms and upon term interests, and non-participating royalty interests
- e. Effect of pooling and unitization upon analysis of dominant estate rights
- f. Distinctions with regard to regulatory provisions and lease provisions as they relate to vertical wells versus horizontal wells
- g. What constitutes, and what is the significance of “lease line” for well permitting with the Railroad Commission
- h. Issues regarding drilling horizontal wells which cross tracts with unpooled or unleased interests
- i. Issues regarding drilling horizontal wells which cross tracts that are not pooled and payment of production based allocation

#### **6. Industry Contracts including Remedies for Default**

- a. Farmouts
- b. Operating agreements
- c. Gas Balancing agreements
- d. Division and transfer orders
- e. Joint venture agreements
- f. Rights of way
- g. Seismic easements and options and seismic data licenses

- h. Surface use and surface damage agreements
- i. Processing agreements
- j. Drilling contracts
- k. Master service contracts
- l. Indemnities
- m. Insurance coverage relevant to indemnities
- n. Gas purchase contracts
- o. Salt water disposal agreements
- p. Slurry Site Agreements

**7. Recent Developments including**

- a. Fracking issues
- b. Nuisance and negligence claims against oil and gas lessees
- c. Railroad Commission Regulation of Horizontal Drilling, including all newly developed concepts
- d. Production Sharing Agreements
- e. Production Sharing Agreements & Allocation Wells
- f. local regulation of oil and gas operations through zoning or other land use ordinances
- g. State preemption of local regulation

**8. Oil and Gas Industry Terminology**

**9. State and Federal Regulation of Oil, Gas and Minerals**

- a. Railroad Commission regulation of oil, gas and minerals
- b. Surface Mining and Reclamation Act
- c. Mineral Interest Pooling Act
- d. Relinquishment Act
- e. Leasing and operating on state lands
- f. Fieldwide pooled units for secondary recovery

**10. Oil, Gas and Mineral Financing and Liens (including deed of trust or mortgage liens, mechanic's and materialmen's liens, security interests under the Uniform Commercial Code - creation, perfection, release, and foreclosure of such liens and relative priorities among the various types of liens)**

**11. The Texas Disciplinary Rules of Professional Conduct.** The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an applicant is advised to be familiar with all provisions of the TDRPC.

**SKILLS.**

An applicant must demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel and courts
- Develop and evaluate strategies for solving a problem or accomplishing an objective
- Identify, analyze and apply legal rules and principles

- Analyze, sort and use facts; plan and direct factual investigations
- Organize and manage a legal task efficiently within time constraints
- Represent a client consistent with applicable ethical standards
- Invoke and utilize the procedures normally required in the specialty area including pleadings and filings

Specifically relating to oil, gas, and mineral law, an applicant must be able to:

- Advise clients on the legal aspects of ownership and transfer of oil, gas and mineral rights
- Draft documents necessary to accomplish client objective directives
- Advise clients of the rights and obligations of all parties under an oil, gas and mineral lease
- Advise clients on the legal aspects of transfers of leases
- Advise clients on issues related to pooling and unitization, various contracts related to oil, gas and mineral leases, and the Texas Railroad Commission regulation of producers and landowners