

Fixed Versus Floating Jeopardy

Hosts: Greg Binns and Rich Phillips

Holland & Knight

JEOPARDY BOARD

FINAL JEOPARDY

How We
Got Here

What Has
Happened

Where We
Are Now

Where We
Are Going

Potpourri

\$100

\$100

\$100

\$100

\$100

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\$200

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Topic 1 - \$100 Question

What is the problem?

Click to see answer



Topic 1 - \$100 Answer

Older instruments that describe interests
using double fractions

“Grantee shall be entitled to receive under
this conveyance . . . $\frac{3}{16}$ ths of one-eighth
of all the oil and or gas or other minerals
produced therefrom under such lease.”

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Topic 1 - \$200 Question

What is the estate-misconception theory?

Click to see answer



Topic 1 - \$200 Answer

Archaic Texas law held that a lessor conveyed $7/8^{\text{th}}$ of its interest to the lessee under a lease with a $1/8^{\text{th}}$ royalty

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Topic 1 - \$300 Question

What is the legacy of the
 $1/8^{\text{th}}$ royalty?

Click to see answer



Topic 1 - \$300 Answer

The belief that lease
royalties would always be
 $1/8$ th

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Topic 1 - \$400 Question

What's the deal with
multiple-grant deed forms?

Click to see answer



Topic 1 - \$400 Answer

They stem from a Texas Supreme Court case that was good law for only four years but had effects for decades

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Topic 1 - \$500 Question

If you contract to buy 1,000 rabbits how many rabbits are you going to buy?

Click to see answer



Topic 1 - \$500 Answer

1,200

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Topic 2 - \$100 Question

Historically, courts applied these principles, right?

Click to see answer



Topic 2 - \$100 Answer

Not necessarily. Until recently, the cases reflect mixed results with no discernible unifying principle.



Topic 2 - \$200 Question

What happened in *Garrett v. Dils Co.*?

Click to see answer



Topic 2 - \$200 Answer

The Texas Supreme Court
decided one of the first
cases that led us to the
current interpretation
principles

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Topic 2 - \$300 Question

What happened in *Luckel v. White*?

Click to see answer



Topic 2 - \$300 Answer

One of the first times in the modern era that the Texas Supreme Court wrestled with the legacy of the 1/8th

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Topic 2 - \$400 Question

What happened in *Concord
Oil Co.v. Pennzoil
Exploration & Production
Co.?*

Click to see answer



Topic 2 - \$400 Answer

One of the first times in the modern era that the Texas Supreme Court wrestled with the estate-misconception theory

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Topic 2 - \$500 Question

What happened in *Hysaw v. Dawkins*?

Click to see answer



Topic 2 - \$500 Answer

One of the first times in the modern era that the Texas Supreme Court addressed both the estate-misconception theory and legacy of $1/8^{\text{th}}$ in detail

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Topic 3 - \$100 Question

What is the *Van Dyke* presumption?

Click to see answer



Topic 3 - \$100 Answer

The term $1/8^{\text{th}}$ in a double fraction in a mineral instrument in “this era” refers to the entire mineral estate



Topic 3 - \$200 Question

What is the presumed-grant doctrine and how did *Van Dyke* clarify it?

Click to see answer



Topic 3 - \$200 Answer

If the parties acted liked
someone owned it for a long
time, then they do own it

No gap in title required



Topic 3 - \$300 Question

What did *Clifton v. Johnson* say about royalty deeds?

Click to see answer



Topic 3 - \$300 Answer

The *Van Dyke* presumption
also applies to royalty deeds

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Topic 3 - \$400 Question

What does *Clifton* teach about rebutting the *Van Dyke* presumption?

Click to see answer



Topic 3 - \$400 Answer

A conveyance that shows its math that leads to a different conclusion regarding the parties' intent will rebut the presumption

Granting clause: $1/128^{\text{th}}$

Future lease clause: “ $1/128^{\text{th}}$ ($1/16^{\text{th}}$ of the usual $1/8^{\text{th}}$ royalty)”



Topic 3 - \$500 Question

What does *Clifton* say about the presumed-grant doctrine?

Click to see answer



Topic 3 - \$500 Answer

Although hard to prove, it
can be dispositive regardless
of the deed's language



Topic 4 - \$100 Question

Is there a time-period
limitation on the *Van Dyke*
presumption?

Click to see answer



Topic 4 - \$100 Answer

Not yet

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Topic 4 - \$200 Question

How else can the *Van Dyke* presumption be rebutted?

Click to see answer



Topic 4 - \$200 Answer

Unclear. But it must stem
from the language in the
conveyance.



Topic 4 - \$300 Question

What is needed to use the presumed-grant doctrine?

Click to see answer



Topic 4 - \$300 Answer

Documents. Documents.
Documents.

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Topic 4 - \$400 Question

What do you do if you get in
a fixed versus floating
lawsuit?

Click to see answer



Topic 4 - \$400 Answer

Depends on a lot of factors.

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Topic 4 - \$500 Question

Can we glean anything
further from *Clifton*?

Click to see answer



Topic 4 - \$500 Answer

The Texas Supreme Court is
attempting to provide more
solid guidance

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Topic 5 - \$100 Question

How many gallons of oil are
in a barrel of oil?

Click to see answer



Topic 5 - \$100 Answer

42

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Topic 5 - \$200 Question

What is the chemical added to natural gas so it smells?

Click to see answer



Topic 5 - \$200 Answer

Mercaptan

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Topic 5 - \$300 Question

How many barrels of crude oil were produced in Texas in 2025?

Click to see answer



Topic 5 - \$300 Answer

1,726,145,088

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Topic 5 - \$400 Question

What was the scent used in the natural gas for the Mirage volcano in Las Vegas?

Click to see answer



Topic 5 - \$400 Answer

Piña Colada

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Topic 5 - \$500 Question

Could these issues all have been avoided?

Click to see answer



Topic 5 - \$500 Answer

Maybe

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FINAL JEOPARDY!

Topic: TBD

Click to see question



Final Jeopardy Question

TBD

Click to see answer



Final Jeopardy Answer

TBD

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