



Ad Coelum, Rule of Capture, and Subversions

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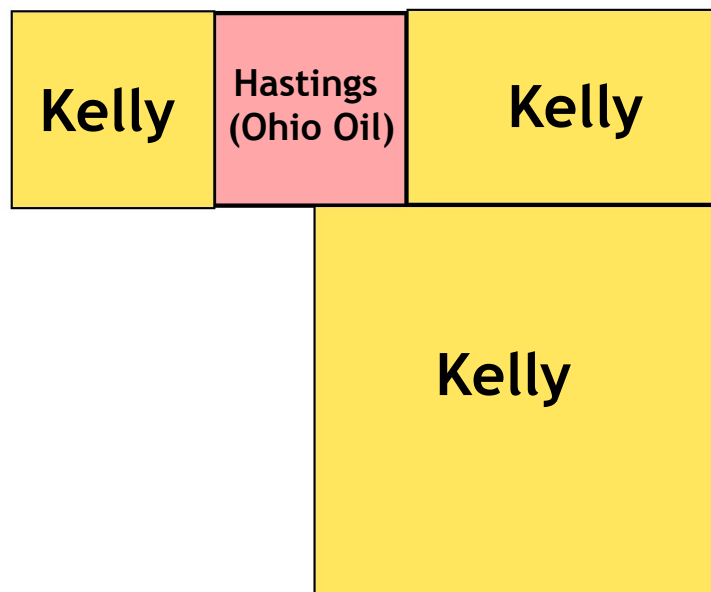
Ad Coelum Doctrine

- The ad coelum doctrine provides that a real property owner owns the surface and the subsurface all the way to the center of the Earth bounded on sides extending from the surface boundaries to the center.
- “The owner of the surface own[s] all beneath.” - *Del Monte Mining & Milling v. Last Chance Mining & Milling*
- If you tunnel under the property line into my subsurface and take my minerals, I can sue to get them back.

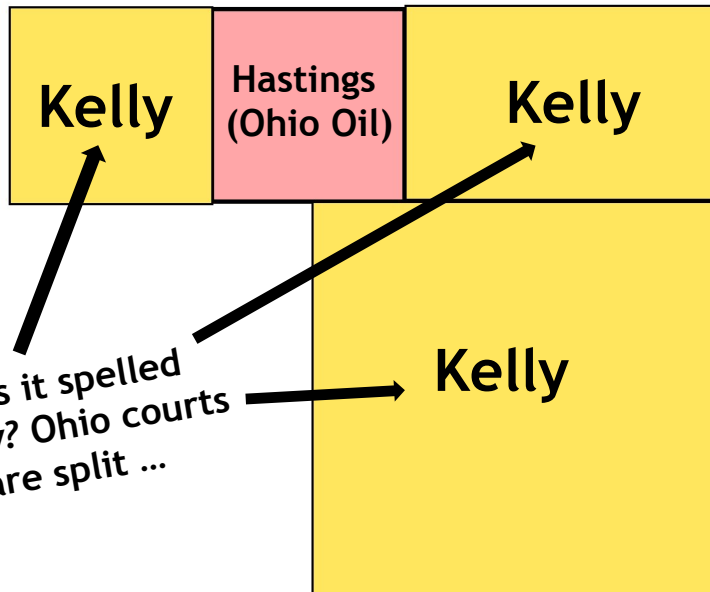
Rule of Capture

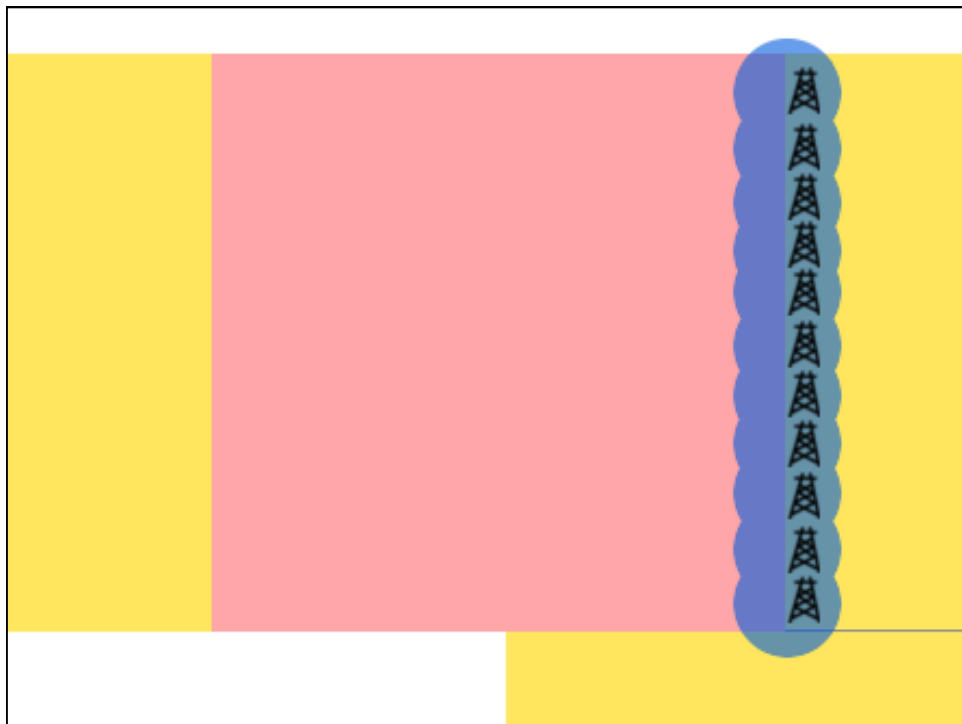
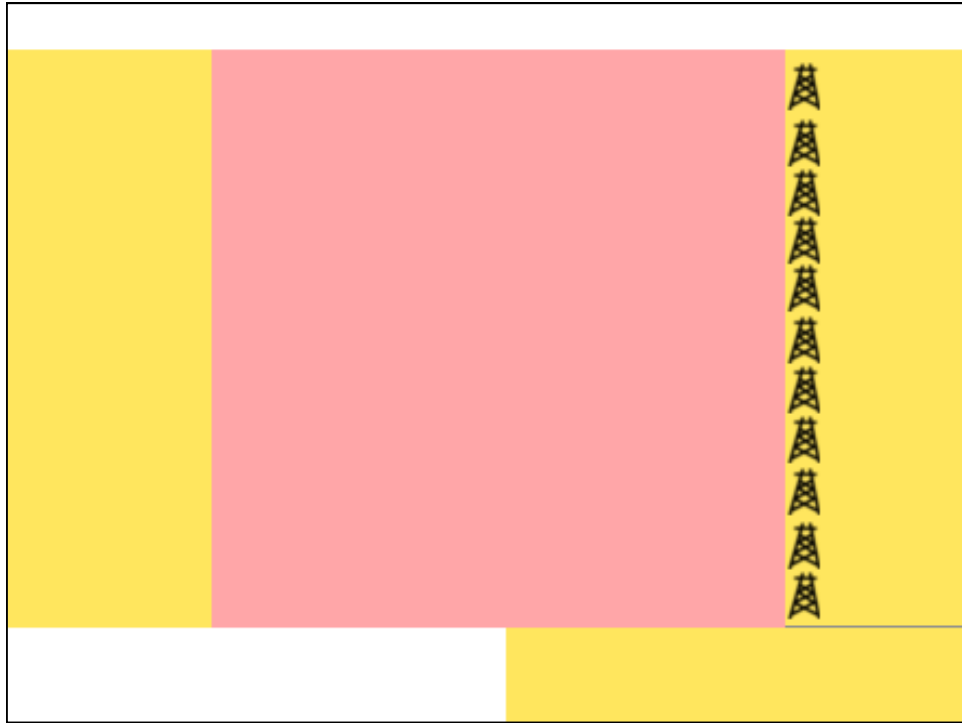
- The rule of capture modifies the ad coelum doctrine by providing that the landowner acquires ownership to the oil and gas extracted from the landowner's subsurface even if the oil and gas came from a neighboring property.
- “Whatever gets into the well belongs to the owner of the well, no matter where it came from.” - Kelly v. Ohio Oil

Kelly v. Ohio Oil



Kelly v. Ohio Oil





Doctrine of Correlative Rights

- The doctrine of correlative rights modifies the rule of capture by providing that a capturer is liable for waste or negligence that damages the common source of oil and gas.
- “due to the harsh consequences to neighboring land owners, Ohio law has evolved on this issue and the ‘rule of capture’ has been limited by the doctrine of correlative rights’ - Barnes v. Res. Energy Expl. (Ohio App. 2016)

Doctrine of Correlative Rights

“The principle set forth in *Kelley v. Ohio Oil Co.*, namely that drilling an oil well near one's property line does not interfere with the legal rights of the adjoining landowner so long as the operations are confined to the land on which the well is drilled, is clearly outmoded and has been superseded by the regulations limiting drilling based on R.C. Chapter 1509. The fact that Ohio Adm. Code 1501:9-1-04 requires a twenty-acre tract and a three hundred foot set back for wells of this depth indicates that an adjoining landowner can be damaged by the diminution of his mineral reserves by an adjacent well. Indeed, where the developer of the resource cannot comply with the division's area- and set-back requirements, the chief may limit the developer's production. See R.C. 1509.29.” - Schrimsher Oil & Gas Expl. v. Stoll (Ohio App. 1984)

Question:

I understand the difference between the ad coelum doctrine and the rule of capture, but ...

What is the difference between ad coelum doctrine and the rule of capture as modified by the doctrine of correlative rights?

Conservation Laws

- Conservation laws use the state's police power to regulate drilling and production.
 - Examples:
 - Well-spacing rules
 - Well-spacing exceptions
 - Production regulation
 - Forced pooling
 - In Texas, this regulation is done by the Railroad Commission.

Conservation Laws

“States began developing petroleum conservation laws as the problems of unrestrained application of the rule of capture became apparent, exercising their police powers to internalize the external costs of the rule of capture. ... Today, conservation laws are the keystone of the U.S. legal structure governing oil and gas development.” - John S. Lowe, *Oil & Gas Law in a Nutshell*, 6th Ed.

“The primary purpose of oil and gas conservation statutes is to avoid physical and economic waste of oil and gas resources.” *Id.*

Conservation Laws

“Petroleum conservation laws work hand in hand with the correlative-rights doctrine to limit the rule of capture, transforming it to a ‘fair share’ doctrine; each owner is entitled to a fair chance to capture the oil and gas under his or her property.” ” - John S. Lowe, *Oil & Gas Law in a Nutshell*, 6th Ed.

Fair-Share Principle

- The fair-share principle modifies the rule of capture by providing that each mineral-rights holder must have a fair opportunity to get the oil and gas under the owner's surface.
- “The right to have a reasonable opportunity to produce one's just and equitable share of oil in a pool is [a] common-law right ... ” *Wronski v. Sun Oil* (Mich. App. 1979)
- Drilling too close to the property line “deprived plaintiff of the opportunity of claiming and taking the oil that was rightfully hers; and defendants must respond in damages for such conversion.” *Ross v. Damm* (Mich. 1936)

Fair-Share Principle

“Within reasonable limits, each operator should have an opportunity equal to that afforded other operators to recover the equivalent of the amount of recoverable oil (and gas) underlying his property. The aim should be to prevent reasonably avoidable drainage of oil and gas across property lines that is not offset by counter drainage. ... This fair-share rule does not do away with the rule of capture, but rather acts to place limits on its proper application.” - *Wronski v. Sun Oil Co.*, (Mich. App. 1979) (quoting American Petroleum Institute)

Ad Coelum Doctrine

Rule of Capture

**Correlative
Rights**

**Conservation
Laws**

**Fair Share
Principle**