OIL AND GAS LEASES AND POOLING: A LOOK BACK AND A PEEK AHEAD

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I. INTRODUCTION

With the renaissance of onshore, domestic oil and gas production principally through the development of long-known, but heretofore inaccessible, shale reservoirs containing both oil and gas, the standard provisions contained in the oil and gas lease have been put to the test and, in many ways, have come up short. One such standard provision—the pooling clause—appears to be ripe for change. Another leasehold provision—the unitization clause—which is rarely found in Texas or the Mid-Continent Region, also needs to be revisited in order to make the oil and gas lease a more effective instrument from both the lessor’s and lessee’s perspectives as we move forward in the twenty-first century. I use the terms pooling clause and unitization clause as I would the terms pooling and unitization, namely that a pooling clause is one that will allow the “joining together of small tracts or portions of tracts for the purpose of having sufficient acreage to receive a well drilling permit under the relevant state or local spacing laws and regulations.”

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2. Kramer & Martin, Law of Pooling, supra note 1, at 1-2 to -3. In Freeman v. Samedan Oil Corp., 78 S.W.3d 1 (Tex. App.—Tyler 2001, no pet.), the court found that, even though the pooling clause expressly gave the lessee the power to both pool and unitize, the clause, interpreted in its entirety, did not authorize the lessee to commit a pooled unit into a voluntary fieldwide secondary recovery unit. Id. The court focused on the language “drilling or production units” in the clause to preclude the lessee from unitizing the acreage. Id.