SMU | Dedman School of Law

SMU Law Review

Volume 13 | Issue 1 Article 6

January 1959

Book Reviews

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BOOK REVIEWS

INSTITUTE ON MINERAL LAW, Sixth Annual. HARRIET S. DAGGETT and FRANK S. CRAIG, ED. Baton Rouge: Louisiana State University Press, 1958. Pp. vii, 181. $7.50.

The Mineral Law Institute is now an established program at the Law School of the Louisiana State University as a part of its policy of continuing legal education. The Sixth Institute, again under the capable guidance of Professor Harriet S. Daggett, presented a panel of excellent papers which merit the careful and studied attention of members not only of the Louisiana Bar but also of the Texas Bar who are interested in Louisiana oil and gas law problems.

The greater portion of the 1958 Institute seems to have been devoted to the presentation of matters from the standpoint of the lessor rather than the oil operator. Two major papers are to this end. The first is entitled "The Functions of a Geologist as Consultant to a Landowner" by Gordon I. Atwater, a consultant geologist of New Orleans. It consists chiefly of the advice that a consultant geologist can give a lessor, first with respect to granting a lease on his land and, secondly, in the matter of the sale, transfer, or gift of minerals and royalties, thirdly, as to the services that can be rendered during the exploration and drilling period, and finally, as to the services that can be rendered during the period of established production. Mr. Atwater repeatedly emphasizes the important function a consultant geologist plays on behalf of the landowner in all these matters and particularly with respect to representation before the State Conservation Agency. This he feels is the most important role the consultant occupies in the oil and gas business. He fully recognizes that many of the problems that are passed to him are legal and quasi-legal. Consequently he states that the geologist should be conscious at all times of the line that divides the practice of geology from the practice of law. He states that because of these problems there must be an intimate association between the consultant geologist and the attorney. Mr. Atwater further feels that a geologist is retained to consult with his client and not to make a trade for his client. He feels that his special knowledge should be made available to the client but that it is up to the client to determine whether the geologist should remain a consultant or take an active part in the matter of leasing. It is the writer's opinion that too many members of the legal profession take a contrary view and, instead of continuing to act as a consultant, attempt to make a trade for the client regardless of whether the client so desires.

The second paper dealing with the landowner's problem is entitled "A Lessor's Lease Form" by H. J. Dauterive, Jr., an attorney from New Iberia, Louisiana. Mr. Dauterive frankly states that the lease form presented by him and attached to the paper is one drawn distinctly in favor of the landowner. The ideas that went into the lease form were the joint product of a number of attorneys, geologists, and landowners. The form was drafted particularly for use in swamp land areas of South Louisiana. The lease is entitled "Oil and Gas Lease" instead of the customary "Oil, Gas and Mineral Lease" because the lease covers only oil and gas and does not cover what are commonly referred to as "other minerals." It is difficult, being an oil company attorney, to comment upon the form of the lease suggested, since the writer's views would be somewhat prejudiced. I can, however, comment that the lease form is admittedly drawn in favor of the lessor through express written provisions not usually found in standard oil and gas leases and also through vague statements or complete omissions of important provisions so that additional negotiations would be necessary after the lease had been taken and development commenced. The lease form is an interesting example of provisions to consider for landowner-clients. It is also of value to bear in mind when working for oil operator clients.

No Mineral Law Institute would be complete without at least one discussion of trends in federal mineral income tax law. This year Charles P. McKeon, tax counsel for Honolulu Oil Corporation, presented such developments to the Institute. Since the evolution of tax law is constant, Mr. McKeon devoted his paper to a broad generalization of the more important ground developments and trends in the taxation of minerals. Space will not permit a detailed discussion of the problems he presents, but he has divided them into four major parts dealing with: (a) oil and gas unitization and the creation of the unit; (b) gross income from the mineral property; (c) production payments; and (d) I. T. 3930 and Sub-Chapter K. Mr. McKeon concludes by stating that each year some of the old issues are solved, but new problems arise. He warns that continuous and careful tax planning is necessary if maximum tax advantages are to be obtained. Good tax ideas are important, but correct tax information is absolutely necessary.

The fourth paper involves the drawing of voluntary unitization agreements and was delivered by Raymond M. Myers, formerly with the legal department of Magnolia Petroleum Company. Mr. Myers is more than well qualified to discuss the problem involved. He

recently published a book on the law of pooling and unitization which was the outgrowth of more than two decades of handling pooling and unitization problems for his company. He has long been recognized as one of the outstanding attorneys in this highly specialized field. He has in a most comprehensive manner given the salient features of a voluntary unitization agreement. Of course, this agreement must necessarily be in two parts, the operator's agreement and the royalty owner's agreement. In each he mentions the various provisions of a typical agreement and dwells lightly but accurately and in detail upon the origin and meaning of the important provisions of each agreement. He points out that it is impossible for him to discuss every detail concerning these agreements and further calls attention to the fact that there are numerous agreements in effect all of which have special provisions covering special circumstances attendant to the particular field involved. All of these instruments must be studied to find which one fits the drafter's particular case.

General Ernest O. Thompson of the Texas Railroad Commission discussed "An Administrator's Views on Conservation in the Production of Oil and Gas." He delved into the history of the interstate oil compact, what it is and what it is not. He then pointed out possible trends in the future of the oil and gas industry in the United States. He concluded his talk with a discussion of the Texas Market Demand Statute.

The usual highlight of the Institute is the discussion by competent qualified attorneys on the decisions of the preceding year involving mineral law. This year's discussion was divided into two groups, one involving decisions by the Appellate Court of the State of Louisiana and the other involving decisions by the federal courts. The decisions cover tax cases as well as matters involving mineral law, mineral rights, and oil and gas leases. Both papers are well prepared and discuss fully the important litigation encountered in the preceding year.

The Institute closes with a talk by the Honorable John B. Hussey, then Commissioner of Conservation and now a member of the Federal Power Commission. His talk is labeled "Conservation Development of the Year" and is without a doubt the finest paper presented by the Institute. It delves not only into conservation developments in Louisiana but also into important problems arising outside the state. Naturally, it concerns itself with Federal Power Commission problems and regulations concerning minimum wellhead price for natural gas. In my opinion the most important discussion by the Commissioner was his talk on determination of well costs when an involuntary unit has been formed by the Department of Conservation. For

many years this has been a moot problem on which there is virtually no jurisprudence. The Commissioner has reviewed several cases arising out of Louisiana as well as several that have arisen before the Commission, though not necessarily appealed. The results of these discussions and the conclusions reached by the Commission and the Department of Conservation are of great value to both operators and non-operators in determining the cost to be charged against a non-consenting operator when he is forced into a unit by a conservation order.

The volume is complete with table of cases, subject index, books and articles index, and an index of Louisiana and federal citations.

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HANDBOOK OF MODERN EQUITY, 2D ED. BY WILLIAM Q. DE FUNIAK. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1956. Pp. xii, 269. $4.75.

Because this new edition does not present a radical revision of its predecessor, this reviewer will not go into the detailed analysis that is required of a first edition review. There have been adequate and comprehensive reviews of the first edition,[1] so it is more helpful to offer here a comparative treatment with an indication of the more significant changes in the new book.

The first edition was very enthusiastically received, so much so that Professor de Funiak became overburdened with the details of publishing and distributing. To rid himself of these tasks, the author has employed the services of an experienced publisher, Prentice-Hall, Incorporated, for the second edition. The author's preface indicates that this has allowed "revision of the book, by the addition and citation of new materials and the rearrangement of some of the existing material."[2] Fortunately or otherwise, this statement is somewhat misleading. Three new sections have been added to the former text dealing with means other than contempt for the enforcement of injunctive relief, *i.e.*, ne exeat and sequestration. The material on equitable conversion has been expanded by the addition of another section, actually an elaboration of a paragraph contained in the first edition. Twelve pages of new material are appended at the end mentioning other forms of equitable and quasi-equitable relief, *i.e.*, reformation

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[1] DeRieux, 2 Mercer L. Rev. 455 (1951); Moreland, 39 Ky. L. Rev. 137 (1950); Rauscher, 25 Tul. L. Rev. 152 (1950); Young, 29 Texas L. Rev. 396 (1951).

[2] P. v.

and rescission, contribution, subrogation, bills quia timet, bills of peace, and bills of interpleader. These pages constitute no more than an enlarged dictionary definition of the terms and do little other than make the reader aware of their existence. Since these latter remedies are often omitted from the shortened course in equity that is presented in most schools today (if indeed the course appears in the curriculum at all), the mention of these terms by Professor de Funiak may be helpful.

Considerable new material is cited in the footnotes of the second edition. Except as mentioned above, however, there are less than half a dozen changes from the text as it appeared in the first edition, and most of these changes consist of the addition of a sentence or the omission of an obsolete paragraph. Thus the revision of the first edition and the rearrangement of its material has been superficial at best.

It may be fortunate that there is little revision or alteration in the second edition. I found de Funiak helpful for review purposes as a student and have cited both the first and second editions to my students while teaching. The text does not purport to be all-encompassing, but parts of it are of more value than any corresponding material in Walsh, Clark, or McClintock. And, of course, as a concise means of review for a bar examination it is unsurpassed. But then all this could be said of the first edition too.

On the formal or stylistic side of the volume, some unfavorable changes have been made. In the second edition as in the first, the references in the index and table of cases are to sections. From the student's standpoint, this is especially inadvisable in the table of cases. When one is trying to short-cut the briefing of cases (and most students try that in one form or another at one time or another), it is rather difficult to sift footnotes on the several pages of a section to find the case desired. But the largest point of censure for the publisher lies in the fact that although the index and table of cases are referenced to sections, only page numbers appear on the pages. The section numbers appear only in the title at the beginning of each section. The first edition was much superior in this respect as the section numbers appeared at the outer corners of each page, and the pagination at the inner corners.

The print in the new edition is easier to read, at least to this reviewer. However, again from the students' standpoint, the footnote calls[3] are not as prominent on the page as in the first edition. The

[3] The numeral "3" that directed you here is a footnote call. After conducting a random

new edition is therefore that much less attractive to the "enterprising" student.

The innovations that have been made in the second edition have been neither numerous nor propitious. Perhaps it is the nature of the subject matter that there have not been many. The second edition of Clark suffers from an even greater lack of change in text. On the other hand, for a book entitled "Handbook of Modern Equity," some further revision of or additions to the text would seem proper, even in only a six year span.

de Funiak on Equity is well worth having for a brief review of the whole subject. But there is little reason to buy the second edition if one already has the first. Professor de Funiak has been relieved of the administrative detail of distribution, but whether he made full use of his additional time to improve the second edition and whether Prentice-Hall exercised its full talents on this edition are debatable.

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survey, there seemed to be no uniformity of opinion regarding what these numbers are, or should be, called. Footnote "call" is not original with this reviewer (Professor Elmer M. Million of New York University was my source) but it is a good, short, descriptive term.

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