



# Frequently Asked Questions

*Utilizing the Pattern Jury Charges for oil and gas cases.*

BY **JESSE R. PIERCE**

**ONE OF THE MOST CHALLENGING PARTS OF THE TRIAL OF AN OIL AND GAS CASE IS THE PREPARATION OF A PROPER JURY CHARGE.** In large part, this stems from the difficulty of adapting standard jury charges, many of which were developed in the personal injury practice, to the fact situations, nomenclature, and legal doctrines that commonly arise in oil and gas cases. However, lawyers have a valuable resource in formulating an oil and gas jury charge.

In 2000, Susan Richardson, who was then a member of the Oil, Gas, and Energy Resources Law Council of the State Bar of Texas, suggested that the council form a committee to create Pattern Jury Charges for oil and gas cases. Richardson was the first chair of the committee, which included Kevin Beiter, Becky Miller, Dick Watt, Bob

Grable, Ernest Bruchez, Arnold Johnson, Pat Lochridge, Jesse Pierce, Laura Burney, and Allen Cummings. The committee members were of the view that a discussion of the substantive law applicable to the various jury charges would be of great benefit particularly to trial judges, many of whom had not had occasion to explore oil and gas law in depth.

After more than two years of work, the committee devised a final draft of the jury charges, which then underwent hundreds of hours of review, critiquing, and alteration. This review process included the solicitation of comments from a number of district judges and trial lawyers who handle oil and gas cases. The revision process was lengthy in part because of the size of the project and the desire of the committee members to create



objective questions and instructions that conformed to existing Texas case law and to provide comments containing background materials on particular areas of law. After review and editing, the final version was produced in 2005, at an estimated expenditure of attorney time of more than \$2 million.

The committee then faced the difficult task of figuring out how to make the Pattern Jury Charges available to the bar and bench. The State Bar of Texas was not interested in publishing another set of Pattern Jury Charges at that time, so the Oil, Gas, and Energy Resources Council funded the work to publish the Pattern Jury Charges on its website, where they are available today. Regrettably, many members of the trial bar and judges seem unaware of this valuable resource. The original committee members, including the author of this article, remain optimistic that the Pattern Jury Charges will be published in printed form.

*The questions, definitions, and instructions in the Pattern Jury Charges, together with the comments, are intended as a basic template. They must be adapted to the particular facts, instruments, and issues in each case.*

The Pattern Jury Charges contain jury questions, definitions, instructions, and comments on the substantive law covering the following topics: Adverse Possession, Trespass and Injuries to Real Property (including Trespass, Nuisance, and Surface Use and the Accommodation Doctrine), Breach of Lease, Pooling, Royalty Disputes, Implied Covenants, Drainage, Failure to Develop, Lease Termination, Shut-In Royalty, Cessation of Production in Paying Quantities, Repudiation of Title, Breach of Joint Operating Agreement, Farmout Agreements, Preferential Right to Purchase, Area of Mutual Interest Agreements, Conversion, Laches, Revivor, Ratification, and Executive Rights.

The questions, definitions, and instructions were written to apply what were considered to be the most common fact patterns found in cases arising in each of the substantive areas treated. The variety of facts and legal issues—often arising from the governing documents and agreements between the parties—made it impossible to publish questions, definitions, and instructions that would apply to all cases. The questions, definitions, and instructions in the Pattern Jury Charges, together with the comments, are intended as a basic template. They must be adapted to the particular facts, instruments, and issues in each case. Because the jury charge must conform to the pleadings and evidence, there will no doubt be many cases that require jury questions and instructions

not found in the State Bar of Texas Pattern Jury Charges, or differ from those standard charges. The committee is also mindful that the jury charge is often primarily dependent on the particular language of the lease, joint operating agreement, farmout agreement, gas purchase contract, or other instruments out of which the parties' claims and defenses arise.

In keeping with the policy in the printed State Bar of Texas Pattern Jury Charges, the Oil, Gas, and Energy Resources Law Council did not recommend changes in the law but attempted to follow what the committee considered to be existing law, based on Texas Supreme Court authority, where available. In some instances, the committee pointed out conflicts or uncertainty in the existing authorities but did not attempt to reconcile these disputes or take a position on the proper outcome or development of the law. In areas where the law was unsettled,

the council and committee generally did not attempt to determine the proper form of jury charge. However, in instances in which there was no definitive authority, the committee attempted to set forth guidelines and discussion meant to assist trial judges and lawyers in developing proper jury questions and instructions.

The Pattern Jury Charges have undergone some revisions over the years, an undertaking in which Watt took the lead. In 2010, Ricardo Morales assumed the chair of the committee, which is now composed of Lisa Vaughn, Jeff Hart, Dick Watt, Mark Rodriguez, Charles Gordon, Rick Strange, Becky Miller, Richard Brown, Craig Haynes, Mike McElroy, Michael Jones, Susan Richardson, Pat Lochridge, and Jesse Pierce. The current committee has undertaken a revision project, which is expected to be completed in 2013.

Past and present members of the Pattern Jury Charges Committee hope that more Texas lawyers and judges will become aware of this resource and that it will assist them in future oil and gas cases. **TBJ**



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