# **38 Am Jur 2d Gas and Oil § 129**

***American Jurisprudence 2d (AMJUR)* > *Gas and Oil* > *IX. Contracts for Sale of Output of Well***

**Author**

Karen L. Schultz, J.D.; and Lonnie E. Griffith, Jr., J.D.

**§ 129 Contracts for sale of output of gas and *oil* well**

In accordance with the rules governing the formation of contracts generally, [[1]](#footnote-2)1the minds of parties purporting to enter into a contract for the sale of the output of a gas well or an ***oil*** well must meet with respect to all material matters. [[2]](#footnote-3)2Where words used in a gas purchase contact have no trade or technical meaning within the industry, they are given their plain and ordinary meaning. [[3]](#footnote-4)3

Where the lease specifies that the royalty will be payable in kind, the lessor is a necessary party to a contract for the sale of the output of the leasehold; [[4]](#footnote-5)4but if it is payable in money only, the lessee acquires title to the entire production as it is brought to the surface [[5]](#footnote-6)5and can contract for its sale without procuring the lessor's assent. [[6]](#footnote-7)6

Even in a jurisdiction in which ***oil*** and gas in place are not the subject of ownership distinct and separate from the soil but in which the lessee under a gas and ***oil*** lease has a present interest in the land, the purchaser, under a contract for purchase from the lessee of the output of a gas well entitling the purchaser to go on the premises and take gas, has an interest in the leasehold that will be protected by equity against persons with notice. [[7]](#footnote-8)7

**Reference**

West's Key Number Digest, Mines and Minerals [westkey]83, 84

A.L.R. Index, Gas and ***Oil***

West's A.L.R. Digest, Mines and Minerals [westkey]83, 84

West's Key Number Digest, Mines and Minerals [westkey]83, 84

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1. 1 As to necessity of mutual assent and intent to be bound, generally, see Am. Jur. 2d, Contracts § 29. [↑](#footnote-ref-2)
2. 2 Southwest Pipe Line Co. v. Empire Natural Gas Co., 33 F.2d 248, 64 A.L.R. 1229 (C.C.A. 8th Cir. 1929). [↑](#footnote-ref-3)
3. 3 Texas West ***Oil*** & Gas Corp. v. El Paso Gas Transp. Co., 631 S.W.2d 521 (Tex. App. El Paso 1982), writ refused n.r.e., (May 19, 1982). [↑](#footnote-ref-4)
4. 4 ***Kern*** Sunset ***Oil*** Co. v. Good Roads ***Oil*** Co., 214 Cal. 435, 6 P.2d 71, 80 A.L.R. 453 (1931). [↑](#footnote-ref-5)
5. 5 Barker v. Campbell-Ratcliff Land Co., 1917 OK 208, 64 Okla. 249, 167 P. 468 (1917). [↑](#footnote-ref-6)
6. 6 ***Kern*** Sunset ***Oil*** Co. v. Good Roads ***Oil*** Co., 214 Cal. 435, 6 P.2d 71, 80 A.L.R. 453 (1931). [↑](#footnote-ref-7)
7. 7 Southwest Pipe Line Co. v. Empire Natural Gas Co., 33 F.2d 248, 64 A.L.R. 1229 (C.C.A. 8th Cir. 1929) (applying Ohio law). [↑](#footnote-ref-8)