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Vexatious Title Problems

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Vexatious Title Problems:  
Railroads, K.S.A. § 79-420, and 
Strangers to the Deed

by

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I. Introduction

Kansas, like all states, has an abundant supply of nagging title issues. Today I would like to try and "solve" three problems that I have encountered, vicariously, through my former students and others examining title to Kansas lands. These have also been prominent topics in Washburn's Mineral Title Examination course that is taught each year by over twenty oil and gas practitioners.

II. Railroad Titles: Does The Railroad Own a Fee or an Easement?

A. Kansas Public Policy

1. To understand and apply the rules in this area, the Kansas Supreme Court’s policy goals must be understood.

2. Why will a court interpret a deed that would otherwise convey a fee simple, to instead convey merely an easement in the property?

3. In Kansas, a railroad can acquire land in fee. K.S.A. § 66-501 provides:

   "Every railway corporation shall, in addition to the powers hereinbefore conferred, have power -- . . . Second. To take and hold such voluntary grants of real estate [e.g., not by involuntary condemnation] and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railway; but the real estate received by voluntary grant shall be held and used for the purpose of such grant only, and to purchase and hold, with power to convey, real estate, for the purpose of aiding in the construction, maintenance and accommodation of its railway."

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1 My thanks to Tony Hunter who provided me with this quote.
a. K.S.A. § 66-501 (Second) deals with voluntary grants of land used for railroad purposes – for right-of-way and non-right-of-way purposes).

b. K.S.A. § 66-501 (Third) provides for taking property by eminent domain and describes the power: “To lay out its road, not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the road; [and other rights to make use of land to operate on the right-of-way] . . . .”

4. The court poses the policy issue in Abercrombie v. Simmons, 71 Kan. 538, 542, 81 P. 208, 210 (1905), as follows:

“May a railroad company purchase a strip of land, extending a great distance through the country and over many farms, abandon the enterprise, and then sell the strip to those who will put it to a wholly different use; one which might be both obnoxious and menacing to the adjoining owners?”

a. The court also cited an excerpt from a railroad treatise that where the land is acquired for a right-of-way the conveyance will contain “an implied restriction” that it vests only an easement “as is requisite to effect the purpose for which the property is required.” Id. at 542-43, 81 P. at 210.

b. The court then noted: “The fact the deed contains covenants of warranty, or that the right acquired is designated as a fee, is not necessarily controlling.” Id. at 543, 81 P. at 210.

c. But, the policy has limits. “We are not called upon to decide, nor do we intend to express an opinion, as to the rule applicable where lands are purchased or obtained without regard to the use to be made of them, or where there is nothing in the contract or conveyance indicating that they have been purchased for a right-of-way.” Id. at 546, 81 P. at 211.

d. That open question was answered in Danielson v. Woestemeyer, 131 Kan. 796, 293 P. 507, 511 (1930) (policy limitation only applies to land acquired by the railroad for use as a “right-of-way” as opposed to land acquired “for other railroad purposes”).

5. Another public policy is mentioned in *Harvest Queen Mill & Elevator Company v. Sanders*, 189 Kan. 536, 370 P.2d 419 (1962). If the railroad only receives an easement if it condemns a right-of-way, it should receive no more than an easement if a person voluntarily conveys the interest to the railroad. *Id.* at 542, 370 P.2d at 423 (“The rule is in conformity with the state’s long-standing public policy and gives full effect to the intent of the parties who execute right-of-way deeds rather than going through lengthy and expensive condemnation proceedings.”).

**B. Conveyances Held to Convey a Right-of-Way.**

1. If the conveyance purports to convey a fee interest, but the conveyance reveals it is being made for right-of-way purposes, the railroad receives only an easement in the land.

2. If the conveyance purports to convey a fee interest, but the conveyance does not reveal it is being made for right-of-way purposes, the railroad receives a fee interest, not an easement.

3. It is not necessary to use the term “right-of-way” in the conveyance for the court to find the parties intended a right-of-way conveyance. It is sufficient if use as a right-of-way is properly “within the contemplation of the parties” because of the language used and the surrounding circumstances at the time of the grant. *Abercrombie*, 71 Kan. at 546, 81 P. at 211.

4. The problem: what sort of language will adequately suggest the conveyance is being made for right-of-way purposes?

5. The *Abercrombie* deed language:

Simmons conveys and warrants to Railroad:

“[A]ll the land in the southwest quarter of section fifteen (15), township nine (9) south, of range seven (7) west, lying within fifty feet of the center line of the main track of said railroad, and containing six and twenty-three hundredths (6.23) acres, more or less.” *Id.* at 539, 81 P. at 209.

a. The only express language in the deed indicating the land was being acquired for right-of-way purposes is the “fifty feet of the center line of the main track” language.

b. The court noted that prior to the conveyance the railroad “surveyed and staked out a route” on the land. *Id.*
c. A week after the conveyance, the railroad filed a route map with the county clerk. The railroad was never constructed. *Id.*

d. The court held: the interest was taken for right-of-way purposes and therefore the railroad received only an easement in the lands.

6. The *Harvest Queen* deed language:

Long conveys and warrants to Railroad:

"A strip of land one hundred & one hundred & fifty feet wide of which the center line of the route and line of The Chicago Kansas and Nebraska Railway Company as the same is now surveyed staked and located is the center being Fifty & Seventy five feet each side of the center line of said route over across and through the following described tracts of land as said route and line of said railway passes through the same to wit [describing two tracts of land] . . . . (Emphasis added).

"Together with all such additional or extra ground out of the lands of the said Grantor or Grantors adjoining such strip of land hereby conveyed as said Company may at any time require to be paid for by said Company at the price per acre paid for said strip and said Railway Company may through its Agents employees servants or contractors encroach upon the adjoining lands outside of the limits above mentioned to which said Grantor or Grantors have title or possession for the purpose of building or constructing its roadbed and railroad and of completing and trimming its cuts and fills and for all other purposes for the building constructing or maintaining its roadbed or of maintaining its railroad." (Emphasis by the court).

*Harvest Queen*, 189 Kan. at 538, 370 P.2d at 420-21.

a. "In the instant case the 1887 deed and those things to which we may look in its interpretation plainly show that the strips were sold by the grantor and purchased by the grantee railway company as and for a right-of-way for a railroad." *Id.* at 541, 370 P.2d at 423.

b. "This use being within the contemplation of the parties, it is to be considered as an element in the contract and limits the interest that the railroad acquired, i.e., an easement for railroad purposes." *Id.*

c. In *Harvest Queen* the issue was whether the landowner, or the railroad, had the ability to lease, for oil and gas development, the lands granted to the railroad.
Court made it clear the railroad had only an easement (not any sort of fee simple determinable), and therefore the owner of the servient estate, and not the railroad, owned the minerals beneath the right-of-way.

The court summarized the relationship as follows:

"Where a railroad merely acquires an easement of way the title to the underlying minerals found or existing within the limits of the right-of-way and below the grade of the road remain in the owner of the fee who might mine for them so long as he does not interfere with the operation of the railroad nor imperil the surface support." *Id.* at 542, 370 P.2d at 424.

**C. Conveyances Held to Convey a Fee.**

1. The *Stone* deed language:

   Little conveys and warrants to Railroad:

   "[A]ll the following described REAL ESTATE [legal description of tract of land 247.5 feet long and 235 feet wide]."

   *Stone*, 278 Kan. at 167-68, 91 P.3d at 1196.

   a. After this conveyance, the railroad conveyed part of the land away and retained a potion which it in fact used for right-of-way.

   b. "In this case, the unambiguous language of the original conveyance . . . does not suggest that it is to be used as a right-of-way." *Id.* at 180, 91 P.3d at 1203.

2. The *Danielson* deed language:

   Grantor quitclaims to Railroad:

   "[A] certain strip of land one hundred feet wide, extending through the larger tract hereinafter described, *said strip of land being the route or right of way of the railroad* of said second party as described and defined on the map of the route of said railroad filed in the county clerk's office. The lateral boundaries of said strip of land to be fifty feet equi-distant from the center of the main railroad track of the said second party as now constituted and to extend in length through the larger tract of land hereinbefore referred to which is more particularly described as follows, to-wit: the Northwest Quarter of Section 32, Township 10, Range 24 East.
“And said party of the first part for said consideration also remise, release and quitclaim unto said party of the second part, another strip of land 100 feet wide by 1500 feet long, lying parallel and adjoining the said strip of land hereinbefore described and conveyed as right of way . . . .” Danielson, 293 P. at 510-11.

a. The parties agreed that the first tract, the south 100 feet, conveyed merely an easement because it was for right-of-way purposes.

b. The second tract, the north 100 feet, was not limited to right-of-way purposes; the reference to “right of way” was merely to locate the tract.

c. “Applying the usual rules of construction to the deed above set out, we are compelled to conclude that the south 100 feet only was conveyed as the right of way, and as to the north 100 feet the deed conveyed the fee for railroad purposes . . . .” Id. at 511.

D. Student Exercise (Advanced Oil & Gas Law)

The Horizontal Well

PART I

The Railroad Deed

(5 Points)

Acme Oil Company owns an oil and gas lease granted to it by Robert Riley, covering all of § 3, T 11 S, R 15 E, from the 6th PM. Robert received the surface and mineral interest to § 3 through a deed from the successor-in-interest to Dock Hillard (see Warranty Deed from the ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY at page 4 of this document). At the time of the 1885 conveyance from the Railroad, its track ran from the Southwest corner of § 3 to the Northeast corner of § 3, dividing § 3 into two triangular tracts of land. Although you are not provided the chain of title into the Railroad, for this Exercise you can assume it was conveyed to the Railroad by a private owner who transferred all rights in the property to the Railroad by warranty deed.

You represent Acme Oil Company. Acme plans to drill a horizontal well on a 1280-acre pooled unit consisting of all of § 3 and § 10, T 11 S, R 15 E. The first well will have a beginning wellbore location 330' from the South boundary of § 10 and 330' East from the West boundary of § 10, and extending due North for a distance of approximately 9,500', staying, at all times, at least 330' East of the West boundary of § 10 and § 3. The well will be drilled vertically until it
encounters the Mississippian Lime formation, at about 4,800 feet below sea level. The horizontal component will be completed solely in the Mississippian Lime formation.

The landman for Acme, Teresa McClaranan, has contacted you for legal advice. She is concerned that Dock did not obtain the oil and gas in the portion of § 3 retained by the Railroad in its Warranty Deed. Therefore, because Robert’s source of title is through Dock, Robert may not have the ability to lease the oil and gas underlying the retained Railroad lands. Teresa wants to know if Acme needs to procure an oil and gas lease from the Railroad before drilling. Teresa is aware that it would cost over $100,000 to procure a lease from the Railroad. Therefore, Acme needs to know who owns the oil and gas, and the right to develop the oil and gas, in the interest retained by the Railroad in its 1885 conveyance. The Railroad is still using the track that traverses § 3.

YOUR TASK. You will prepare a memorandum of law, addressed to Teresa as Acme’s representative, that answers Teresa’s question. This is a research project. You will be required to find, read, analyze, and use the available statutory and case law.

Use the Times New Roman font, 12-point type, one-inch margins, single-spaced, with a total word count (including the heading) not to exceed 575 words. The memo must be on one 8.5” x 11” page. Citations must be imbedded in the text, as opposed to being placed as footnotes at the bottom of the page.
WARRANTY DEED

This Indenture, Made this Sixth day of January, one thousand eight hundred and eighty-five (1885), by and between the ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, a corporation doing business under the laws of the State of Kansas, and Thomas Nickerson, George C. Lord, F. H. Peabody, and S. L. Thorndike, all of the County of Suffolk, in the Commonwealth of Massachusetts, as Trustees, as hereinafter stated, parties of the first part, and Dock Hillard, of the County of Crawford, in the State of Kansas, party of the second part,

WITNESSETH: That the said ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, for and in consideration of the sum of Five Hundred and Seventy-Six dollars ($576.00) to it duly paid by the said Dock Hillard, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, all that tract, piece, and parcel of land situate in the County of Shawnee, in the State of Kansas, to wit: Section 3, Township 11 South, Range 15 East of the 6th Principal Meridian, containing in all Six-Hundred and Forty (640) acres more or less according to the United States Survey.

Reserving, however, to the said ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY all that portion of the land hereby conveyed (if there be any such) which lies within lines drawn parallel with, and fifty feet on each side distant from, the center line of its Railroad, as now constructed, and any greater width where necessary permanently to include all their cuts, embankments, and ditches, and other works necessary to secure and protect the main line of said Railroad.

To Have and to Hold The said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY doth hereby covenant with the said party of the second part, his heirs and assigns that it is lawfully seized of the premises aforesaid; that said premises are free and clear of all incumbrance whatsoever; and the said ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY will forever warrant and defend the same, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the lawful claim of all person whomsoever, except taxes that may have been levied thereon for the year 1885, or subsequent thereto.

[Assume the Warranty Deed was property executed and timely recorded.]
Memorandum of Law

TO: Acme Oil Company (ATTN: Teresa McClarnan, Land Department)
FROM: Exam No. 107
SUBJECT: Ownership of Oil & Gas Underlying Land Retained by Railroad in 1885 Deed
DATE: 11 February 2013

I. QUESTION. When the Atchison, Topeka & Santa Fe Railroad Company conveyed land to Dock Hillard, and reserved a 100-foot wide strip of land containing the Railroad’s trackage, did the reservation include the oil and gas rights beneath the reserved interest?

II. ANSWER. No. The deed indicates the Railroad reserved a right-of-way. The Railroad conveyed the fee, including the oil and gas rights, to Dock. Dock’s rights are held by Robert Riley, who entered into an oil and gas lease with Acme Oil Company. The Railroad has no oil and gas rights in the land; a lease from the Railroad is unnecessary.

III. DISCUSSION. Once a railroad ceases using right-of-way lands, Kansas public policy favors returning the strip of land to the surrounding landowners. Harvest Queen Mill & Elevator Co. v. Sanders, 189 Kan. 536, 542, 543, 370 P.2d 419, 423, 424 (1962). This policy goal is achieved by holding that any conveyance to a railroad, using language that would otherwise create a fee interest, instead creates an easement, when the conveyance suggests it is for a right-of-way. Id. If the terms of the fee conveyance do not suggest it is being obtained for a right-of-way, the railroad will receive a fee. Stone v. U.S.D. No. 222, 278 Kan. 166, 180, 91 P.3d 1194, 1203-04 (2004). It is not necessary to use the term “right-of-way” in the conveyance. It is sufficient if use as a right-of-way is properly “within the contemplation of the parties” because of the language used. Abercrombie v. Simmons, 71 Kan. 538, 546, 81 P. 208, 211 (1905).

Applying these principles, the language in Dock’s deed indicates the land reserved is to “secure and protect” the Railroad’s existing 100-foot wide “main line” of trackage. This is a right-of-way. The Railroad reserved land within “fifty feet on each side distant, from the center line of its Railroad, as now constructed, and any greater width to include all their cuts, embankments, and ditches, and other works necessary to secure and protect the main line of said Railroad.” This is similar to the conveyance language in Abercrombie where it was held the abandoned land was a right-of-way and reverted to the landowner. Abercrombie, 71 Kan. at 539, 81 P. at 210 (conveying “lands . . . lying within fifty feet of the center line of the main track of said railroad”). It is also similar to the conveyance in Harvest Queen, where it was held the railroad received an easement, and therefore had no rights to the oil and gas in the land. Harvest Queen, 189 Kan. at 538, 370 P.2d at 421 (conveyance granted a 100- to 150-foot strip of land “for the purpose of . . . building constructing or maintaining its roadbed or of maintaining its railroad.”). Dock’s deed indicates the interest reserved is land associated with the railroad’s existing trackage right-of-way. This distinguishes Dock’s deed from Stone, where the deed granted “all the following described REAL ESTATE,” without stating how the land might be used. Stone, 278 Kan. at 168, 91 P.3d at 1196. Any doubt in this situation should be resolved against the Railroad as the grantor. K.S.A. 58-2202; Barker v. Lashbrook, 128 Kan. 595, 598, 279 P. 12, 14 (1929) (reservation construed strictly).

A. The Statute


2. The current version is found at K.S.A. § 79-420 and provides:

Whenever the fee to the surface of any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right or title to any minerals therein is in another or in others, such mineral interest shall be listed and the market value, if any, determined separately from the fee of such land, in separate entries and descriptions. Such land and such mineral interest shall be separately taxed to the owners thereof respectively. In determining the market value, if any, of any such mineral interest, the appraiser shall consider every proper factor, including but not limited to, the size of the particular mineral interest, the fractional share of such interest and the number of fractional shares in existence for such interest. The register of deeds shall furnish to the county clerk where such mineral interest exists and are a matter of record, a certified description of all such interest. When such reserves or leases are not recorded within 90 days after execution, they shall become void if not listed for taxation.


4. The incentive is simple. If, within 90 days from the date of delivery of the deed creating the mineral severance, it is not recorded, or otherwise timely “listed” for taxation, the severed mineral interest is void.


a. Henry Becker and wife Laura Becker convey an undivided one-half mineral interest to S. D. Leighton. Deed “executed and delivered” 22 April 1929, deed recorded 5 April 1930, deed recorded 5 April 1930, tax listing date for this period was 1 March 1930.
b. Through the years the grantee, and the grantee's successors:

(1) paid taxes on the severed mineral interest;

(2) conveyed fractional interests in the mineral interest; and

(3) had some of the fractionalized mineral interests transferred through tax sales.

c. The grantors' successors brought suit in 1969 to quiet title to the one-half mineral interest conveyed to S. D. Leighton in 1929.

d. The court held that because the deed was not recorded within 90 days from 22 April 1929, and was not otherwise recorded or presented for "listing" before 1 March 1930, the 1929 conveyance by the Beckers to Leighton was void.

e. As explained by the court:

"Failure to comply with the statute renders the instrument void not on the theory of forfeiture of a vested title, but because a condition precedent to the vesting of title in the transferee had not been met."

f. Therefore, the chain of title to minerals emanating from the grantee Leighton is void and nonexistent. The full mineral interest had, since 1 March 1930, resided in the grantor, the Becker chain of title.

B. Benevolent Judicial Interpretation to Avoid Harsh Results – In Some Cases

1. Although the terms of the statute refer to recording "reserves or leases," the statute does not apply to an oil and gas lease that does not grant the lessee a present right to the oil and gas in place.

a. In Kansas Natural Gas Co. v. Board of Commissioners of Neosho County, 75 Kan. 335, 89 P. 750 (1907), the court held that an oil and gas lease granting the right to enter land to search for, develop, and extract oil and gas, did not confer a right to the mineral in place sufficient to trigger the separate taxation requirements of K.S.A. § 79-420. [Although this case is applying the 1897 version of K.S.A. § 79-420, the applicable language is identical to the later 1911, 1959, and 1982 versions of the statute.]

b. This prompted the court to characterize the oil and gas lease as follows:
"The lease grants no estate in the land or in the oil or gas which it may contain. It creates an incorporeal hereditament only, a license to enter and explore for oil and gas, and if they are discovered to produce and sever them. . . . Until discovered and brought to the surface, no severance of title occurs. The minerals not only remain a constituent part of the land, but they belong to the owner of the surface soil beneath which they lie. The lessee has no "right or title" to them . . . and they are not separately taxable to him."

c. The court, however, follows this general classification with a cautionary statement: "There is no standard form for an oil and gas 'lease.'" Therefore, "[e]ach instrument must be interpreted in the light of its own peculiar provisions."

d. When the Texan comes to Kansas with a Texas lease form, that confers on the lessee the present right to all minerals in place, such an oil and gas "lease" could be subject to the requirements of K.S.A. § 79-420.

e. The examiner must therefore focus on the granting clause of the oil and gas lease to determine whether it creates a present severance of the oil and gas in place, or merely confers on the lessee a profit à prendre to develop and extract oil and gas.

f. General classifications will not change contrary language in the document. This issue is discussed at length in 1 David E. Pierce, Kansas Oil and Gas Handbook § 6.10 (1986) ("Deed/Lease Problem").


a. "Transfers of 'royalty' are not covered by the provisions of G.S. 1935, 79-420."

b. The importance of classifying the conveyance as creating either a "royalty" interest or a "mineral" interest was noted by the court:

"If it is a mineral deed, carving out of the fee a present subsurface estate in the oil and gas in place, the instrument is void under Section 79-420, G.S.1935, not having been recorded within ninety days after execution or listed for taxation. On the other hand if the instrument conveyed only a royalty interest—a right to share in oil or gas produced—then the statute is not applicable."
c. The trial court concluded the conveyance created a "mineral" interest; the supreme court reversed holding a "royalty" interest was created.

(1) The opinion reproduces the document at issue, prepared by the president of a bank using a printed form.

(2) Although it appears to be more "mineral" than "royalty," the court's conclusion is probably more in line with what the parties were trying to accomplish.

(3) It also prevented the harsh remedy of voiding an interest that the parties intended to create – whatever its proper classification.

(4) This merely complicates an already complicated issue associated with distinguishing between a mineral interest and a royalty interest.

4. The statute does not apply to an interest excepted or reserved in the grantor. 


Although this would seem to be just as much a "severance" as a grant of the minerals to a grantee, the court in Medford v. Board of Trustees of Park College held: "a grantor retaining, or excepting from, a conveyance, a vested and recorded title to any minerals is not required to record the instrument . . . by reason of G.S. 1935, 79-420."

5. Although the grantor of a retained mineral interest need not record, if they do record or list in a timely manner, subsequent grantees of the mineral interest are relieved from further recording or listing obligations. 


a. Consider the facts in Johnson v. Johnson:

1916 C. A. Johnson record owner of land in fee.

1917 C. A. Johnson and wife M. M. Johnson convey to Harry C. Jobes with the Johnsons excepting all the oil and gas. Deed recorded within a few days.

1925 C. A. Johnson and M. M. Johnson convey ½ mineral interest to Mrs. E. C. Johnson. Recorded 11 August 1928. [listing date would have been 1 March 1926]
1926 William Johnson (plaintiff) purchases all of Jobes rights (surface; subject to 1917 mineral reservation).

1928 C. A. Johnson dies intestate with all property going to wife, M. M. Johnson (either a ½ mineral interest – or a full mineral interest if the 1925 conveyance was void).

1937 M. M. Johnson “conveyed by royalty deed” “all her interest in the mineral in the land” to C. E. Johnson. Conveyed 11 October 1937 but not recorded until 16 July 1938. [listing date would have been 1 March 1938]

1938 Suit filed 12 July 1938 contending the 1925 conveyance was void “as to the half interest in the mineral conveyed to Mrs. C. E. [E. C.?] Johnson . . . .”

b. The court held the requirements of 79-420 were met in 1917 when the Johnson/Jobes deed was recorded. The court reasoned:

“The fact that there were subsequent conveyances of the royalty interest is of no importance since the first severance of the mineral right from the title to the surface was made by the conveyance of July 2, 1917, and the two interests became taxable from that time on. The recording of the subsequent conveyances could have given the taxing officials no notice that they did not have from the conveyance of July 2, 1917.”

c. The court in Medford summarized its holding in Johnson stating: “we held that where a severance of the mineral interests has been made and recording thereof has followed in compliance with the statute that it is not necessary thereafter to record or list separately for taxation other conveyances of integral interests in and to the mineral rights.”


a. Until then, no obligation to record or list arises.

b. When the parties intend that a severance not take place immediately following “execution” of the deed, then the 79-420 severance may occur on a date subsequent to the signing and acknowledgment dates shown in the deed.
c. In *Burgin* the parties had an oral agreement to escrow the deed until a new mortgage could be obtained.

(1) The court held the proper date for determining compliance with 79-420 was when the deed was released to the grantee, not the date the deed was “executed.”

(2) A similar result was obtained in *Ochs v. Blankenship*, 192 Kan. 423, 388 P.2d 626 (1964), where there was a written escrow agreement imposing specific contractual obligations the grantee had to satisfy before becoming entitled to delivery of the deeds.

d. Another way to conceptualize these delayed delivery problems is to view delivery as an essential element of “execution.”

(1) The statute requires the deed to be “recorded within 90 days after execution . . . .”

(2) The cases reveal that “execution” is not necessarily the dates shown on the face of the deed, or the date shown in the acknowledgment certificate. Instead, “execution” takes place when the last act necessary to complete the transaction occurs: delivery of the deed.

e. Record title will rarely reveal the reason for a delay in recording.

(1) Title examiners will focus on the date shown in the deed and the date shown in the acknowledgment certificate.

(2) The severance of a mineral estate can take place with a deed that is not acknowledged, so long as it was effective between the parties to the conveyance. K.S.A. § 58-2209 (2005) (signature required “and may be acknowledged”); K.S.A. § 58-2214 (2005) (proof of “due execution and delivery” of unacknowledged deed); K.S.A. § 58-2223 (2005) (unrecorded deed valid between parties and those having actual notice).

(3) These will be compared with the recording date, followed, if necessary, by comparison with the applicable listing date.

f. If this information reveals that the deed, based on the record, violates 79-420 and is void, how can the examiner determine whether there was a delayed delivery of the deed?
The uncertainty caused by these factual issues can only be addressed by ascertaining any facts available and then evaluating which party has the burden of proof.

For example, in Burgin the court noted: “Defendants assumed the burden of showing the mineral deed was not delivered on the date of its execution, July 11, 1936.”

The older the transaction, the more likely the allocation of the burden of proof will resolve the issue in accordance with the evidence shown of record.

g. Addressing the delivery issue is aided by Kansas Title Standard 5.4 which provides: “Delivery of a deed on the date of its acknowledgment is presumed.” KANSAS TITLE STANDARDS HANDBOOK 15 (7th ed. 2005).

For example, a deed dated February 28, 1967 was not recorded until March 10, 1967.

The party challenging the deed argued it was not effective until recorded on March 10. Rejecting this argument, the court in In re Estate of Laue, 225 Kan. 177, 589 P.2d 558 (1979), held: “In the absence of any showing to the contrary, a deed is presumed to have been delivered on the date it was executed and acknowledged.”

Therefore, it was incumbent on the party challenging the conveyance to prove it was not in fact delivered on the date they were signed and acknowledged.

Another situation where the effective date for triggering the 79-420 analysis may be delayed is when the grantee is granted a future interest in the minerals.


b. The grantors conveyed the minerals but reserved in the grantors a life estate until the last to die of the grantors, with a vested remainder in the grantees.

c. The court concluded that the 79-420 requirements would not become triggered until the grantees had possession of the interest,
which would not be until May 6, 1979 upon the last to die of the life tenants. Therefore, the July 3, 1967 recording was timely.

d. The basis for this conclusion was that no tax would be avoided because the interests remained with the grantors who continued to pay tax on the full interest.

(1) The court’s no-tax-avoidance analysis would only fit situations where the grantors continue to have a present possessory interest in the minerals, and therefore continue paying all taxes as though the interests had not been severed.

(2) The results would be different if the conveyance were to a grantee life tenant, as opposed to a retained life estate in the grantor.

e. The Kansas Supreme Court has not addressed this issue. I question whether the supreme court would follow the court of appeals approach in *Goodspeed*.

C. What Is the Proper “Listing” Date?

1. Assuming a grantee failed to comply with the 90-day recording requirement, the next inquiry is whether the grantee satisfied the alternative timely “listing” requirement.

2. The first step is to determine the relevant listing date. The listing date depends upon the effective date of the deed at issue. The relevant listing dates are as follows:

<table>
<thead>
<tr>
<th>Version of K.S.A. § 79-420</th>
<th>Listing Date</th>
<th>Applicable Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>1897 Kan. Sess. Laws 456</td>
<td>March 1</td>
<td>March 12, 1897 to May 21, 1911</td>
</tr>
<tr>
<td>1911 Kan. Sess. Laws 571, 572</td>
<td>March 1</td>
<td>May 22, 1911 to June 29, 1959</td>
</tr>
<tr>
<td>1982 Kan. Sess. Laws 1655, 1671</td>
<td>December 15</td>
<td>July 1, 1982 to the Present</td>
</tr>
</tbody>
</table>

3. The chart can be further summarized by the following rules: If the deed was effective prior to June 30, 1959, the listing date is March 1. From June 30, 1959 to June 30, 1982 the listing date was January 1. For any deed taking effect beginning July 1, 1982 to the present, the listing date is December 15.

4. Prior to the 1982 amendment of 79-420, the statute contained the listing date. The listing date was deleted in the 1982 amendment with the
following changes: “The register of deeds shall furnish to the county assessor, who shall furnish on the first day of January each year to each deputy assessor clerk where such mineral reserves exist interest exists and are a matter of record, a certified description of all such reserves interest.”

a. As part of the same bill amending 79-420, there was included an amendment to K.S.A. § 79-408 dealing with the county clerk’s preparation of real property assessment rolls.

b. The county clerk is directed to consult “the real estate transfer record in the office of the clerk” and “the records and plats in the office of the register of deeds.”

c. The statute ends with the statement: “After the county clerk has completed such rolls, the clerk shall deliver them to the county appraiser no later than December 15.”

d. This is where the December 15 “listing” date is derived. The assumption is that the county clerk would continue to note documents recorded in the register of deeds office until the statutory December 15 delivery date.

5. Although the December 15 date appears to be the proper listing date, a statement by the court in Ford v. Willits, 237 Kan. 13, 697 P.2d 834 (1985), suggests the listing date is to be found in K.S.A. § 79-306, providing a March 15 listing date for “tangible personal property.”

a. In Ford the court noted the interest had been timely listed because it was filed for record “prior to March 1, the listing date for personal property, K.S.A. 79-306 . . . .”

b. This was an unnecessary observation because the version of 79-420 applicable to the 1947 recording specified a March 1 listing date.

6. Because 79-420 focuses on real property, the appropriate listing date should be the one applicable to real property interests, not personal property.

a. K.S.A. § 79-408, with its December 15 listing date, appears to be the proper date for use with 79-420.

b. Particularly since 79-408 was part of the same bill that amended 79-420 and eliminated the January 1 date that had been imbedded in 79-420.
c. It is also notable that although K.S.A. § 79-306 has been amended many times throughout the years, it was not amended in 1982 when 79-408 and 79-420 were amended.

7. Another listing issue is determining the latest possible listing date allowable under the various versions of 79-420.

a. It would appear that any recording that takes place prior to the applicable designated date (March 1, January 1, December 15), would be timely.

b. In Richards v. Shearer, 145 Kan. 88, 64 P.2d 56 (1937), the mineral conveyance was delivered on June 26, 1934 and recorded on January 30, 1935.

(1) Although it was not recorded within 90 days from execution, it was recorded in advance of the applicable listing date, which was March 1, 1935.

(2) The court observed:

"True, the conveyance was not recorded within 90 days after its execution, but the statute does not say it shall therefore be void. The proviso reads: "That when such reserves or leases are not recorded within ninety days after execution, they shall become void if not listed for taxation."

"Did the recording before March 1, 1935, constitute the necessary listing of property taxed as real estate? We think it did."

(3) The court also noted: "The conveyance was recorded in ample time to enable the register of deeds to furnish the country clerk, and he in turn the assessor, with a certified description of the reserve made by the conveyance."

(4) Although the recording in Richards took place a month prior to the March 1 date, it would appear that recording at any time prior to the March 1 date would be sufficient. Otherwise, it would become a factual issue in each case whether the recording provided the officials with "ample time," prior to the designated date, to do their job.

8. In Templing v. Bennett, 156 Kan. 68, 131 P.2d 904 (1942), the court recognized a listing option that injects troublesome factual issues into the 79-420 analysis.
a. The grantee received the conveyance on October 6, 1928. The interest would not be recorded until June 30, 1934. Instead of recording the conveyance, the grantee brought the conveyance to the county clerk’s attention, in December of 1928, in an effort to have it listed for taxation. The county at that time did not maintain records on severed mineral interests; the clerk refused to list the interest.

b. The court held that the grantee’s efforts to have the property listed were sufficient to satisfy the 79-420 listing requirement.

c. As with the escrow and delayed delivery situations, attempts to list that do not involve recording will most likely be managed by how the burden of proof is assigned.

(1) If the conveyance took place a long time ago, it is unlikely the current successor to the grantee will be able to present evidence to establish an informal attempt to list as in Templing.

(2) The important fact is that what is shown of record, primarily the recording date, may not be the final word on whether a timely listing has occurred.

D. Dealing With Potential Factual Issues; The Title Opinion

When the record reveals a conveyance date, and a recording date, that indicate 79-420 has been violated, and therefore a conveyance is void, the following language may be useful in addressing potential factual situations that may negate what is shown of record:

The Kansas Supreme Court has noted two factual situations where the dates shown in the record may not determine compliance with §79-420. First, because delivery of the deed is a necessary event to create the severance, facts may exist, that are not shown of record, that delivery was delayed beyond the date of the deed. For example, if the deed was delivered into escrow, the date the deed was released from escrow will be the date used to determine compliance with §79-420, not the date of the deed. Second, if the grantee in fact took action to try and list the mineral interest for taxation, that can constitute compliance with §79-420, even if the deed was not timely recorded and there is no other record evidence of the listing, or attempted listing. In each of these situations, the party asserting the existence of these factual situations would have the burden of proof. Because there is nothing I have gleaned from the record to suggest any of these factual situations apply, I have assumed, for this opinion, they do not.
IV. Resolving “Stranger to the Deed” Problems Without Kansas Supreme Court Guidance.

A. The Problem

1. “O conveys land to A, reserving to X all the oil and gas in and under the conveyed land.”

2. At common law, the attempted reservation in X, a “stranger” to the deed, was void.

3. The rule is stated by one commentator as follows:

   “[I]n a deed neither a reservation nor an exception in favor of a stranger to the instrument can, by force of ordinary words of exception or reservation, create in the stranger any title, right, or interest in or respecting the land conveyed. . . . [T]he stranger has no interest in the land to be excepted from the grant, and likewise none from which a reservation can be carved out, an exception or reservation in his favor being therefore deemed quite impossible.”

   W.W. Allen, Annotation, Reservation or Exception in Deed in Favor of a Stranger, 88 A.L.R.2d 1199, §2 (Supp. 2012).

B. Kansas Law on the Issue

1. The Kansas Supreme Court has not addressed the issue, but the Court of Appeals has: In re Marriage of Wade, 20 Kan. App.2d 159, 164, 884 P.2d 736, 740 (1994).

2. In re Marriage of Wade facts:

   a. The parents of Ron Wade and Gwendolyn Gooding conveyed land containing two houses to Wade Farms, Inc., with the following provision: “Excepting therefrom a life-time estate in the personal residences separately occupied and lived in by Gwendolyn L. Gooding and Ron D. Wade.”


   c. The validity of Ron’s life estate became an issue in his divorce.

   d. Ron contended the attempted conveyance to him was invalid because he was a stranger to the deed and that words such as
“reserve” or “except” are not sufficient words of grant to pass title to a third party.

3. The rule fashioned by the court in *Wade*:

   a. The court refused to adopt the common law rule, noting that the Kansas Supreme Court has made it clear “that the cardinal rule in interpreting the effect of a deed is to ascertain the intent of the grantor.”

   b. In the *Wade* case the grantor and mother of Gwendolyn and Ron, and the attorney who drafted the deed, testified the grantors intended to convey the land to the corporation, but also intended to allow the children to possess the houses for the remainder of their lives.

   c. The court held it must interpret the deed to give effect to the “obvious intention of the grantors” and “determine as best it can the purpose of the grantors and the intentions they endeavored to convey.”

   d. Even without the aid of extrinsic evidence, the express terms of the exception seem to reveal the “obvious intention” of the grantors to convey the land to the corporation, but only if it is subject to a simultaneous right, created in their children, to continue residing in the houses for the balance of their lives.


   a. In *Brady* the issue focused on the grantor’s intent to create an easement in favor of a stranger to the grant.

   b. The court assumed such a grant would be effective, if that was the clear intent of the grantor.

   c. Without citing the *Wade* case, the court proceeded under the following premise: “The general rule is that a reservation in a deed cannot create an easement in favor of a third party unless that was clearly the grantor’s intent.”

   d. The court does not pursue the matter further, because it found the grantor had no intent to confer rights on a third party.
C. Rationale for the Common Law Rule and its Modern Rejection

1. The most frequently stated rationale for the common law rule is the lack of adequate words of grant.

2. The modern rejection of the rule is based upon a desire to give effect to the intent of the parties to the conveyance.


   a. In *Hinchliffe* the issue was whether a document titled “Private Annuity Contract” could, in effect, be a deed that would convey land to the “transferees.”

   b. Although titled “Private Annuity Contract” it contained the words “bargains, sells and transfers.”

   c. In upholding the conveyance, the court observed that K.S.A. § 58-2205, and its predecessor enacted in 1868, were designed to “make the transfer of interest in land as free as possible.”

   d. The court also quoted the following from a prior opinion: “It is not necessary to the validity of a deed that technical operative words of conveyance be used.” *Bryant v. Fordyce*, 147 Kan. 586, 78 P.2d 32 (1938) (words “assign and set over” indicate intention by grantor to convey property to grantee; technical words of grant not necessary).

D. When Should the Kansas Supreme Court Recognize a Common Law Rule?

1. The “stranger to the deed rule” is a remnant from early common law.

   a. In 2013, how should the Kansas Supreme Court determine whether to adopt such a common law rule that it has not previously acknowledged?

   b. Interestingly, there is a fairly well-defined process that should be applied to answer this question.

2. The issue for the court will be whether, at this late date in Kansas history, the common law rule is an appropriate addition to the laws of Kansas.

3. This inquiry is governed by K.S.A. § 77-109 which provides: “The common law as modified by constitutional and statutory law, judicial
decisions, and the conditions and wants of the people, shall remain in force in aid of the General Statutes of this state . . . ."

4. The court in *Steele v. Latimer*, 214 Kan. 329, 521 P.2d 304 (1974) offered guidance on how the "the conditions and wants of the people" should be determined when deciding to accept or reject a common law principle. The court adopted the following statement as its guide:

"The nature of the common law requires that each time a rule of law is applied, it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice. Whenever an old rule is found unsuited to present conditions or unsound, it should be set aside and a rule declared which is in harmony with those conditions and meets the demands of justice."

5. This analysis of 77-109 assumes the Kansas Legislature has not already addressed the issue.

   a. It is arguable that the issue was addressed generically, as early as 1868, with enactment of the predecessor to K.S.A. § 58-2205 that provides:

   "Conveyances of land, or of any other estate or interest therein, may be made by deed, executed by any person having authority to convey the same . . . , and may be acknowledged and recorded as herein directed, without any other act of ceremony whatever."

   b. Commenting on this statute, the court in *Miller v. Miller* 91 Kan. 1, 136 P. 953 (1913), observed:

   "[T]he Kansas Legislature of 1868 undertook not only to permit the granting of future estates but to abolish other common-law restrictions on alienation not suited to allodial tenures and modern conveyancing, and to make transfers of interests in land as free as possible."

   c. Arguably, the stranger-to-the-deed rule is one of those "other common-law restrictions on alienation not suited to . . . modern conveyancing . . . ."
V. Conclusions: Lots More to Come

A. Endless Supply of Title Problems

1. So long as there is something worth fighting over, there will be an endless supply of title problems as competing owners seek to establish their claim to a piece of the action.

2. Title issues that go untested, or unrecognized, in other contexts, become major problems in the oil and gas context.

B. Keeping Pace With The Law

1. In the past, lawyers, and their clients, sometimes paid little attention to major oil and gas title decisions — at least not until the next title examination event.


3. Don’t miss an opportunity to sell your clients some of your time; they need your representation as soon as the law undergoes a shift that may impact their interests.

C. Washburn: Preparing Our Students to Effectively Represent Clients

See Exercise #2, Defeasible Term Interests (beginning on the next page).
EXERCISE #2

Defeasible Term Interests

(10 Points)

The Federal Land Bank of Wichita has, through time, made loans to Kansas landowners and then found it necessary to foreclose on the land mortgaged to secure the loans. Regarding the lands at issue in this Exercise, the Bank properly acquired the mortgaged lands as the successful bidder at the foreclosure sales. When the Bank re-sold the lands to new purchasers, it retained a mineral interest in each conveyance. Assume that each conveyance from the Bank to the grantee conveyed all the land to the grantee, except for the retention of a defeasible term mineral interest, using a form identical to Exhibit A to this Exercise (see page 4).

For this Exercise, when it is indicated a mineral owner has entered into an oil and gas lease covering a tract of land, assume in each case the mineral owner and the lessee entered into a lease identical (except for dates, names, and property description) to the Form 88 – (Producers) Kan., Okla. & Colo. 1962 Rev. Bw form we have been using in class.

Assume that all activities are taking place in the West Shawnee Gas Field. The Kansas Corporation Commission, beginning in 1941 and continuing through today, spaced the Shawnee Gas Field to require a section of land (640 acres) for each Shawnee Formation gas well. To ensure a uniform pattern of development, each spacing unit well must be located in the Southwest Quarter of the Northeast Quarter of each Section. The spacing order does not purport to pool, unitize, or otherwise accomplish the consolidation of acreage that may be required to satisfy the spacing requirements. That is a matter for voluntary agreement among the affected mineral owners within each Section.

Assume that for Sections 2 and 3 described below: (1) Acme Oil Company obtained separate oil and gas leases, using the form referenced above, from the Bank, and the Bank’s grantees (and their spouses); (2) each lease was for 10 years beginning May 1, 1945; (3) Acme properly exercised the pooling power conferred by ¶ 5 of each lease to create a 640-acre pooled unit, effective in each case on October 1, 1945; (4) during October 1945, Acme drilled a single gas well in the Southwest Quarter of the Northeast Quarter on each Section (no other wells have ever been drilled on the Sections); and (5) since first production, Acme has paid 1/4th of the royalties to the Bank and 3/4ths to the landowners, without any party entering into a division order.
Assume that for Sections 4 and 5 described below: (1) Acme Oil Company obtained separate oil and gas leases, using the form referenced above, from the Bank, and the Bank’s grantees (and their spouses); (2) each lease was for 10 years beginning July 7, 1961; (3) Acme properly exercised the pooling power conferred by ¶ 5 of each lease to create a 640-acre pooled unit, effective in each case on December 1, 1961; (4) during December 1961, Acme drilled a single gas well in the Southwest Quarter of the Northeast Quarter on each Section (no other wells have ever been drilled on the Sections); and (5) since first production, Acme has paid 1/4th of the royalties to the Bank and 3/4ths to the landowners, without any party entering into a division order.

Section 2: Bank conveyed N/2 of the N/2, and the SW/4 of the NW/4, to Joni Ellis, excepting the mineral interest described in Exhibit A. Conveyance date: June 12, 1944. There has been continuous production from the well on the pooled unit from 1945 until September 2012 when the casing in the well corroded through, allowing salt water to enter the well bore, thereby flooding out the well. All production from the well ceased on September 10, 2012. To date, the lessee has failed to take action, or to obtain a contractor, to pull the damaged casing and replace it with new casing. The lessee plans to have the casing repaired, and the well back in production, by May 1, 2013. The well is otherwise a good well, and will be able to produce in paying quantities once it is repaired.

Section 3: Bank conveyed NE/4 and the S/2, to Dock Hillard, excepting the mineral interest described in Exhibit A. Conveyance date: June 12, 1944. There has been continuous production from the well on the pooled unit since 1962.

Section 4: Bank conveyed SE/4 of the SE/4, and the NW/4 of the NW/4, to Reginald Kelley, excepting the mineral interest described in Exhibit A. Conveyance date: June 15, 1952. There has been continuous production from the well on the pooled unit since 1962.

Section 5: Bank conveyed NW/4 of the NE/4, the SE/4 of the NW/4, and the SE/4, to Mark Dice, excepting the mineral interest described in Exhibit A. Conveyance date: December 14, 1960. There has been continuous production from the well on the pooled unit since 1962.
You represent the China Petroleum & Chemical Corp. ("Sinopec") that has just closed a deal to purchase all of Acme Oil Company’s assets in the West Shawnee Gas Field. You have been hired to determine the ownership of rights to the oil and gas in Sections 2, 3, 4, & 5.

YOUR TASK. You will prepare a memorandum of law, addressed to Tex Baxter, Sinopec’s landman, that describes your analysis of the law impacting the ownership issues associated with Sections 2, 3, 4, & 5. Your memo will have the following heading:

Memorandum of Law

To: China Petroleum & Chemical Corp. (ATTN: Tex Baxter, Land Department)

From: Exam No. [Obtain an exam number from Shirley Jacobson, Room 302]

Subject: Oil and Gas Ownership in Sections 2, 3, 4, & 5, Township 11 South, Range 15 East from the 6th Principal Meridian, in Shawnee County, Kansas.

Date: 14 March 2013

Use the Times New Roman font, 12-point type, one-inch margins, single-spaced, with a total word count (including the heading) not to exceed 575 words. The memo must be on one 8.5” x 11” page. Citations must be imbedded in the text, as opposed to being placed as footnotes at the bottom of the page.

Citations must conform to the “Bluepages” (pp. 3-51) of The Bluebook: A Uniform System of Citation (Columbia Law Review Ass’n et al. eds., 19th ed. 2010). For this Exercise you should also apply the Kansas Supreme Court rules regarding citation. Although this document will not be tendered to a court for filing, your law firm requires that all citations in the firm’s memos conform to the Kansas Supreme Court rules. This means you will be applying the “Local Rules” qualification noted at page 3 of The Bluebook.


You must submit your work electronically, in some version of Microsoft Word, so the word count can be confirmed. You will submit your work to Shirley by e-mail at:

shirley.jacobson@washburn.edu

You are responsible for the proper electronic submission of your paper. You must ensure that the file containing your paper is properly attached, complete, and can be opened by Shirley.
This is critical because your electronic submission will be used to determine whether your work has been submitted on time. If Shirley is unable to open the file you send, it will not be deemed submitted until you solve the problem and Shirley has a readable submission. This Exercise #2, must be submitted on or before 5:00 p.m. Topeka time, Thursday, March 14, 2013.

LATE WORK. The late work rules stated in Exercise #1, Part I apply to this Exercise, and to all Exercises you will be doing this semester.

Remember that this is a graded exercise. You cannot discuss the exercise with anyone. You must do your own work the same as if this were my final examination. If you have questions about the Exercise, they should be directed to me.

EXHIBIT A

MINERAL DEED

Federal Land Bank of Wichita, conveys and warrants to [GRANTEE] all of the [Portion of Section #_], in Township 11 South, Range 15 East from the 6th Principal Meridian, in Shawnee County, Kansas.

"Excepting and reserving unto Federal Land Bank of Wichita, its successors and assigns, an undivided ¼ of all oil, gas and other minerals and mineral rights, in, upon and under the above described real estate for a period of twenty years from and after the conveyance date, and so long thereafter as oil, gas and/or other minerals or any of them are produced therefrom, or the premises are being developed or operated."

[Properly Dated, Executed, and Recorded.]
Vexatious Title Problems: Railroads, K.S.A. § 79-420, and Strangers to the Deed

by
David E. Pierce
Washburn Law School

Reality

• "Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket?" (Abraham Lincoln, July 1, 1850)

• My thanks to Tony Hunter for this gem.
Oil & Gas Title Examination

- It is different.
- Not like declaring title to the shopping mall.
- There will always be a “fiend” or two lurking about – in search of “defects” – something you may have missed, that they can rely upon to gain an interest in the property (and in the process “stir up strife” in an attempt to “put money in his pocket”).

Railroad Property
Railroad Property

- Railroad Titles: Does The Railroad Own a Fee or an Easement?
- Kansas Public Policy
- To understand and apply the rules in this area, the Kansas Supreme Court’s policy goals must be understood.
- Why will the court interpret a fee simple conveyance to instead convey merely an easement in the property?
Railroad Property

• In Kansas, a railroad can acquire land in fee.
• K.S.A. § 66-501 provides: "Every railway corporation shall . . . have power -- . . . Second. To take and hold such voluntary grants of real estate . . . as shall be made to it to aid in the construction, maintenance and accommodation of its railway; but the real estate received by voluntary grant shall be held and used for the purpose of such grant only, and to purchase and hold, with power to convey, real estate, for the purpose of aiding in the construction, maintenance and accommodation of its railway."

Railroad Property

• K.S.A. § 66-501 (Third) provides for taking property by eminent domain and describes the power: "To lay out its road, not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the road; [and other rights to make use of land to operate on the right-of-way] . . . ."
Railroad Property

• The court poses the policy issue in *Abercrombie v. Simmons*, 71 Kan. 538, 542, 81 P. 208, 210 (1905), as follows:

• "May a railroad company purchase a strip of land, extending a great distance through the country and over many farms, abandon the enterprise, and then sell the strip to those who will put it to a wholly different use; one which might be both obnoxious and menacing to the adjoining owners?"

Railroad Property

• The court also cited an excerpt from a railroad treatise that where the land is acquired for a right-of-way the conveyance will contain "an implied restriction" that it vests only an *easement* "as is requisite to effect the purpose for which the property is required."

• "The fact the deed contains covenants of warranty, or that the right acquired is designated as a fee, is not necessarily controlling."
Railroad Property

- But, the policy may have limits.
- "We are not called upon to decide, nor do we intend to express an opinion, as to the rule applicable where lands are purchased or obtained *without regard to the use to be made of them, or where there is nothing in the contract or conveyance indicating that they have been purchased for a right-of-way".

Railroad Property

- That open question was answered in *Danielson v. Woestemeyer*, 131 Kan. 796, 293 P. 507, 511 (1930) (policy limitation only applies to land acquired by the railroad for use as a "right-of-way" as opposed to land acquired "for other railroad purposes").
Railroad Property

• Another public policy is mentioned in *Harvest Queen Mill & Elevator Company v. Sanders*, 189 Kan. 536, 370 P.2d 419 (1962).

• If the railroad only receives an easement if it condemns a right-of-way, it should receive no more than an easement if a person voluntarily conveys the interest to the railroad.

• Encourage voluntary sales vs. condemnation.

Railroad Property

• The rules used to promote Kansas public policy:

  • If the conveyance purports to convey a fee interest, but the conveyance reveals it is being made for right-of-way purposes, the railroad receives only an easement in the land.

  • If the conveyance purports to convey a fee interest, but the conveyance does not reveal it is being made for right-of-way purposes, the railroad receives a fee interest, not an easement.
Railroad Property

• Application of the rules: what is necessary to reveal the conveyance was made for right-of-way purposes?

• It is not necessary to use the term "right-of-way" in the conveyance for the court to find the parties intended a right-of-way conveyance.

• It is sufficient if use as a right-of-way is properly "within the contemplation of the parties" because of the language used and the surrounding circumstances at the time of the grant.

Railroad Property

• The problem: What sort of language, or circumstances, will adequately suggest the conveyance is being made for right-of-way purposes?
Railroad Property

- The *Abercrombie* deed language: Simmons conveys and warrants to Railroad --

- "[A]ll the land in the southwest quarter of section fifteen (15), township nine (9) south, of range seven (7) west, *lying within fifty feet of the center line of the main track of said railroad*, and containing six and twenty-three hundredths (6.23) acres, more or less

Railroad Property

- The only express language in the deed indicating the land was being acquired for right-of-way purposes is the “fifty feet of the center line of the main track” language.

- The court noted that prior to the conveyance the railroad “surveyed and staked out a route” on the land.

- After the conveyance, a route map was filed with the county, but no line was constructed.
Railroad Property

• The court held: the interest was taken for right-of-way purposes and therefore the railroad received only an easement in the lands.

Railroad Property

• The Harvest Queen deed language: Long conveys and warrants to Railroad --

  "A strip of land one hundred & one hundred & fifty feet wide of which the center line of the route and line of The Chicago Kansas and Nebraska Railway Company as the same is now surveyed staked and located is the center being Fifty & Seventy five feet each side of the center line of said route over across and through the following described tracts of land as said route and line of said railway passes through the same to wit . . . ."
Railroad Property

• "Together with all such additional or extra ground out of the lands of the said Grantor or Grantors adjoining such strip of land hereby conveyed as said Company may at any time require . . . said Railway Company may . . . encroach upon the adjoining lands outside of the limits above mentioned . . . for the purpose of building or constructing its roadbed and railroad and of completing and trimming its cuts and fills and for all other purposes for the building constructing or maintaining its roadbed or of maintaining its railroad."

Railroad Property

• "In the instant case the 1887 deed and those things to which we may look in its interpretation plainly show that the strips were sold by the grantor and purchased by the grantee railway company as and for a right-of-way for a railroad."

• "This use being within the contemplation of the parties, it is to be considered as an element in the contract and limits the interest that the railroad acquired, i.e., an easement for railroad purposes."
Railroad Property

• In *Harvest Queen* the issue was whether the landowner, or the railroad, had the ability to lease, for oil and gas purposes, the lands granted to the railroad.

• Court made it clear the railroad had only an easement (not any sort of fee simple determinable), and therefore the owner of the servient estate, and not the railroad, owned the minerals beneath the right-of-way.

Railroad Property

• The court summarized the relationship as follows:

• “Where a railroad merely acquires an easement of way the title to the underlying minerals found or existing within the limits of the right-of-way and below the grade of the road remain in the owner of the fee who might mine for them so long as he does not interfere with the operation of the railroad nor imperil the surface support.”
Railroad Property

- The *Stone* deed language: Little conveys and warrants to Railroad --
- "[A]ll the following described REAL ESTATE [legal description of tract of land 247.5 feet long and 235 feet wide]."

Railroad Property

- After this conveyance, the railroad conveyed part of the land away and retained a potion which it in fact used for right-of-way.
- "In this case, the unambiguous language of the original conveyance . . . does not suggest that it is to be used as a right-of-way."
- The railroad received a fee in the land, not an easement.
Railroad Property

- The *Danielson* deed language: Grantor quitclaims to Railroad --
- "[A] certain strip of land one hundred feet wide, extending through the larger tract hereinafter described, *said strip of land being the route or right of way of the railroad* of said second party as described and defined on the map of the route of said railroad filed in the county clerk's office. The lateral boundaries of said strip of land to be fifty feet equi-distant from the center of the main railroad track of the said second party as now constituted and to extend in length through the larger tract of land hereinbefore referred to which is more particularly described as follows . . . ."

Railroad Property

- "And said party of the first part for said consideration also remise, release and quitclaim unto said party of the second part, *another strip of land 100 feet wide by 1500 feet long, lying parallel and adjoining the said strip of land hereinbefore described and conveyed as right of way* . . . ."
Railroad Property

- The parties agreed that the first tract, the south 100 feet, conveyed merely an easement because it was for right-of-way purposes.
- The second tract, the north 100 feet, was not limited to right-of-way purposes; the reference to "right of way" was merely to locate the tract.

"Applying the usual rules of construction to the deed above set out, we are compelled to conclude that the south 100 feet only was conveyed as the right of way, and as to the north 100 feet the deed conveyed the fee for railroad purposes..."
Railroad Property

- Student Exercise (Advanced Oil & Gas Law)
- The Horizontal Well and The Railroad Deed
- "Reserving, however, to the said ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY all that portion of the land hereby conveyed (if there be any such) which lies within lines drawn parallel with, and fifty feet on each side distant from, the center line of its Railroad, as now constructed, and any greater width where necessary permanently to include all their cuts, embankments, and ditches, and other works necessary to secure and protect the main line of said Railroad."
K.S.A. § 79-420

- The major inquiry in this area is: When has the Kansas Supreme Court been willing, and unwilling, to engage in various forms of benevolent interpretation to mitigate the harsh results created by 79-420?

The Statute

- K.S.A. § 79-420. Whenever the fee to the surface of any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right or title to any minerals therein is in another or in others, such mineral interest shall be listed and the market value, if any, determined separately from the fee of such land, in separate entries and descriptions.
The Statute

- Such land and such mineral interest shall be separately taxed to the owners thereof respectively. In determining the market value, if any, of any such mineral interest, the appraiser shall consider every proper factor, including but not limited to, the size of the particular mineral interest, the fractional share of such interest and the number of fractional shares in existence for such interest.

The Statute

- The register of deeds shall furnish to the county clerk where such mineral interest exists and are a matter of record, a certified description of all such interest. When such reserves or leases are not recorded within 90 days after execution, they shall become void if not listed for taxation.
The Statute

• The statute has been around since 1897.
• Some version of 79-420 applies to deeds executed on or after March 12, 1897.
• The statute has been amended three times: in 1911, 1959, and 1982.
• The only substantive change in the statute through the years has been the “listing date.”

The Statute

• When such reserves or leases are not recorded within 90 days after execution, they shall become void if not listed for taxation.
• Two ways to comply with the statute:
  • (1) Record the deed making the severance within 90 days after execution; or
  • (2) List for taxation.
Case Law Interpreting 79-420

• What happens if you don’t comply with the statute?
• Does the interest really “become void”?
• Yes.
• It is as though the deed creating the interest never existed.

Case Law Interpreting 79-420

• Henry Becker conveyed undivided one-half mineral interest to Leighton.
• Deed “executed and delivered”: 22 April 1929.
• Recorded: 5 April 1930.
• Tax listing date for this period: 1 March 1930.
• Issue raised in 1969. Held: Deed void.
Case Law Interpreting 79-420

• Through the years the grantee’s successors:
  • Paid taxes on the severed mineral interest.
  • Conveyed fractional interests to others.
  • Some of the interests were transferred through tax sales.
  • Compliance with the statute was: “a condition precedent to the vesting of title in the transferee.” So the transferee took nothing.

Case Law Interpreting 79-420

• When such reserves or leases are not recorded within 90 days after execution, they shall become void if not listed for taxation.
  • The statute does not apply to an oil and gas “lease.” Kansas Natural Gas Co. v. Board of Commissioners of Neosho County, 75 Kan. 335, 89 P. 750 (1907).
Case Law Interpreting 79-420

• K.S.A. § 79-420 does not apply to:


  • An interest excepted or reserved in the grantor. Medford v. Park College, 162 Kan. 169, 175 P.2d 95 (1946).

Case Law Interpreting 79-420

• K.S.A. § 79-420 does not apply to:

Case Law Interpreting 79-420

- When such reserves or leases are not recorded within 90 days after execution, they shall become void if not listed for taxation.
- Under the statute, "execution" does not take place until there is delivery.
- If the deed is signed, dated, and acknowledged, but then placed in escrow, the 90-day time period does not begin until the deed is released from escrow to the grantee.

Case Law Interpreting 79-420

- The problem: often the record will not disclose that the deed was placed in escrow.
- All that will be shown of record is the date the deed was signed and acknowledged, and later recorded.
Case Law Interpreting 79-420

- These cases, when contested, will often be resolved by burden-of-proof requirements.
- Who has the burden of presenting facts surrounding the delivery of the deed?
- In *Burgin* the court noted: “Defendants assumed the burden of showing the mineral deed was not delivered on the date of its execution, July 11, 1936.”

Case Law Interpreting 79-420

- **Kansas Title Standard 5.4** provides: “Delivery of a deed on the date of its acknowledgment is presumed.”
Case Law Interpreting 79-420

• Court held: "In the absence of a showing to the contrary, a deed is presumed to have been delivered on the date it was executed and acknowledged."

• Unfortunately for the title examiner, this will not eliminate the possibility that a grantee, or their successor, can present facts, not shown of record, to establish the deed was not in fact delivered until some date after that shown in the deed and acknowledgment certificate.

Case Law Interpreting 79-420

• Another delay, future interests.


• Grantors conveyed the minerals but reserved a life estate, with a vested remainder in the grantees.

• Held: the 79-420 requirements would not be triggered until the grantees had possession of the interest.
Case Law Interpreting 79-420

- Life estate created in deed dated 29 January 1964, but not recorded until 3 July 1967.
- The last to die of the grantors was 6 May 1979; the 3 July 1967 recording was timely.
- Rationale: no tax avoidance.
- Note this rationale only works where the grantors continue to have a present possessory interest in the minerals.

Case Law Interpreting 79-420

- Remember, *Goodspeed* is a court of appeals case; the Kansas Supreme Court has not addressed this issue.
- It appears the only reason not to recognize a present severance in the remainder interest is the court was seeking to avoid the harsh results of failing to timely record.
The Statute

• When such reserves or leases are not recorded within 90 days after execution, they shall become void if not *listed for taxation*.

• Listing for taxation is accomplished by the register of deeds furnishing to the county clerk, who in turn furnishes to the assessor, the necessary information so the property can be assessed for taxation.

The Statute

• The “listing” option.
• All versions of 79-420, prior to the 1982 (the present) version, stated a specific listing date.
• In the 1897 and 1911 versions of the statute, which are effective for conveyances from March 12, 1897 and up to and including June 29, 1959, the stated listing date is March 1.
The Statute

• The register of deeds becomes aware of the information through recording.

• Therefore, the listing alternative relates to recording the deed in time so it can be provided to the assessor.

• All versions of 79-420, prior to the current version passed in 1982, contained an express listing date in the statute.

The Statute

• For example, from 1897 through June 29, 1959, the statute stated:

  “The register of deeds shall furnish to the county clerk, who shall furnish on the first day of March each year, to each assessor where such mineral reserves exist and are a matter of record, a certified description of all such reserves . . . .”
The Statute

• The version of 79-420 applicable from June 30, 1959 to June 30, 1982 provided:
  • "The register of deeds shall furnish to the county assessor, who shall furnish on the first day of January each year to each deputy assessor where such mineral reserves exist and are a matter of record, a certified description of all such reserves . . . ."

The Statute

• The current version of 79-420, applicable from July 1, 1982 to the present, as it appears in the session laws, provides:
  • "The register of deeds shall furnish to the county assessor, who shall furnish on the first day of January each year to each deputy assessor clerk where such mineral reserves exist interest exists and are a matter of record, a certified description of all such reserves interest:."
The Statute

• Note that the reference to “the first day of January” has been removed, raising the issue as to the current listing date.
• I believe the current listing date is December 15.
• In 1982, as part of the same bill amending 79-420, is an amendment to K.S.A. § 79-408 dealing with the county clerk’s preparation of real property assessment rolls.

The Statute

• The county clerk is directed to consult “the real estate transfer record in the office of the clerk” and “the records and plats in the office of the register of deeds.”
• The statute ends with the statement: “After the county clerk has completed such rolls, the clerk shall deliver them to the county appraiser no later than December 15.”
Case Law Interpreting 79-420


• The effective date of the deed at issue was in 1947; under the applicable version of 79-420 it specified a March 1 listing date, so reference to 79-306 was unnecessary.


<table>
<thead>
<tr>
<th>Version of K.S.A. § 79-420</th>
<th>Listing Date</th>
<th>Applicable Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>1897 Kan. Sess. Laws 456</td>
<td>March 1</td>
<td>03/12/1897 to 05/21/1911</td>
</tr>
<tr>
<td>1911 Kan. Sess. Laws 571</td>
<td>March 1</td>
<td>05/22/1911 to 06/29/1959</td>
</tr>
</tbody>
</table>
Case Law Interpreting 79-420

• It would appear that any recording that takes place prior to the applicable listing date, following the conveyance, would be timely.
• The critical date for determining which version of 79-420 applies, is the date of the deed and acknowledgment certificate.
• This assumes there is no delayed delivery of the deed due to an escrow or other circumstance.

Case Law Interpreting 79-420

• Richards v. Shearer, 145 Kan. 88, 64 P.2d 56 (1937).
• Mineral conveyance delivered on June 26, 1934 and recorded on January 30, 1935.
• Although not recorded within 90 days, it was recorded in advance of the applicable listing date, which was March 1, 1935.
• It was timely under the “listing” alternative.
Case Law Interpreting 79-420

- "The conveyance was recorded in ample time to enable the register of deeds to furnish the country clerk, and he in turn the assessor, with a certified description of the reserve made by the conveyance."
- Although the recording in Richards took place a month prior to the March 1 date, it would appear that recording at any time prior to the March 1 date would be sufficient.

Case Law Interpreting 79-420

- In Templing v. Bennett, 156 Kan. 68, 131 P.2d 904 (1942), the court recognized a listing option that injects troublesome factual issues into the 79-420 analysis.
- The grantee received the conveyance on October 6, 1928.
- The interest would not be recorded until June 30, 1934.
Case Law Interpreting 79-420

- Instead of recording the conveyance, the grantee brought the conveyance to the county clerk's attention, in December of 1928, in an effort to have it listed for taxation.
- The county at that time did not maintain records on severed mineral interests; the clerk refused to list the interest.
- The grantee was able to prove that his efforts in fact took place.

Case Law Interpreting 79-420

- The court held that the grantee's efforts to have the property listed were sufficient to satisfy the 79-420 listing requirement.
- As with the escrow and delayed delivery situations, attempts to list that do not involve recording will most likely be managed by how the burden of proof is assigned.
Addressing 79-420 Factual Issues

• You have conducted your title search and discovered a failure to comply with 79-420 that will void the original grantee’s chain of title.

• However, you are aware of the risk that in a subsequent action someone may be able to establish an escrow, or an attempt to list, that would avoid loss of the interest.

• How might you note this risk in your opinion?

Addressing 79-420 Factual Issues

• There Kansas Supreme Court has noted two factual situations where the dates shown in the record may not determine compliance with §79-420. First, because delivery of the deed is a necessary event to create the severance, facts may exist, but not appear of record, that delivery was delayed beyond the date of the deed.
Addressing 79-420 Factual Issues

• For example, if the deed was delivered into escrow, the date the deed was released from escrow will be the date used to determine compliance with §79-420, not the date of the deed. Second, if the grantee took action to try and list the mineral interest for taxation, the grantee’s listing efforts can satisfy §79-420, even if the deed was not timely recorded, and there is no other record evidence of the listing, or attempted listing.

Addressing 79-420 Factual Issues

• The party asserting a delayed delivery, or an attempt to list, would have the burden of proof. Because there is nothing I have gleaned from the record to suggest any of these factual situations apply, I have assumed, for this opinion, they do not.
Stranger to the Deed

• Consider the effect of the following conveyance:
  
  • "O conveys land to A, reserving to X all the oil and gas in and under the conveyed land."
  
  • At common law, the attempted reservation in X, a "stranger" to the deed, was void.

Stranger to the Deed

• Although this has been described as "the prevailing view," courts, in more recent times, have reconsidered and rejected the rule.

  • E.g, Simpson v. Kistler Investment Co., 713 P.2d 751, 756 (Wyo. 1986) (court abandons adherence to the rule "[j]oining the enlightened approach that the intent should control and that archaic and inappropriate feudalistic principles should no longer apply").
Stranger to the Deed

• The Kansas Supreme Court has not addressed the issue. *In re Marriage of Wade*, 20 Kan. App.2d 159, 164, 884 P.2d 736, 740 (1994).

• Therefore, the issue for the court will be whether, at this late date in Kansas history, the common law rule is an appropriate addition to the laws of Kansas.

Stranger to the Deed

• This inquiry is governed by K.S.A. § 77-109 which provides:

• "The common law as modified by constitutional and statutory law, judicial decisions, and the conditions and wants of the people, shall remain in force in aid of the General Statutes of this state . . . ."
Stranger to the Deed

• The court in *Steele v. Latimer*, 214 Kan. 329, 332-33, 521 P.2d 304, 307 (1974) (quoting 15 AM.JUR.2d Common Law, § 2, p. 797), offered guidance on how “the conditions and wants of the people” should be determined when deciding to accept or reject a common law principle.

• The court adopted the following statement as its guide:

> The nature of the common law requires that each time a rule of law is applied, it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice.”

• This assumes the Kansas Legislature has not already addressed the issue.
Stranger to the Deed

• It is arguable that the issue was addressed generically as early as 1868, with enactment of the predecessor to K.S.A. § 58-2205 that provides:

• "Conveyances of land, or of any other estate or interest therein, may be made by deed, executed by any person having authority to convey the same ..., and may be acknowledged and recorded as herein directed, without any other act of ceremony whatever."

Commenting on this statute, the court in Miller v. Miller, 91 Kan. 1, 136 P. 953 (1913), observed:

• "[T]he Kansas Legislature of 1868 undertook not only to permit the granting of future estates but to abolish other common-law restrictions on alienation not suited to alodial tenures and modern conveyancing, and to make transfers of interests in land as free as possible."
Stranger to the Deed

- Two rationales for the stranger-to-the-deed rule:
  - The reservation lacks the necessary words of grant.
  - It "splits the chain of title."
- Neither rationale is consistent with the modern focus on giving effect to the intent of the parties as expressed by the conveyance.

Stranger to the Deed

- Arguably, the stranger-to-the-deed rule is one of those "other common-law restrictions on alienation not suited to . . . modern conveyancing . . . ."
Stranger to the Deed

- The parents of Ron Wade and Gwendolyn Gooding conveyed land containing two houses to Wade Farms, Inc., with the following provision:
  
  "Excepting therefrom a life-time estate in the personal residences separately occupied and lived in by Gwendolyn L. Gooding and Ron D. Wade."

- The validity of Ron’s life estate became an issue in his divorce.
- Ron contended the attempted conveyance to him was invalid because he was a stranger to the deed and that words such as “reserve” or “except” are not sufficient words of grant to pass title to a third party.
Stranger to the Deed

- The court refused to adopt the common law rule, noting that the Kansas Supreme Court has made it clear “that the cardinal rule in interpreting the effect of a deed is to ascertain the intent of the grantor.”
- The stranger to the deed rule is intent defeating — but so is the rule against perpetuities — but we are not being asked to initially adopt the perpetuities rule in 2013.

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Stranger to the Deed

- The most frequently stated rationale for the common law rule is the lack of adequate words of grant.
- The issue was whether a document titled “Private Annuity Contract” could, in effect, be a deed that would convey land to the “transferees.”
Stranger to the Deed

• In upholding the conveyance, the court observed that K.S.A. § 58-2205, and its predecessor enacted in 1868, were designed to “make the transfer of interests in land as free as possible.”

Stranger to the Deed

• The court also quoted the following from a prior opinion: “‘It is not necessary to the validity of a deed that technical operative words of conveyance be used.’”

• *Bryant v. Fordyce*, 147 Kan. 586, 000, 78 P.2d 32, 35 (1938) (words “assign and set over” indicate intention by grantor to convey property to grantee; technical words of grant not necessary).
Stranger to the Deed

• The problem for the title examiner is deciding how to respond to conveyances such as: "O conveys land to A, reserving to X all the oil and gas in and under the conveyed land."

• The foregoing analysis provides guidance that will allow the client to assess the risk related to treating these "stranger" reservations and exceptions as valid conveyances.

Stranger to the Deed

• Title opinion language that invites the client to assess the risk and make the business decision might provide:
Stranger to the Deed

• The reservation of the minerals in X, as part of the O to A conveyance, would be void at common law under the “stranger to the deed” rule. The prevailing rationale for the rule is there are no adequate words of conveyance transferring the minerals from O to X. Although the Kansas Supreme Court has not addressed the issue, the Kansas Court of Appeals has rejected the common law rule and given this sort of conveyance effect.

Stranger to the Deed

• The Kansas courts have also indicated that technical words of grant are not necessary to create an effective conveyance.
• Also, it is arguable that Kansas may have already rejected the common law rule by statute (K.S.A. 58-2205) and, if not by 58-2205, it is unlikely the court would adopt the common law rule at this late date.
Stranger to the Deed

• If this issue were litigated, I believe it is highly likely the Kansas Supreme Court would not adopt the common law rule, but instead would resolve the issue by giving effect to the intent of the grantor as expressed in the deed.

Stranger to the Deed

• I believe this title issue can be resolved by treating the reservation in X as a valid conveyance, with your recognition there is some business risk involved because the Kansas Supreme Court has not addressed the “stranger to the deed” rule.
Conclusions: More to Come

• Abe Lincoln's observations aside --

• So long as there is something worth fighting over, there will be an endless supply of title problems as competing owners seek to establish their claim to a piece of the action.

• Title issues that go untested, or unrecognized, in other contexts, become major problems in the oil and gas context.

Conclusions: More to Come

• Does your current title reflect current law?

• If not, why not?

• In the past, lawyers, and their clients, sometimes paid little attention to major oil and gas title decisions — at least not until the next title examination event.
Conclusions: More to Come


• Major shift in the law in 1972 not reacted to until a 1976 title opinion.

• Major shift in the law in 1980 not reacted to until a 1984 title opinion.

• Four-year lag in each case.

• Inquiry triggered only by additional drilling.

Conclusions: More to Come

• Don’t miss an opportunity to sell your clients some of your time; they need your representation as soon as the law undergoes a shift that may impact their interests.
Conclusions: More to Come

• Washburn: Preparing Our Students to Effectively Represent Clients
• Washburn Oil & Gas Law Center
• I will leave you with a problem my students are currently addressing:

Conclusions: More to Come

• Student Exercise (Advanced Oil & Gas Law)
• Defeasible Term Interests
• "Excepting and reserving unto Federal Land Bank of Wichita, its successors and assigns, an undivided ¼ of all oil, gas and other minerals and mineral rights, in, upon and under the above described real estate for a period of twenty years from and after the conveyance date, and so long thereafter as oil, gas and/or other minerals or any of them are produced therefrom, or the premises are being developed or operated."