# **ARTICLE: A LANDMAN'S WORK IS THE FOUNDATION FOR ACCURATELY DETERMINING MINERAL OWNERSHIP UNDER RIGHTS-OF-WAY: SO, HOW SHOULD A LANDMAN SEARCH FOR ROADWAY TITLE?**

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**Text**

**[\*40]**

I. Introduction

***Oil*** and Gas Companies operating in urban areas are addressing an issue not frequently found in rural areas: determining mineral ownership for hundreds and possibly thousands of acres under highways, streets, and alleyways ("roads" or "roadways"). As horizontal drilling operations continue in the urban play of the Barnett Shale [[1]](#footnote-2)1 and rural plays in other areas of Texas, [[2]](#footnote-3)2 an operator must lease the mineral owners for the many roads that a horizontal wellbore passes under; otherwise, the operator commits a trespass. [[3]](#footnote-4)3 Before acquiring a lease, the operator must determine who owns the minerals. A proper mineral determination generally requires: (1) a title search by a landman; (2) a title examination and written opinion by an attorney; and (3) management of this title examination process by the operator's land department. [[4]](#footnote-5)4

This Article addresses the many legal and practical issues a landman faces when researching title records to form a complete chain of title **[\*41]** for roadways. Because the examining attorney reviews this chain of title to form an opinion, attorneys should understand the research process used by the landman. [[5]](#footnote-6)5 Further, many attorneys perform stand-up opinions from their own title research at the courthouse. [[6]](#footnote-7)6 Therefore, to determine whether a chain of title for a roadway is complete, the attorney must understand the title research process. Although the practical issues addressed in this Article apply more to professionals working in the urban area of the Barnett Shale play, the legal principles addressed here are equally applicable to landmen and attorneys working together in rural areas as well. Further, although the concepts discussed here may apply to several types of rights-of-way besides roads, this Article discusses these concepts in the context of roads only.

This Article examines the following subjects as practiced in Texas: a brief overview of the title examination process, the process of a "standard title search," and right-of-way mineral ownership law. [[7]](#footnote-8)7 Further, this Article analyzes each subject to suggest a legal standard, which the Texas courts have not yet articulated, for developing a chain of title that covers mineral ownership of roadways.

II. Title Examination Process

The title examination process typically involves three different professionals: a petroleum landman, an examining title attorney, and a company land manager. [[8]](#footnote-9)8 The landman researches a county's public records to create a chain of title for a particular tract of land (the "subject tract") and takes an ***oil*** and gas lease from the current mineral owner. [[9]](#footnote-10)9 Then, the attorney examines instruments in the chain of title to determine ownership interests in the property and any deficiencies in title. [[10]](#footnote-11)10 The company land manager hires both the landman **[\*42]** and the attorney and oversees their work so that it is completed in a timely manner in the process of drilling and operating a well. [[11]](#footnote-12)11

A. The Landman [[12]](#footnote-13)12

According to the American Association of Professional Landmen ("AAPL"), the professional organization for landmen and land-related professionals, "landmen constitute the business side of the ***oil*** and gas and mineral exploration and production team." [[13]](#footnote-14)13 The AAPL describes two types of landmen - independent field landmen and company landmen. [[14]](#footnote-15)14 The "independent field landman" works for his client - an ***oil*** and gas company - on a contract basis and provides services such as courthouse research, lease acquisitions, and surface inspections. [[15]](#footnote-16)15 The "company landman" works directly for the ***oil*** and gas company providing many functions, such as negotiating business deals, administering compliance of contracts and leases, and ensuring the company's compliance with government regulations. [[16]](#footnote-17)16 The AAPL's description of a "company landman" falls under the umbrella of this Article's discussion of the "land manager." [[17]](#footnote-18)17 For simplicity, in this Article, the term "landman" will be used to describe the contract field landman who conducts title research and acquires ***oil*** and gas leases, and the term "land manager" will be used to describe any kind of company landman.

Generally, before a landman purchases a lease from a mineral owner, someone must first determine the proper mineral owner. Many times, the landman will personally conduct a title search and prepare an ownership report based on the landman's research. Other times, though not often, an attorney will complete a lease purchase title opinion, which is created based on an examination of the chain of title reflected from the attorney's own title search or a landman's title search. After the lease is taken, the landman may perform a detailed title search for the attorney so the attorney can determine ownership interests for the drilling and division order title opinions. [[18]](#footnote-19)18 Whether a landman conducts a search before or after buying a lease, the **[\*43]** landman's title search is the foundation for ownership determinations. [[19]](#footnote-20)19

To begin the title examination process, the landman performs the important function of a title search by researching public records to form a chain of title for the subject land. [[20]](#footnote-21)20 The landman then prepares a runsheet that includes recorded instruments making up the chain of title. [[21]](#footnote-22)21 Some in the industry also refer to the landman's runsheet as an abstract of title or abstract. [[22]](#footnote-23)22 The term "abstract," however, is a term generally used to describe land title instruments for a real estate transaction. [[23]](#footnote-24)23 Moreover, an "abstractor" is defined as one that "compiles data, allowing an examiner to evaluate the title's legal status." [[24]](#footnote-25)24

Whether the finished product is called an abstract or runsheet, the landman's function is always the same for both: research the title of the subject land. [[25]](#footnote-26)25 Thus, a landman might also be considered an abstractor, [[26]](#footnote-27)26 although an abstractor for real estate transactions is distinct **[\*44]** from a petroleum landman. The real estate abstractor typically works with a title company, which insures title and may also perform abstracts if the company does not hire an outside abstract company. [[27]](#footnote-28)27 Title companies do not examine mineral ownership interests and cannot insure them. [[28]](#footnote-29)28 Simply put, an abstractor researches real estate title, and a landman researches mineral title.

B. The Attorney

Generally, the examining attorney performs various functions in the title examination process. The attorney examines the public records for the subject land; interprets the chain of title; formulates factual and legal conclusions; and prepares a title opinion reflecting ownership interests, title defects, and irregularities for the subject land. [[29]](#footnote-30)29 Title opinions generally come in three forms: (1) a lease purchase title opinion, which is completed before a bonus is paid, describes the executive rights and the proportional ownership of mineral owners; (2) a drilling title opinion, which is completed before drilling begins, describes all working interests, encumbrances, and title curative issues; and (3) a division order title opinion, which is completed after production is found, lays out the percentage ownership (or division of interest) of all parties with an interest in production. [[30]](#footnote-31)30

To render an opinion, an attorney may examine the title records by two different methods: a "sit-down" examination or a "stand-up" examination. [[31]](#footnote-32)31 The latter method requires the attorney to perform the title search function in place of the landman, while the former method requires the attorney to rely solely on the landman's work - the runsheet. Regardless of which method the attorney uses, the general functions of each professional are clearly different: the landman or attorney may search the records, but the attorney must make the final legal conclusions and render the title opinion. [[32]](#footnote-33)32

On the one hand, the "sit-down" examination requires the attorney to examine an abstract or runsheet created by another person. [[33]](#footnote-34)33 In this situation, the attorney is not responsible for gathering the instruments to be examined. [[34]](#footnote-35)34 The attorney, however, "should assess the **[\*45]** acceptability of the methods employed in [identifying or gathering the documents] and should disclose any instance in which the methods employed are not generally considered to be the most reliable." [[35]](#footnote-36)35 Further, "the attorney is responsible for any error that resulted because the landman omitted a key document from the run sheet." [[36]](#footnote-37)36 Ultimately, "the actual examination of title is not the landman's task. That responsibility rests upon the lawyer." [[37]](#footnote-38)37

On the other hand, the "stand-up" examination requires the attorney to personally examine the public records in the county where the property is located. [[38]](#footnote-39)38 To find the instruments to examine, the attorney first must complete a title search to determine the chain of title, [[39]](#footnote-40)39 just like a landman would when preparing a runsheet. [[40]](#footnote-41)40 During this type of examination, the attorney performs essentially the same task as the landman, either before or during the title examination. [[41]](#footnote-42)41

Accordingly, the attorney should understand the details of the landman's methods of researching title to roadways for two important reasons. First, the attorney is arguably responsible for the entire title examination process in a sit-down examination, even if the landman actually researched the records or made a mistake. [[42]](#footnote-43)42 Second, the attorney performs the same title search (or abstracting) function himself, instead of the landman, when the attorney performs a stand-up opinion. In both cases, the attorney should understand the title research process to perform a sufficient title examination. [[43]](#footnote-44)43

C. The Land Manager

In the end, the land manager is the puppet master who pulls the strings for the landman and attorney to conduct their respective duties. First, the land manager hires the landman and attorney and orders the runsheet and title opinion from each, respectively. Second, he analyzes the title opinions to determine what title risks his company **[\*46]** may accept. [[44]](#footnote-45)44 Third, the land manager will rely on the lease title opinion or drilling opinion to determine the proper mineral owner from whom to acquire a lease. [[45]](#footnote-46)45 Finally, he will rely on the division order title opinion to determine how to pay the appropriate royalty and working interest owners. [[46]](#footnote-47)46

The land manager must therefore understand everyone's role in this process and how the work of one affects the other. The landman's title search is used to create the runsheet, the runsheet is used to render a title opinion, and the title opinion is used to make appropriate business decisions and accurately pay production proceeds. Thus, the land manager should ensure his vendors (landmen and attorneys) are competent in their respective crafts. But more importantly, the land manager must understand the domino effect stemming from the landman's title search: it is the foundation for determining ownership interests and title issues in lands, including roadways, producing ***oil*** and gas.

III. A Standard Title Search

A landman's search is the foundation for determining who owns record title to land. [[47]](#footnote-48)47 The landman first performs a title search to find the chain of title for a tract of land. [[48]](#footnote-49)48 The landman then prepares a runsheet made up of the instruments in the chain of title. [[49]](#footnote-50)49 Afterwards, the attorney examines the runsheet's chain of title to render a title opinion. [[50]](#footnote-51)50 The chain of title is a critical factor in the title examination process because it creates certain rights, under the recording statute, for those holding record title. [[51]](#footnote-52)51

This Section will address a landman's duties in a title search, the process of a standard title search and its resulting chain of title, and the Texas recording statute and its effect in the title examination process. [[52]](#footnote-53)52

A. Duty of Care

The Author found no Texas authority - case law, statute, or regulation - that explicitly addresses a landman's duty of care in conducting **[\*47]** a standard title search. Although, it may be presumed that at least "ordinary care" may apply. [[53]](#footnote-54)53 Because a landman is similar to a real estate abstractor, case law regarding abstractors (and abstract companies) may be instructive for the Texas landman.

Texas case law reveals that an abstractor has a common-law duty to make an abstract with "skill, reasonable expedience, and faithfulness." [[54]](#footnote-55)54 Not only might an abstractor be liable to the person who hired the abstractor (e.g., a purchaser), [[55]](#footnote-56)55 but the abstractor also might be liable to another party (e.g., a seller) if the abstractor "reaffirms and recertifies" the abstract to the other party. [[56]](#footnote-57)56 In the end, an abstractor's negligence that causes damages can be a tort or breach of contract. [[57]](#footnote-58)57 The case of Chicago R.I. & G. Ry. Co. v. Duncan illustrates these two causes of action for real estate abstractors. [[58]](#footnote-59)58

In Duncan, the plaintiff, a purchaser of real estate, contracted with an abstractor to build an abstract of title for a tract of land. [[59]](#footnote-60)59 The abstractor accidentally omitted a deed of record in the abstract; however, he certified that the abstract was complete. [[60]](#footnote-61)60 In the end, the plaintiff was injured after relying on the incomplete abstract. [[61]](#footnote-62)61

The court recognized that a breach-of-contract cause of action was available to the plaintiff for the abstractor's failure to deliver a complete abstract. [[62]](#footnote-63)62 The court also recognized a fraud cause of action because the plaintiff relied on the abstractor's false certification that the abstractor had been "diligent and careful" in delivering a "complete abstract" that included "all instruments of record pertaining to or affecting the title to the property in question." [[63]](#footnote-64)63 Even the abstractor's **[\*48]** lack of intent to defraud could not shield him from liability. [[64]](#footnote-65)64 The court reasoned that although the abstractor was not charged with conduct involving moral turpitude, "good faith and belief in the truth of a representation … will not affect the legal fraudulent nature of the representations." [[65]](#footnote-66)65

The facts in Duncan, where the abstractor certified that the abstract was complete, are similar to a landman certifying that a runsheet was created after a "diligent and careful" search of the county records. Further, a landman might also certify that "all instruments of record pertaining to" the land are included in the runsheet - similar to the Duncan abstractor who certified a complete abstract. Though one might argue that Duncan should apply to landmen, it is unclear whether that case extends to landmen because of a distinguishing factor - the role a title attorney plays in the title examination process.

In ***oil*** and gas title examinations, the company land manager relies mostly on the title attorney's work to make a business decision, [[66]](#footnote-67)66 unlike in Duncan where the purchaser relied solely on the abstractor's work. [[67]](#footnote-68)67 The landman's work - a runsheet - is a small part of the process, albeit the foundation of it. Although the land manager will sometimes rely only on a landman's title work before he buys a lease (and not rely on a formal title opinion), the land manager always relies on the attorney for drilling and division order opinions to determine the ownership interests. [[68]](#footnote-69)68

Apparently, the attorney bears much of the burden in the title examination process in Texas. [[69]](#footnote-70)69 As previously discussed, one industry expert indicated that even if a landman omitted an instrument from a runsheet, the attorney is nevertheless responsible. [[70]](#footnote-71)70 Regardless of which professional is liable for a title research error, it is reasonable for a land manager (and title attorney) to rely on the field landman to **[\*49]** provide services, at a minimum, with "skill, reasonable expedience, and faithfulness." [[71]](#footnote-72)71

B. The Logistics of a Search: the Grantor-Grantee Indexes

Where does a landman conduct a title search in Texas? In First Southern Properties, Inc. v. Vallone, a title search is described as "a [county] courthouse search of the grantor-grantee indices, deed of trust records, lis pendens records, abstract of judgment records, mechanic's and materialman's lien records, and the federal bankruptcy records, and a search of indices to the same records at [a local title company]." [[72]](#footnote-73)72 A title search may also include a search of court records in the offices of the county clerk and district clerk. [[73]](#footnote-74)73 Generally, a search of city records is not required. [[74]](#footnote-75)74 Finally, the result of the search is the chain of title. [[75]](#footnote-76)75 A Texas court once "defined [it] to be: 'the successive conveyances, commencing with the patent from the government, each being a perfect conveyance of the title down to and including the conveyance to the present holder.'" [[76]](#footnote-77)76 Now that a landman knows where to search, how does a landman actually search the records?

The Vallone case listed all the places to conduct a search; however, it did not describe the specific process a title searcher must use in searching the indexes. [[77]](#footnote-78)77 In fact, the Author's research resulted in no Texas case, statute, or rule of civil procedure [[78]](#footnote-79)78 that affirmatively described, on-point, the logistical process for searching (or navigating) the grantor-grantee indexes. Strangely enough, if a novice landman wanted to know how to navigate the indexes to create a chain of title in Texas, the landman might not find a legally recognized, written process **[\*50]** for searching title (however, some might argue that case law explaining the "limitations to a title search" may impliedly create a process [[79]](#footnote-80)79). Instead, the landman may readily find an affirmatively described navigation process for a title search in a legal casebook. [[80]](#footnote-81)80 Or the landman may learn the practice of a title search by shadowing or helping an experienced landman perform a search firsthand, like most novice landmen do to learn the title search practice. [[81]](#footnote-82)81

A proper chain of title is compiled by beginning the title search in the grantor-grantee index in the county's real property records. [[82]](#footnote-83)82 The grantor-grantee index [[83]](#footnote-84)83 is an index to the thousands (or millions) of real property conveyances filed in the county recorder's office. [[84]](#footnote-85)84 Generally, the indexes are created as follows:

In the grantor index all instruments are indexed alphabetically and chronologically under the grantor's surname. In the grantee index all instruments are indexed under the grantee's surname. Thus a deed from Able to Baker will be indexed under Able's name in the grantor index and under Baker's name in the grantee index. [[85]](#footnote-86)85

The specific logistical process for navigating the grantor-grantee index is completed in this order: (1) identify the current owner (or person claiming ownership) of the tract; (2) using the grantee index, begin tracing title backwards from that current owner to the historical starting point of the search; (3) using the grantor index, begin tracing forwards from the record owner at the starting point to the current **[\*51]** record owner. [[86]](#footnote-87)86 The result of the foregoing search is a "chain of title." [[87]](#footnote-88)87

Before searching the grantee index, the title searcher must identify the current owner (or person claiming ownership) of the land. [[88]](#footnote-89)88 This process is somewhat different between real estate transactions and ***oil*** and gas transactions. In a real estate deal, a potential buyer has negotiated with the seller long before a title search is needed in the closing process - near the end. So, an abstractor may start a search with the known seller's name. In a lease-acquisition deal, a landman often does not negotiate with a mineral owner [[89]](#footnote-90)89 until it has identified him from a title search. [[90]](#footnote-91)90 Nonetheless, the landman must begin a grantee-index search with the surface owner. [[91]](#footnote-92)91 Many times, the landman keeps his business activities (researching title and acquiring leases in a certain area) confidential to protect against competitors discovering the landman's prospect area and leasing it. Thus, the landman typically attempts to identify the surface owner without personally contacting the surface owner. To do so, the landman may research the county's tax rolls to find the person paying taxes on the land because the taxpayer is usually the surface owner. Therefore, a landman's grantee-index search most often begins with a search in the tax office - before a negotiation ever begins.

1. The Grantee Index [[92]](#footnote-93)92

A title searcher of the grantee index will find "the preceding source of title (the grantor) of each person who purports to own" a particular **[\*52]** tract of land. [[93]](#footnote-94)93 For example, if Alan Abbott owned the surface to Blackacre, the title searcher, Sam, will search the name "Abbott" in the grantee index beginning with the current year. Sam will continue searching the index for each preceding year until he finds an entry in the 1999 index where Billy Baird conveys Blackacre to Alan Abbott. [[94]](#footnote-95)94 Sam will then search the indexes for "Baird" from 1999 through the preceding years until he finds who conveyed Blackacre to Billy Baird (e.g., Chase Clark to Billy Baird in 1991). Sam will repeat this process for Clark (e.g., Dean Dunn to Chase Clark in 1980) and his predecessors in title until he reaches the person who owns Blackacre at the starting point of the search (e.g., the State of Texas). [[95]](#footnote-96)95 (Note: This example will be discussed throughout the remainder of the Article. For simplicity, the parties may sometimes be referred to by a letter. For example, Alan Abbott may be referred to as "A," Billy Baird may be referred to as "B," and so forth.)

The extent to which a Texas title searcher must search the grantee index for each party in the chain of title is not entirely clear. The Author found no Texas case suggesting that a title searcher must search the grantee index beyond finding the preceding source of title from which the purchaser acquired the land. [[96]](#footnote-97)96 Further, the case of Breen v. Morehead, discussed infra, suggests that a title searcher would not need to search the grantee index further back than when a particular party acquired title to the subject land. [[97]](#footnote-98)97 For example, in the above scenario (i.e., C to B in 1991, B records immediately; B to A in 1999, A records immediately), the title searcher may neither need to search for A in the grantee index any years before 1999 nor need to search for B before 1991.

Simply stated, a search of the grantee index merely forms the basic framework for the chain of title. Conversely, a search of the grantor index reveals the complexities in the chain of title. [[98]](#footnote-99)98

**[\*53]**

2. Grantor Index

After a search of the grantee index, the title searcher must switch to the grantor index and search forward to the present date. [[99]](#footnote-100)99 Searching the grantor index will uncover all conveyances ranging from fee simple to less-than-fee-simple title [[100]](#footnote-101)100 and encumbrances made during each grantor's respective period of ownership. [[101]](#footnote-102)101 For example, Sam will search Clark's name in the grantor index from the effective date Clark acquired title (i.e., 1980) until the recording date of the instrument from Clark to Baird (i.e., 1991). [[102]](#footnote-103)102 Searching from 1980 to 1991, Sam finds a mineral deed [[103]](#footnote-104)103 of a one-half interest in Blackacre from Clark to Jeff Jones in 1987; [[104]](#footnote-105)104 a Deed of Trust from Clark to Tim Trustee, for Bellevue Bank, in 1988; an easement from Clark to Ultimate Utility Company in 1989; a right of way deed for a highway from Clark to Capital City in 1990; and finally, a warranty deed (with no mineral reservations) [[105]](#footnote-106)105 from Clark to Baird in 1991. (Note: Jeff Jones, Bellevue Bank, Ultimate Utility, and Capital City are new parties in the chain of title that could not be found only by a grantee search). In a search for Jones from 1987 to the present time, Sam might find an ***oil*** and gas lease from Jones to Big ***Oil*** Operator in 2007 for Jones's one-half mineral interest. Thus, Sam must also search Big ***Oil*** in the grantor index from 2007 to the present time for any conveyances from Big ***Oil*** to some other person or entity.

The extent to which a Texas title searcher must search the grantor index for each party in the chain of title is clearer than that of the **[\*54]** grantee index. Two questions arise for the title searcher of the grantor index. First, "must a purchaser search the records for a conveyance recorded after a prior grantor in the chain parted with title?" [[106]](#footnote-107)106 Second, "must [a purchaser] search for a conveyance recorded before a prior grantor in the chain acquired title?" [[107]](#footnote-108)107 The Texas Supreme Court answered both questions in the negative. White v. McGregor [[108]](#footnote-109)108 addressed the first question, and Breen v. Morehead addressed the second. [[109]](#footnote-110)109

a. White v. McGregor

In White, Aura White and other plaintiffs brought an action of trespass to try title against McGregor and other defendants, claiming that their title was superior to that of the defendants. [[110]](#footnote-111)110 Both White and McGregor claimed title under a common source - John Crum. [[111]](#footnote-112)111 Under White's title, the following transactions occurred: (1) John Crum conveyed to Jane Dickerson in 1884 (recorded same day); (2) Jane conveyed to Reuben Crum in 1888 (recorded same day); and (3) Reuben conveyed to White in 1892 (recorded same month). [[112]](#footnote-113)112 Under McGregor's title, the following transactions occurred: (1) a judgment against John Crum resulted in a sheriff's levy and sale to Evans in an 1885 deed (recorded same day); and (2) the will of Evans devised the land to Mrs. McGregor.

To determine whether White's or McGregor's title was superior, the Court questioned whether the sheriff's deed to Evans gave notice to White of the existence of such deed. Of course, a commonly stated proposition is that the recording of a deed is "notice to all the world." [[113]](#footnote-114)113 The Court, however, qualified that proposition as follows: "The registry of a deed is notice only to those who claim through or under the grantor by whom the deed was executed." [[114]](#footnote-115)114 Therefore, the recording of a deed is constructive notice only to the subsequent purchasers in the chain of title, not prior purchasers. [[115]](#footnote-116)115

To explain, the Court asked, "if a grantor conveys the same property twice, and the second grantee [records], is it notice to one who subsequently purchases from the first grantee?" [[116]](#footnote-117)116 No. [[117]](#footnote-118)117 "The record **[\*55]** is not notice to the first grantee, for he is a prior purchaser. Nor [is it] intended to be notice to any who should purchase from him." [[118]](#footnote-119)118 A purchaser must search for and take notice of conveyances prior to his purchase from the purchaser's grantor and prior grantors through whom the purchaser's grantor claims title. [[119]](#footnote-120)119

Therefore, during a title search, a purchaser need not look further for a subsequent deed from that grantor because that conveyance is outside the chain of title from which he buys. [[120]](#footnote-121)120 It follows that a Texas landman researching title for the operator, [[121]](#footnote-122)121 under similar circumstances encountered by the plaintiff in White, may not need to continue searching the grantor index for a vendor after the time the vendor conveys, in a recorded instrument, all that the vendor owns.

To illustrate White, consider the previous example. If in 1991, C conveys to B all that C owns, the title searcher may not need to search the grantor index for C after 1991. Further, if B conveys all that he owns to A in 1999, the searcher may not need to continue searching for B in the 2000 grantor index or later.

b. Breen v. Morehead

The basic facts in Breen are as follows: Marshall Rogers applied to purchase a 640-acre section in El Paso County and was awarded the land in 1883. [[122]](#footnote-123)122 In July 1885, Rogers conveyed a one-half interest in the land to M.J. McKelligon by quit-claim deed, which was recorded the same day the deed was dated. [[123]](#footnote-124)123 In October 1885, McKelligon conveyed his interest in the land to Patrick Breen. [[124]](#footnote-125)124 Before a patent was ever issued to anyone for this land, Rogers defaulted on the loan from the State of Texas in August 1886, and the sale to him was forfeited. [[125]](#footnote-126)125

After the forfeiture, McKelligon applied for the land in 1887 and was awarded the land (the "second McKelligon purchase"). [[126]](#footnote-127)126 Further, the State of Texas granted him a patent for the land in August 1890, which vested title in McKelligon at the time of his application - **[\*56]** 1887. [[127]](#footnote-128)127 Later, McKelligon conveyed all of the land in smaller portions to P.E. ***Kern*** and other persons, none of whom were Breen. [[128]](#footnote-129)128 Because Rogers's forfeiture terminated Breen's claim to the land, Breen asserted title to the land under the doctrine of estoppel against McKelligon under his 1885 conveyance to Breen. [[129]](#footnote-130)129

Therefore, the question before the Court was whether subsequent bona fide purchasers from McKelligon, under the second McKelligon purchase, were required to search the records before McKelligon received title to the land to ascertain whether McKelligon conveyed any interest in the land before he acquired it. [[130]](#footnote-131)130 The Court answered this question by first explaining that each purchaser from McKelligon had a duty to see that McKelligon did not convey the land previously. [[131]](#footnote-132)131 But, the Court questioned to what extent that purchaser must search back in time for that link in the chain. [[132]](#footnote-133)132 In other words, did a purchaser such as ***Kern*** need to search records before 1887, the year McKelligon received title from the state, to determine whether McKelligon had conveyed title to someone else, such as Breen in 1885? [[133]](#footnote-134)133 The Court reasoned that in searching title, "if required to go beyond the origin of title, there could be no limit short of the vendor's life, and such requirement of purchasers would involve land titles in such uncertainty that it would be impracticable to rely upon any investigation." [[134]](#footnote-135)134 The Court, therefore, affirmed the trial court's judgment against Breen. [[135]](#footnote-136)135

Thus, the rule in Breen is that "a purchaser need not look beyond the origin of the title under which he purchased." [[136]](#footnote-137)136 It follows that a Texas landman, similar to a purchaser under McKelligon's lineage in Breen, may not need to search the grantor index for the name of a seller during a time prior to the date that the same seller acquired title. Returning again to the previous example, if recorded conveyances reflect that C conveyed Blackacre to B in 1991, and B conveys it to A in 1999, then the title searcher may neither need to search for B in the grantor index before 1991, nor need to search for A in the grantor index before 1999. Moreover, as discussed in Section III(B)(1), supra, this same rule likely applies to a grantee search, in which the title searcher may neither need to search for A before 1999 nor need to search for B before 1991.

**[\*57]**

c. Westland ***Oil*** Development Corporation v. Gulf ***Oil*** Corporation

A title searcher may need to search outside the general scope of a title search, as defined by White and Breen, under the rule set out in Westland ***Oil*** Development Corp. v. Gulf ***Oil*** Corp. [[137]](#footnote-138)137 This case involved the adjudication of interests in several ***oil*** and gas leases. [[138]](#footnote-139)138 The Court's determination of the parties' rights in those leases hinged on the effect of an unrecorded letter agreement. [[139]](#footnote-140)139 Though unrecorded, the letter agreement was referred to in a recorded assignment of leasehold interests. [[140]](#footnote-141)140 Specifically, the recorded assignment provided that it "shall be subject to all the provisions of that certain Operating Agreement dated March 1, 1968 … ." [[141]](#footnote-142)141

To determine the effect of the unrecorded agreement, the Court stated the "well settled [rule] that a 'purchaser is bound by every recital, reference and reservation contained in or fairly disclosed by any instrument which forms an essential link in the chain of title under which he claims.'" [[142]](#footnote-143)142 Because it was the purchaser's duty to make an investigation of the unrecorded agreement, the purchaser was charged with notice of its contents as well. [[143]](#footnote-144)143

Indeed, Westland ***Oil*** is instructive for the examining attorney when he finds a reference to any recital, reference, or reservation in a recorded instrument in the chain of title. And certainly, the landman should probably also take notice of the recital and determine whether it reflects something else that is necessary to search for in the records. [[144]](#footnote-145)144 Consequently, the title searcher (landman or attorney) might need to look in the grantee or grantor index outside of the scope indicated in either White, Breen, or both when the title searcher finds such a reference to an instrument that lies outside the chain of title. [[145]](#footnote-146)145

To illustrate, consider the running example in this Article: D to C (deed executed and recorded in 1980), C to J (mineral deed of one-half interest executed and recorded in 1987), C to B (deed executed and recorded in 1991), and B to A (deed executed and recorded in 1999). If the deed from B to A references an easement from D to E, executed in 1979 and recorded in 1985 (volume and page are unknown), **[\*58]** the purchaser from A is deemed to have constructive notice of this easement under Westland ***Oil*** even though it was recorded outside the apparent chain of title. Because the recording information for the easement is unknown, the title searcher may need to search the indexes outside the standard scope of a title search to find it. [[146]](#footnote-147)146

C. The Texas Recording Statute [[147]](#footnote-148)147

The recording systems in this country were "developed to assure purchasers of land that they have good title to the land purchased." [[148]](#footnote-149)148 The statutes establishing the Texas Recording System are found in Title 3 of the Texas Property Code. [[149]](#footnote-150)149 Particularly, the Texas recording statute (also called the "recording act") is found in section 13.001 of Title 3. [[150]](#footnote-151)150 This statute is often referred to as a notice statute. [[151]](#footnote-152)151 The recording statute effectively protects a certain party when two or more parties claim title to the same land. [[152]](#footnote-153)152

Section 13.001(a) provides that "[a] conveyance of real property … is void as to … a subsequent purchaser for valuable consideration without notice unless the instrument has been [properly] filed of record as required by law." [[153]](#footnote-154)153 Further, section 13.001(b) provides that "the unrecorded instrument is binding on a party to the instrument, … and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument." [[154]](#footnote-155)154 Thus, to receive protection under Texas's notice statute, a purchaser must "acquire the property in good faith, for value, and without notice of any third-party claim or interest." [[155]](#footnote-156)155 The protected purchaser is called a bona fide purchaser. [[156]](#footnote-157)156

Notice of another's claim to property has two forms: actual notice and constructive notice. [[157]](#footnote-158)157 Actual notice stems from personal knowledge or information regarding the third-party's claim. [[158]](#footnote-159)158 Constructive **[\*59]** notice is notice imputed by law to a person not possessing personal knowledge or information. [[159]](#footnote-160)159

In a property conveyance in Texas, the chain of title always gives constructive notice of its contents (the recorded instruments and anything else referenced in them) to the purchaser. [[160]](#footnote-161)160 Conversely stated, a purchaser "is not charged with constructive notice of a recorded instrument which is not in the chain of title." [[161]](#footnote-162)161 In fact, an instrument recorded outside the chain of title may be deemed "unrecorded." [[162]](#footnote-163)162 For a purchaser to protect his interest in property, it is critical that he record the instrument from which he took title, and do so immediately to ensure it is within the chain of title. If that purchaser does not record and his seller conveys the same land to another person, the former purchaser is not protected, even if he records after the latter conveyance but before the second purchaser records. [[163]](#footnote-164)163 The following two cases illustrate the importance of recording real property instruments.

The first case, Nguyen v. Chapa, applies the recording statute and its effect of notice on a person claiming bona fide purchaser protection under section 13.001 of the Texas Property Code. [[164]](#footnote-165)164 In Nguyen, Victor Ruiz owned a 3.101-acre tract of land. [[165]](#footnote-166)165 Ruiz conveyed the land to Alonso Chapa, but Chapa did not record the deed. [[166]](#footnote-167)166 Thirteen months later, Ruiz conveyed the same land to Hue Nguyen, and Nguyen recorded the deed immediately. [[167]](#footnote-168)167 Chapa filed suit to establish his title to the land over Nguyen, and Nguyen claimed protection as a bona fide purchaser. [[168]](#footnote-169)168

The court determined that Nguyen was a bona fide purchaser because he bought the land from Ruiz without actual or constructive knowledge. [[169]](#footnote-170)169 Nguyen did not have personal knowledge of the deed from Ruiz to Chapa. [[170]](#footnote-171)170 Moreover, Chapa did not file his deed of record; therefore, the deed was not in Nguyen's chain of title and consequently gave no constructive notice to Nguyen. [[171]](#footnote-172)171 Even though Ruiz conveyed the property to Chapa first, Nguyen was awarded title to the **[\*60]** 3.101 acres because he was a bona fide purchaser protected under section 13.001 of the Texas Property Code. [[172]](#footnote-173)172

The second case, Houston ***Oil*** Company of Texas v. Kimball, has facts similar to Nguyen and was decided on similar grounds. [[173]](#footnote-174)173 Kimball, however, was decided under the predecessor law of section 13.001, and it more clearly addressed the issue of "timing of recordings" between competing claims. [[174]](#footnote-175)174 The facts in Kimball are as follows: Nelson conveyed a tract of land to Brown in 1937, but Brown did not record until March 14, 1942; Nelson conveyed the same land to Parmer in 1938, and Parmer recorded on February 23, 1942; and the successor in title to Parmer sued the successor in title to Brown under a trespass to try title suit. [[175]](#footnote-176)175

The Supreme Court of Texas determined that because "the first deed [was] unrecorded when the second was executed, the deed to Parmer conveyed the title," unless Parmer either had actual notice of the Brown deed or did not pay valuable consideration. [[176]](#footnote-177)176 The Court stated that even "if Parmer had failed entirely to record his deed it would not have affected the title of Brown or any one holding under him. No duty rested upon Parmer to record his deed as notice to the prior purchaser, Brown, nor his vendees." [[177]](#footnote-178)177 Further, the recording by Brown (the first grantee) did not give notice to Parmer (the second grantee) because Brown recorded after Parmer was conveyed the land. [[178]](#footnote-179)178 A purchaser, such as Parmer, "is required to look only for conveyances made prior to his purchase by his immediate vendor, or by any remote vendor through whom he derives his title." [[179]](#footnote-180)179

The Kimball case reveals several important principles regarding constructive notice in Texas. If a grantor conveys the same property twice, the first grantee cannot give constructive notice to the second grantee (nor his successors in title) if the first grantee records after the second conveyance, and arguably, even if the first grantee records before the second grantee records. [[180]](#footnote-181)180 In fact, the second grantee does not have a duty to record to give notice to the first grantee. [[181]](#footnote-182)181 But, the second grantee must record to give notice to (and protect himself from) subsequent grantees of the common grantor (the one from whom the second grantee purchased). [[182]](#footnote-183)182 Further, if the second grantee does record, the recording does not give notice to the first **[\*61]** grantee (nor his successors in title). [[183]](#footnote-184)183 Recording an instrument gives notice to subsequent purchasers, not prior purchasers. If Kimball teaches any lesson at all, it is for a purchaser of property in Texas to record immediately so the instrument is within the purchaser's chain of title and consequently gives constructive notice to those who purchase from the purchaser.

1. The Landman's "Notice": Constructive and Actual

In the title examination process, the landman uncovers the "constructive notice" deemed to be held by an operator that buys a lease (the "lessee" [[184]](#footnote-185)184) by conducting a title search. Specifically, the landman's runsheet includes instruments that make up a chain of title, which provides constructive notice of its contents to the landman's client, the lessee-operator. Although, the landman's role may not be restricted to uncovering only constructive notice for the lessee-operator .

A landman's work might also reflect "actual notice" that is chargeable to the operator. [[185]](#footnote-186)185 In other words, the landman's knowledge may also become the operator's knowledge through agency theory. [[186]](#footnote-187)186 Several cases have defined a well-settled rule in Texas: a principal is charged with the knowledge its agent acquires while transacting business for the principal. [[187]](#footnote-188)187 Thus, an operator can be charged with the knowledge its landman acquires while running title, creating runsheets, and buying leases.

The following two examples illustrate how an operator might acquire actual notice through its agent, the landman. In the first example, while negotiating a lease with a mineral owner, the mineral owner may have presented the landman with an unrecorded deed from which the mineral owner claims certain rights. The operator may, therefore, be charged with notice of this unrecorded deed through its agent, the landman. In the second example, the landman may have included in his runsheet a deed from a competing titleholder that is not in the chain of title. Although that particular deed does not provide constructive notice because it is outside the chain of title, the instrument's presence in the runsheet could now be charged to the **[\*62]** examining attorney and operator as actual notice of the conveyance evidenced by that instrument.

Whether actual "knowledge" is acquired by a landman or the operator is a question of fact. [[188]](#footnote-189)188 Therefore, actual notice cannot be "imputed" to a purchaser like constructive notice. [[189]](#footnote-190)189 Regardless, one might argue that actual knowledge of a competing claim held by the operator through its landman - similar to the scenario in the second example above - could therefore form "notice" sufficient to defeat the operator's contention that it is a protected bona fide purchaser. This argument rests on whether the "shelter rule" would apply.

2. The Shelter Rule

Courts have created the shelter rule as an exception to the recording act for certain grantees who would otherwise not be protected because they were not bona fide purchasers. [[190]](#footnote-191)190 In simplest terms, under the shelter rule, "[a] person who takes from a bona fide purchaser protected by the recording act has the same rights as his grantor." [[191]](#footnote-192)191 The Texas courts have long recognized this exception, [[192]](#footnote-193)192 although they have not branded it as the "shelter rule." [[193]](#footnote-194)193

In Texas, if a subsequent purchaser with notice of an adverse claim acquires title from one who is a bona fide purchaser (one who purchases for value and without notice of that adverse claim), the subsequent purchaser acquires all rights of his grantor. [[194]](#footnote-195)194 Further, an "innocent purchaser [,a purchaser without notice,] from one who purchased with notice is as fully protected as if he had bought without notice from the vendor of the party from whom he purchased." [[195]](#footnote-196)195 Thus, once a bona fide purchaser takes title without notice, the subsequent purchasers for value in that bona fide purchaser's chain of title are protected, even if the subsequent purchaser knew of an adverse claim. [[196]](#footnote-197)196 But, the rule does not apply if a party with notice conveys land to a bona fide purchaser and later takes a re-conveyance of the **[\*63]** land. [[197]](#footnote-198)197 Apparently, the shelter rule in Texas "requires not only valuable consideration and absence of notice but also good faith." [[198]](#footnote-199)198

Without the shelter rule in a notice jurisdiction such as Texas, a bona fide purchaser with no notice of an adverse claim could not convey property to those who had notice of it. [[199]](#footnote-200)199 The rule is necessary to give a bona fide purchaser the "benefit of his bargain by protecting his market." [[200]](#footnote-201)200 Accordingly, a bona fide purchaser is protected not only when he purchases property (through the notice statute) but also when he conveys property (through the shelter rule). The example in the next Section illustrates the rules and policy considerations of protecting bona fide purchasers.

3. Applying the Recording Statute: An Example

The following example, as continued from the example described in Section III(B)(1) and (2), supra, applies the notice statute in Texas. Suppose Sam, the title-searcher landman hired by Midsize ***Oil*** ("M-O"), is searching the grantor index for C's name from 1980 to 1991 and finds the following: a mineral deed of a one-half interest in Blackacre from C to J in 1987 (recorded same day) and a warranty deed from C to B in 1991 (recorded same day). Sam continues searching the grantor index after 1991, as a practice, to look for any correction instruments even though the warranty deed appeared to be a perfect conveyance. [[201]](#footnote-202)201 Sam wants to be thorough and impress his client (the operator) and the lawyer. While searching the 1995 index, Sam finds a mineral deed from C to X for a one-half mineral interest (dated 1989 and recorded in 1995), which is outside of the respective chains of title for A, B, and M-O. Sam places that C-to-X mineral deed in the runsheet anyway. Sam continues searching and finds a deed from B to A in 1999 (recorded same day) and a lease from J to Big ***Oil*** ("B-O") for J's one-half mineral interest. Which party should M-O's landman take a lease from for the remaining one-half mineral interest in Blackacre, A or X? An analysis from the lessor's perspective illustrates the rules **[\*64]** and policy considerations for the notice statute and shelter rule in Texas.

At first, A might argue that M-O should take the lease from him because he is the rightful owner of the one-half mineral interest because X's mineral deed is outside of A's and M-O's chain of title, and A should, therefore, have the right to lease his minerals. X might counter-argue that M-O should take the lease from him by asserting that M-O knew of X's interest through the landman's inclusion of the 1989 mineral deed in the runsheet, and M-O is, therefore, a subsequent purchaser with actual notice of X's mineral deed. [[202]](#footnote-203)202 Next, A's best counter-argument would be that both he and M-O are protected under the shelter rule. A could assert the following: (1) A is protected because he was a bona fide purchaser and any subsequent purchasers for value in A's chain of title should be further protected, otherwise A's right to market is constricted if he cannot convey land to someone that happens to know of an adverse claim; and (2) M-O is protected, even though M-O knew of the adverse claim by X, because M-O will purchase an ***oil*** and gas lease for value from A, who at the time of his purchase from B was a bona fide purchaser with no notice of X's adverse claim.

To add a twist to this scenario, suppose the conveyance from C to B was not a warranty deed but a gift deed with no valuable consideration. B would therefore not be a bona fide purchaser, so the shelter rule would probably not apply to M-O because it likely had actual knowledge of X's adverse interest from the inclusion of the C-to-X mineral deed in the runsheet. Suppose further that B-O wants to compete with M-O and lease the remaining unleased one-half mineral interest. B-O's landman does not find the C-to-X mineral deed; therefore, it is not included in his runsheet, which is identical to M-O's runsheet in all other respects. Who does B-O's landman lease the remaining mineral interest from, A or X? If B-O leases from A and M-O leases from X, which lessee has the superior right to that interest - the first lessee to acquire a lease from its lessor? Should the timing of the recording matter between X's lease and A's lease, even though Texas is not a race-notice jurisdiction? [[203]](#footnote-204)203

**[\*65]** Determining which parties own the various interests in Blackacre is not the focus here. Rather, this much is clear: the title a landman must search can be extremely complicated. Therefore, it is important for the landman to search title according to a practice that not only produces clear and consistent results but also that can be relied upon to produce the legally recognized chain of title for the subject land.

D. The Practice of Compiling a Runsheet

Ultimately, the landman takes his instructions from his client, the land manager. The land manager may instruct the landman as follows: (1) perform a title search under a certain process or a certain period of years in a county's records; [[204]](#footnote-205)204 (2) search only in the records of a title company's abstract office; or (3) use an abstract company's records as a starting point or guide to searching a county's records. Apparently, various practices exist for a landman to search title and create a runsheet for an operator.

Although landmen may perform title searches differently from each other in practice, a single legally recognized process should be created for searching a chain of title for a purchaser of an ***oil*** and gas lease. If two competing operators attempt to lease the same land, it is only just that each will need to follow the same set of rules to create a chain of title in a runsheet that reveals the proper mineral owner. For example, if a dispute over title arises between two operators purporting to have a good lease on the subject land, which one wins in a trespass-to-try-title lawsuit? Each operator will assert ownership through its chain of title, as evidenced in its abstract of title that is procured for the lawsuit. Strangely enough, a look at civil procedure is persuasive when determining whether the courts (or other rule-makers) should recognize a single title-search process.

Texas Rules of Civil Procedure 783 through 809 provide for the rules regarding a lawsuit for trespass to try title. [[205]](#footnote-206)205 Rule 791 provides that any party may demand an abstract of title from any other claiming title to the land. [[206]](#footnote-207)206 Rule 793 specifically states what an abstract must include: (1) the type of each document and its date; (2) the parties to each conveyance, date of acknowledgment, and the officer who acknowledged it; (3) the place of recording and book and page; and (4) copies of unrecorded instruments with names of subscribing witnesses (if the instrument is lost or destroyed, a statement of the nature of the instrument). [[207]](#footnote-208)207 None of the rules, however, state the appropriate **[\*66]** process for researching the records to create an abstract. [[208]](#footnote-209)208 Should the abstract contain only instruments in the chain of title or any other instruments that the abstractor might find, even if they are outside the chain of title? [[209]](#footnote-210)209 For example, the records of a title company may occasionally include instruments outside the chain of title for a particular tract of land. If the title searcher uses a title company's records, must the title searcher creating the abstract strictly adhere to the scope of the search set out in Texas case law - specifically the cases of White and Breen - because title company records sometimes include instruments outside the chain of title?

If a title dispute rests upon constructive notice from the recorded chain of title in an abstract of title, created under Civil Procedure Rule 793, it is only reasonable to establish one legally recognized standard to create the chain of title for that abstract. That same standard may be used by a landman to research title and include the proper chain of title in his runsheet. Consequently, all operators could rely on this standard and receive consistent results for the chain of title. But as previously discussed, no affirmative, on-point Texas rule was found to explain the proper navigation of the grantor-grantee index to properly research and create a chain of title in an abstract or runsheet. Some might argue that a "rule" or "standard" is not needed to establish a consistent standard for all title searchers to follow to create a chain of title because the title search should fall under the "custom and usage" of the industry.

In general, the term "custom and usage" has been referred to as "the way things are done within an industry." [[210]](#footnote-211)210 Often, custom and usage is used as evidence to resolve issues in "property, contract, tort, agency, and … '***oil*** and gas law.'" [[211]](#footnote-212)211 In a dispute between parties, "usage" [[212]](#footnote-213)212 may be used to provide "meaning" to a specific term that is not defined or ambiguous in an agreement so that the agreement may be interpreted accurately. [[213]](#footnote-214)213 For example, in a lawsuit between parties to a farm-out agreement, "usage" in the industry was used to prove that one party had a contractual duty to provide "notice" to the **[\*67]** other party of the former's intent to abandon and plug a well. [[214]](#footnote-215)214 As was the case in the foregoing example, usage evidence is used to prove factual issues to be decided by the trier of fact in a lawsuit. [[215]](#footnote-216)215

In fact, usage is established on a case-by-case basis - it does not establish a "precedence" that must be applied in other cases. [[216]](#footnote-217)216 Consequently, courts should not use usage to establish a law or rule that governs all under a particular jurisdiction; instead, usage should be used by the trier of fact to interpret an agreement. [[217]](#footnote-218)217 If a court does happen to elevate usage to "law" status inadvertently, it only seems appropriate that the particular usage law be applied to the specific parties to an agreement. [[218]](#footnote-219)218 Thus, usage would likely be used, for example, to interpret an agreement between a title searcher and an operator as to the title searcher's contractual duties regarding a title search. Usage should not be used to determine the title searcher's duties to all as a matter of law. Therefore, the argument for usage of a title search to provide a title search standard is neither persuasive nor appropriate. Usage in the industry cannot provide a consistent standard for all title searchers to follow when conducting a title search.

Instead of relying on the usage of a title search, the appropriate solution is to create a legally recognized standard or rule for a title search. It is the Author's opinion that a standard title search for mineral interests in the county records should be conducted as follows: (1) identify the person claiming title to the surface; (2) search the grantee index backwards to sovereignty; and (3) search the grantor index to the present time by following the guidelines set out in White, Breen, and Westland ***Oil***. The records found from this search should produce an abstract or runsheet that accurately reveals the records a purchaser is deemed to have notice of (e.g., constructive notice).

A search of the records in a local abstract plant, although helpful, is not required under the foregoing proposed standard, even though the Vallone case described it in the list of records to search title. [[219]](#footnote-220)219 The **[\*68]** abstract company's records for various lands are already compiled from the company's search of the grantor-grantee indexes. The records in each abstract company may not be the same across all other abstract companies in the county (e.g., some companies may include instruments outside the chain of title in their records). [[220]](#footnote-221)220 Title searches at different abstract companies would likely create inconsistent results in runsheets created from the different records at those companies. The integrity of a title search can be maintained only if every possible purchaser of property searches the same records - those in the county's public records office. Although a search at an abstract company is a permissive practice in a title search, a search there under the proposed standard is not mandatory. [[221]](#footnote-222)221

Although title searchers - abstractors, landmen, and attorneys - have been conducting their profession for decades without a formal, standardized title search process, one is necessary for several reasons. First, with ***oil*** and gas exploration increasing in Texas, [[222]](#footnote-223)222 more people will enter (or return) to the profession of title searching thus creating a need to provide a standard for those learning or re-learning the title search process. Second, new and experienced title searchers, who may conduct their searches somewhat differently from others (albeit producing the same results most of the time), will have a guide for creating chains of title with consistent results. Third, as the population and economy of Texas continues to grow, more transactions (simple and complicated) will be filed in the county courthouses, making a title search more difficult and burdensome without a standard to follow. Fourth, and most importantly, the existence of roads adjacent to the subject land being researched creates problems for determining the proper chain of title for the land making up the roads. Before addressing a proposed standard title search for a roadway, a brief overview of the law on mineral ownership under roads is appropriate.

**[\*69]**

IV. Mineral Ownership Under Roads [[223]](#footnote-224)223

To understand the practical nature of searching title to a road, a landman should understand the basic principles or rules regarding mineral ownership under roadways in Texas. Roadway title is important to find because the strips of land making up the road need to be leased by an operator that intends to drill under the road. [[224]](#footnote-225)224 The road, bounded by its edges, may be a separate tract in fee that requires its own ***oil*** and gas lease. If the operator drills under an unleased road, it commits a trespass. [[225]](#footnote-226)225 Therefore, the landman, lawyer, and land manager should be aware of the following principles and rules and how they relate to a title search of a road.

This Article does not address each rule in depth nor does it address all issues related to this subject; but rather, it highlights some important rules applicable to a landman's title search. For an in-depth discussion of the law of roadway ownership, please see Ownership and Leasing of Minerals Under Highways and Right-of-Ways, by William G. Bredthauer and Shawna Snellgrove Rinehart, which this Section of the Article is modeled after. [[226]](#footnote-227)226

A. Title Traced from an Expressed Conveyance for the Road

Title to a road may be created in various ways. [[227]](#footnote-228)227 To explain the basic principles of roadway title, this Article addresses only these four commonly found methods for creating roads: expressed easements, implied easements, dedications, and condemnations. [[228]](#footnote-229)228 Although land for roadways is typically granted by a landowner for surface use only, fee simple title (including the mineral estate) may be conveyed in expressed easements, dedications, and condemnations, but not implied easements. [[229]](#footnote-230)229 If fee title is conveyed, the operator must lease the road as a separate tract from the adjacent land to avoid a trespass. [[230]](#footnote-231)230 Thus, a landman needs to trace the mineral title to a roadway as well as the adjacent tract of land. The landman, however, should be aware that it is the attorney's responsibility to determine whether the **[\*70]** roadway instrument conveyed only a right to use the surface or the fee estate (including minerals).

In a title search, a landman will likely find recorded dedications, condemnations, and expressed easements, which should be included in his runsheet. The landman will probably not find an implied easement in the county's real property records because it is not expressly created by an instrument but rather is imposed by operation of law. [[231]](#footnote-232)231 Regardless, the landman's primary focus is researching mineral title. [[232]](#footnote-233)232 Therefore, the landman should be aware of these conveyances, which could possibly contain the mineral estate. Although the attorney will ultimately determine the legal effect of these conveyances (whether minerals are conveyed in them) and who owns the minerals, the landman must first find the roadway conveyances of record (e.g., expressed easements, dedications, and condemnations) and include them in the runsheet. If fee title or the mineral estate is not conveyed in one of these road conveyances, the attorney will rely on the rules discussed in the next Section to determine mineral ownership of the roadway.

B. Title Traced from a Conveyance of Land Adjacent to the Road

The general rule regarding the fee ownership of a roadway when a grantor conveys land next to a road (the "General Rule") was first recognized in Mitchell v. Bass. [[233]](#footnote-234)233 In Mitchell, the Texas Supreme Court stated that according to common law, "a conveyance of land bound on a public highway carries with it fee to the centre of the road," unless the express language of the grant provided otherwise. [[234]](#footnote-235)234 One of the policy reasons in support of the General Rule is that, typically, a grantor of a tract of land would have no purpose for reserving a strip of land along its boundary. [[235]](#footnote-236)235

As justification for the General Rule, many courts rely on two doctrines: the Appurtenance Doctrine and the Strip and Gore Doctrine. [[236]](#footnote-237)236 "The Appurtenance Doctrine is based on the presumption that a conveyance reflects an intention to carry with it the appurtenance easements and incidents belonging to the property at the time **[\*71]** of conveyance." [[237]](#footnote-238)237 Specifically, appurtenances include all those rights and interests necessary to use the land conveyed. [[238]](#footnote-239)238 The Strip and Gore Doctrine is based on a presumption that a grantor includes in his conveyance the strips of land adjacent to the tract unless the deed's language clearly shows the grantor's intent to reserve the strip. [[239]](#footnote-240)239 This doctrine expresses the notion that to leave title in a small strip to a grantor when he conveys a larger tract next to the strip is against public policy. [[240]](#footnote-241)240

The General Rule has several exceptions that allow a grantor to retain fee ownership of the road without expressly reserving it. [[241]](#footnote-242)241 First, an exception exists where the entire road lies on the margin of the tract of land being conveyed. [[242]](#footnote-243)242 Second, an exception exists when the strip is large in comparison to the adjacent tract and potentially more valuable than the adjacent tract. [[243]](#footnote-244)243 Third, the General Rule does extend to private roads. [[244]](#footnote-245)244

Although countless scenarios may exist to apply the General Rule, the following are three basic applications that a landman will likely face. First, the General Rule applies where a landowner conveys a road easement across his land and later sells off smaller portions of the land describing (in the deeds) the boundary for each parcel as the edge of the road. [[245]](#footnote-246)245 Second, the General Rule treats multiple easements that are side-by-side as one easement; thus, each adjacent landowner will generally own title to the center of the easements. [[246]](#footnote-247)246 Third, the General Rule applies when a landowner who owns land on both sides of a road conveys the land only on one side of the road, leaving the grantee of the tract as fee owner to the half of the road on his side. [[247]](#footnote-248)247

The General Rule may apply in situations even when a grantor intends to reserve the road but the language in his deed is not sufficient. [[248]](#footnote-249)248 For example, the General Rule is not overcome by a deed that describes the border of the lands conveyed as extending to the **[\*72]** exterior boundary of the street. [[249]](#footnote-250)249 Similarly, the rule is not overcome if the distances in the deed's metes and bounds description do not extend to the center of the road. [[250]](#footnote-251)250 Further, merely "excepting" a roadway from a conveyance is not enough to reserve fee title to the road. [[251]](#footnote-252)251

These basic principals of mineral ownership of roads reveal the following: title to the mineral estate of a road may be found in both (1) expressed conveyances of the roadway itself, such as easements, condemnations, and dedications and (2) expressed conveyances of the land adjacent to a road, even if the deed does not describe the road in the conveyance or even "excepts" the road from the conveyance. The landman will provide the attorney with the instruments of record so the attorney may determine how title to the road has passed from one owner to another. Thus, when a landman "traces title to the minerals under a road, it is necessary to examine not only all express conveyances of the road, but also conveyances of tracts adjacent to the road." [[252]](#footnote-253)252

So, how does one "trace title" to a road? The next Section analyzes the discussions above to outline two processes for creating a chain of title for a roadway. The second process is broken down into two specific methods.

V. Developing the Chain of Title for a Road

To build a chain of title for a roadway, one must understand not only the fundamentals of a standard title search but also the basic rules regarding the ownership of roadways. Analyzing these two concepts together reveals two possible processes for creating a chain of title for a roadway. The first process requires the title searcher to always treat the road separate and distinct from the adjacent tract, regardless of whether the General Rule applies (fee title to half of the road is held by the adjacent landowners). The second process requires the title searcher to treat the road as a part of the land adjacent to it, regardless of whether the road is owned in fee and separate from the adjacent land. [[253]](#footnote-254)253 A landman applies these processes as follows: (1) under the first process, the landman creates two different runsheets - one including a chain of title reflected only by the records for the adjacent tract and the other including the chain of title reflected only by the records for the entire roadway, if any records exist at all; and (2) under the second process, the landman creates one runsheet that includes **[\*73]** a chain of title for both the recorded conveyances for the subject tract of land and the part of the road adjacent to it. The distinguishing factor between these two processes is how the title searcher begins his search in the grantee index: either with (1) the name of the owner of the road, as bounded by its edges (as in the first process) or (2) the name of the adjacent landowner (as in the second process).

A. Process No. 1: Consider the Road as a Separate and Distinct Tract

The following outlines a process for creating a chain of title for a roadway in which the title records to the road are included in a separate runsheet from the adjacent tract. Navigating the indexes for this type of search should mirror that of a standard search of a tract of land. [[254]](#footnote-255)254 The title searcher searches the records as follows: (1) identify the surface owner of (or person claiming a right to use) the road; (2) trace title backwards to the sovereignty of the state using the grantee index; and (3) trace title forwards using the grantor index. [[255]](#footnote-256)255 Applying this process is neither simple nor practical.

The primary obstacle in using this process lies in identifying the current person (or governmental entity) claiming ownership or use of a road. Because no known "roadway ownership" index exists in a county's records, [[256]](#footnote-257)256 a landman can only assume ownership of the road - e.g., the landman might assume that a city claims title to a city street, a county claims title to a county road, and the State of Texas claims title to a state highway. Two issues complicate this assumption. First, a county holds title to the land for the benefit of the state. [[257]](#footnote-258)257 Therefore, the landman must further assume that title to a state road may be held either under the "State of Texas" or the name of a county, resulting in a more expansive search of two names. Second, multiple government entities may claim title to parts of the same roadway. **[\*74]** Therefore, the landman must decide which of the multiple entities has superior title to the road, or the landman must search all government entities that could possibly claim title to it. [[258]](#footnote-259)258 Requiring a search of all possible government entities in the grantee index is far too laborious and time consuming to be reasonable. [[259]](#footnote-260)259

Suppose a title searcher is fortunate to find a road that is currently claimed by the entity that originally claimed it - a county, for example. The title searcher must next search the grantee index for that county's name from the present time until he finds the instrument, if any, for the road. If the title searcher is searching in Tarrant County, he might find thousands of instruments for "Tarrant County" in the grantee index from 1970 to 2011, [[260]](#footnote-261)260 and none of them could possibly contain an expressed easement or condemnation to the county. This laborious search arguably is an impractical search similar to the type of search rejected by the Breen Court. [[261]](#footnote-262)261

Suppose further that a title searcher is even more fortunate to find fee simple conveyances for the road. For example, the title searcher finds deeds from each adjacent landowner on both sides of a county road conveying fee simple title to the county. Should the search continue in the grantee index with the name of each adjacent landowner that conveyed his half of the road? If so, this search would duplicate the part of the same search for the adjacent land - limited from the year the road was conveyed, back to sovereignty - which is hardly economical or practical. Or upon finding an apparent fee conveyance for the road (e.g., a right-of-way deed), should the title searcher assume title is now clear to the road and, therefore, change to a grantor search at the year of that conveyance instead of continuing backwards to sovereignty? Indeed, this shortcut would save time; however, this assumption would ignore the previous title from that particular year **[\*75]** back to sovereignty, the records of which would reveal whether the grantor of the road conveyance ever had title to it to begin with. Further, the landman's runsheet for the road's chain of title would probably contain only road conveyances. Therefore, the search results would likely be inconclusive or incomplete under this first process.

To complicate this process further, a title searcher might not ever find a recorded instrument - such as a right-of-way, easement, or deed - for the road he searches title for. Many times, roadways may be referred to in the deeds for adjacent lands (i.e., identified as boundary in a metes and bounds description), but no recorded easement or similar instrument is ever found. Historically, landowners occasionally allowed others to use a roadway on their property's border without formally granting this right in a recorded instrument. If no recorded instrument is found for the road, the title searcher would have spent an unreasonable amount of time searching the grantee index for the State of Texas, a county, a city, or a combination of all, only to find nothing. One must then assume that the General Rule [[262]](#footnote-263)262 applies and title to half of the road is part of the adjacent tract, even though the road is maintained or claimed by a government entity.

This process contains too many uncertainties making the search "impracticable to rely upon." [[263]](#footnote-264)263 Beginning a title search for every road by searching cities, counties, and the state is an unreasonable task. Further, this method ultimately duplicates part of the title search of the adjacent land, which is not economical. Moreover, shortcutting the search by avoiding the parent title prior to a road conveyance is too risky because assumptions of title must be made. Finally, the title searcher may never find an instrument for the road in his initial grantee search.

B. Process No. 2: Consider the Road as a Part of the Adjacent Tract

The following outlines a second process, which is further broken down into two separate methods for creating a chain of title for a roadway. This process ensures that all title records to the road are always accounted for in a title search of the adjacent land. The premise of this process and its two methods is based on the General Rule that the adjacent owner holds fee title to the center of the road unless the instrument conveying the adjacent tract expressly provides otherwise. [[264]](#footnote-265)264 Thus, the title searcher may presume that the mineral interests for the half of the road next to each adjacent landowner in the chain of title remains with that landowner unless any of the following occur: (1) an exception to the General Rule applies; or (2) an adjacent **[\*76]** landowner (a) explicitly reserves the fee or mineral estate in a conveyance; or (b) conveys fee title to the road to another, such as the State of Texas or a political subdivision of it. [[265]](#footnote-266)265

1. The Fork Method

The framework of a title search under the first of these two methods is like the framework discussed in Section III(B), supra, of this Article. A title searcher should follow these steps: (1) begin the search by identifying the surface owner of the land adjacent to the road (the "subject tract"); (2) trace names in the grantee index from the present surface owner back to the sovereignty of the state, focusing solely on title to the subject tract; and (3) trace names in the grantor index from the sovereignty of the state forward to the present mineral owner (if the minerals were severed from the surface, the title searcher will also trace names for surface owners if the land manager requests him to do so). While searching the grantor index, the searcher may presume the title, including minerals, to half of the roadway remains with the adjacent landowners in the chain of title. [[266]](#footnote-267)266 Further, while searching the grantor index, the title searcher should include in the subject tract's chain of title any expressed easements, [[267]](#footnote-268)267 dedications, condemnations, and other similar conveyances for any roadway that lie immediately adjacent to the subject tract. Any such roadway conveyance will create a fork in the chain of title that needs to be followed in the grantor index, just like any other fork in the chain.

To understand the concept of creating a roadway "fork" in a chain of title, consider the following examples of other types of forks in a chain of title. If a landman searches the grantor index and finds a deed where the grantor reserves all the minerals, the entire mineral estate separates from the surface estate resulting in two respective forks. If the continued grantor-index search reveals that the mineral owner later leased the minerals to an operator, this conveyance stays in the mineral estate fork. But suppose a grantor-index search further reveals that the operator conveys an overriding royalty interest to a service company or investor. This example, as a whole, creates four forks in one chain of title: (1) the surface estate; (2) the mineral estate, subject to the lease; (3) the leasehold estate, subject to the overriding **[\*77]** royalties conveyed; and (4) the overriding royalty interests within the leasehold estate.

In the Author's opinion, a roadway conveyance should be classified as a similar fork in a chain of title for the adjacent tract of land, even if the road conveyance appears to be a fee transfer resulting in a separate strip. The genesis of the road's title comes from the adjacent land by way of either a conveyance where the General Rule applies or a fee conveyance in an expressed easement, for example. Under both types of conveyances, the chain of title for a road is borne from a search of the adjacent tract owners through the grantor index. Creating a chain of title under this first approach is referred to as the "Fork Method."

2. The Outsale Method

In contrast, a landman might argue that if a fee owner conveys fee title in an expressed easement for a road, then the road becomes an "outsale" [[268]](#footnote-269)268 and is therefore not a fork within the chain of title of the subject tract. As a result, that same landman probably would not include that expressed easement in the subject tract's runsheet. Further, unless the land manager directs a landman to complete a separate runsheet for the adjacent road, the examining attorney will likely never know the expressed easement existed, unless an instrument within the chain contains a recital to its existence. Ultimately, the landman's argument is premised on the notion that the landman would have to decide the legal effect of that conveyance. On the contrary, the examining title attorney should perform the legal analysis of the complete title for both the road and adjacent tract.

Thus, if the landman performs the title search, he need not concern himself with a legal analysis of the roadway ownership. The examining attorney will determine the effect of the legal issues when examining the runsheet. Instead, under this method, the landman may simply include any roadway instrument as a fork in the chain of title in the adjacent subject tract's runsheet, regardless of whether the roadway instrument apparently conveys fee title to the road and is arguably an outsale. Consequently, the title attorney may safely assume that all instruments conveying title to the half of the road adjacent to each subject tract are present for an examination. [[269]](#footnote-270)269 Accordingly, the attorney **[\*78]** can apply the laws regarding roadway ownership to the roads. A search under this method creates a chain of title for a roadway that is consistent and reliable.

Alternatively, if a Texas court determines that a fee conveyance for a roadway is considered an "outsale" and, therefore, is not a fork in the chain of title of the adjacent tract, the following second method should nevertheless be the foundation for a road's legally recognized chain of title. As discussed in the previous Section, beginning a title search in the grantee index for the current entity claiming the road is arguably impracticable and unreasonable. Further, the genesis of a road's title generally comes from the title of a larger tract of land - being the parent tract of the road and adjacent land. Therefore, the practical solution is to find the first link in a separate and distinct chain of title for a road by searching the grantor index under a standard title search of the adjacent land, until a fee conveyance or outsale is found. Afterwards, the remaining chain of title for the road may be found by continuing the grantor-index search of the roadway owner and the adjacent owner (in case the road is widened and the adjacent owner conveys another portion of his land for the road). Even if considered distinct, the road's chain of title is tied to the adjacent land. Creating a chain of title under this second approach is referred to as the "Outsale Method."

3. The Scope of the Search Under Process No. 2

Regarding the scope of a search under the Fork and Outsale Methods, Westland ***Oil*** will likely apply, but it is unclear whether those limitations set out in White and Breen would apply. In the Author's opinion, applying all three cases under both methods would create more consistency and certainty in title searches. [[270]](#footnote-271)270 For example, if White applies, a title searcher searching the grantor index for the adjacent landowners may not need to continue searching for a road conveyance from a record owner once that particular owner conveys all of his interest to another. And if Breen applies, the searcher may not need to search for a road conveyance from a record owner before that particular owner acquired title to the adjacent land. Of course, Westland ***Oil*** would likely require the title searcher to look outside the White and Breen limitations to find a road conveyance if it is referred to in a recorded instrument within the adjacent land's chain of title.

**[\*79]** Some might argue against the Fork and Outsale Methods in favor of a more exhaustive search for road records, outside the scope set out in White and Breen. That argument relies on the notion that if a title search for a road does not begin in the grantee index (i.e., searching for the city, county, or state in the grantee index first) like every other standard title search, then White and Breen should not apply. To make up for an incomplete search, it might be necessary to look for road conveyances by continuing to search the grantor index after a person conveys all his interest in the land.

C. Applying the Two Processes

In the end, a standard for searching title to roadways would help landmen create consistent results for a road's chain of title. As discussed previously, the chain of title indirectly protects bona fide purchasers. Operators are purchasers of ***oil*** and gas leases, which are considered fee simple determinable conveyances. [[271]](#footnote-272)271 Thus, an operator will want bona fide purchaser protection by taking the lease from the proper lessor in the chain of title. If a title dispute over a roadway arises, the operator will likely rely on the chain of title to argue that any person claiming title under a conveyance recorded outside the chain of title is deemed unrecorded and did not give the operator notice of it. For example, if a city claims title to a road through a fee simple right-of-way deed that was recorded outside the chain of title, the operator would likely argue that the mineral title to each half of the road was conveyed to each adjacent landowner by way of the General Rule. [[272]](#footnote-273)272 Therefore, the operator's lease on the adjacent tracts would cover the minerals for the road, and a lease from the city is not necessary. The chain of title for a road, however, may be different depending on which of the two processes described in this Article is used.

Consider the following example where a landman applies the Fork Method to a title search of Blackacre, a four-sided parallelogram (see Figure 1, infra, for Blackacre and its surrounding roads). The same landman recently acquired a lease on behalf of an operator ("O") and afterwards, performed an extensive title search for the examining attorney. The basic framework determined from the grantee search is as follows: B to A (deed executed and recorded in 1999), C to B (deed executed and recorded in 1991), and D to C (deed executed and recorded in 1980). Assume that all title prior to D is clean: D owns fee simple title to all of Blackacre, and no roads were created on the edges of Blackacre before D owned the land. As the landman searches the grantor index beginning with D, he finds the following: D to C (deed to Blackacre, executed and recorded in 1980), C to Taylor **[\*80]** County (warranty deed for a strip of twenty feet on the east edge of Blackacre, executed and recorded in 1981), C to B (deed to Blackacre, executed and recorded in 1991), B to Capital City (right-of-way for twenty feet on south edge of Blackacre, executed and recorded in 1996), B to A (deed to Blackacre, executed and recorded in 1999, that refers to a 1982 expressed easement conveyed from C to Taylor County for ten extra feet on the east edge of Blackacre for road widening), and A to O (***oil*** and gas lease for Blackacre, executed in 2010 and recorded in 2011, with a metes and bounds description indicating the borders of Blackacre as the edges of the four surrounding roads). The title searcher did not find the referenced easement from a search of C from 1980 to 1991, so he went back to search for C in the grantor index after 1991 and found the easement recorded in 1992. The title searcher included all the foregoing instruments in a runsheet for the examining attorney.

Figure 1:

[SEE FIGURE IN ORIGINAL]

Suppose a roadway borders each side of the four-sided Blackacre: a county road on the east side (recorded warranty deed and easement **[\*81]** found by title searcher), a city street on the south side (recorded right-of-way found by title searcher), a state highway on the north side (warranty deed from B to Texas for a strip of twenty feet on the north edge of Blackacre, executed in 1998 and recorded in 2000, was not found because the title searcher used White to stop searching B in 1999), and another city street on the west side (no instrument was ever executed or recorded).

A search under the Fork Method, as proposed in Section IV(B)(1), supra, and within the scope of White, Breen, and Westland ***Oil***, resulted in the following: all the instruments described in the example above, except for the warranty deed from B to Texas, are in one chain of title for Blackacre. Although the state highway on the north side of Blackacre was conveyed for a road, the state did not record the warranty deed before B conveyed all his interest in Blackacre to C. Under the Fork Method, this warranty deed is outside A's chain of title and, therefore, did not give constructive notice of it to A. Further, neither the landman, the attorney, nor the operator had actual notice of the conveyance.

From this Fork Method search, the attorney can examine the runsheet to make a mineral ownership determination for all four roads. [[273]](#footnote-274)273 The attorney will probably credit A with the mineral interest for the half of the northerly state highway adjacent to Blackacre because the mineral estate for it is in A's chain of title. [[274]](#footnote-275)274 Further, the attorney will probably credit the following mineral interests for the roads to the following owners: Capital City has the twenty feet of the southerly city street from the right-of-way (if, in fact, that right-of-way was determined to convey fee simple title); Taylor County has twenty feet of the easterly county road from the 1981 warranty deed; A has ten feet of the easterly county road under the General Rule (if, in fact, the ten-foot easement to the city in 1982 was for surface only); and A has half of the westerly city street adjacent to Blackacre under the General Rule.

A search of the same title under the Outsale Method, as proposed in Section V(B)(2), supra, and within the scope of White, Breen, and **[\*82]** Westland ***Oil***, would result in similar results for the chains of title for all four roads as in the Fork Method because title to the roads is determined from the grantor index search - the same as in the Fork Method. The difference between the Outsale Method and the Fork Method is that separate runsheets would have to be created for the twenty feet of the easterly road and the twenty feet of the southerly road because those parts of the road were conveyed in apparent fee simple transactions. Either the same landman who searched title for Blackacre would need to complete these separate runsheets, or the land manager would need to hire another landman to complete them. No runsheets would have been created at all for the northerly state highway, the westerly city street, or the ten feet from the easement for the easterly county road.

A search of the same title under the first process [[275]](#footnote-276)275 would yield a different chain of title for the northerly state highway, but the chains of title for the other roads would be the same as they were under the second process. Under the first process, the title searcher would begin a search of the northerly road by searching the grantee index for "Texas" because that road was a state highway and was likely claimed by the state. Unlike under the Fork Method, the title searcher would have found the warranty deed from B to Texas when he searched for "Texas" under the grantee index for the year 2000. Therefore, that warranty deed would arguably be in the chain of title for the northerly state highway. Under this process, the examining attorney would probably credit the minerals for the half of the northerly road to the State - not A, as he would under the Fork Method or Outsale Method. As illustrated, the chain of title for a roadway can be different depending on which of the two above-described title search processes is used.

Ultimately, the title search under the Fork Method was the most reasonable type of search. The Fork Method forced the title searcher to make a good-faith attempt to find all instruments that affect the land and its adjacent roads in one search. For example, if a roadway instrument is not present in the chain of title under a Fork Method search, either of the following reasons may apply: (1) the instrument does not exist (such as for the westerly city street); or (2) the instrument must be recorded outside the chain of title (such as for the northerly state highway). Essentially, the Fork Method allows the title examiner to safely confirm that if a runsheet does not include a roadway instrument for a particular road, then none exists in the chain of title for the subject tract and its adjacent roads. Further, the Fork Method produced only one runsheet, whereas the other methods produced multiple runsheets.

**[\*83]** A search under the Outsale Method would yield the same results as the Fork Method but with multiple runsheets instead of one. The Outsale Method resulted in three runsheets: one runsheet for Blackacre and two roadway runsheets, one for each road found in a recorded conveyance in the chain of title. If the landman who searched Blackacre did not complete the runsheets for the roads, other landmen would be required to do so, making the process more cumbersome and possibly confusing for the examining attorney. The land manager would likely encounter similar confusion because this method requires the land manager to oversee more landmen.

A search under the first process would have taken an unreasonable amount of time to complete and yielded different results from the second process (Fork Method and Outsale Method). The first process required five different searches - a search for Blackacre and a search for each of the four bordering roads. Further under the first process, the landman would likely have found the warranty deed from B to Texas in a chain of title specifically for the road. The State of Texas would, therefore, probably argue these three points: (1) the warranty deed gave constructive notice to the operator; (2) the state was the fee owner of the road; and (3) any lease for the road should be taken from the state. Conversely, under the more reasonable Fork Method search, that B-to-Texas deed is not in the chain of title and the mineral interests to the road passed along with the adjacent landowners according to the General Rule. Obviously, a clarification regarding a roadway title search is needed because of the discrepancies that could result from the several different ways to search.

VI. Conclusion

For searching title to roadways, the two processes outlined above reveal that bona fide purchaser protections are not consistent under both processes. The second process, made up of the Fork Method or Outsale Method, provides the most reasonable title search that produces consistent results. If a court (or other rule-maker) were ever to decide which method is proper, the Author suggests the Fork Method. It allows the title searcher to simply include in one chain of title all instruments conveying an interest in the road and the adjacent land so that a purchaser may analyze all relevant documents to determine which party owns the road. Moreover, the Fork Method would reduce title costs by reducing the time necessary to complete title for roads and adjacent lands. Regardless of which method is determined to be legally correct, at least one should be the "standard" so landowners and operators can rely on a clear legal standard to make their respective business decisions.

A title search for a roadway is anything but simple because different methods for searching a roadway exist. If one type of standard search is ultimately created, the process and the results from it will be consistent. **[\*84]** All parties involved - the landman, attorney, and land manager - have a responsibility to understand this concept so that all land is leased properly before drilling. The foundation for the proper leasing of roads lies in the work of the landman, who should practice his craft with skill, reasonable expedience, and faithfulness. Regardless of which method becomes the "standard," attorneys should at least understand all the potential processes for creating runsheets for roads. These different processes create differences in not only the practical effects of a search but also the legal effects of a search. Finally, all parties should understand that a mineral determination for a road cannot be completed until a landman searches title to the adjacent lands because roadway title almost always comes from the adjacent land's title.

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1. 1 As of March 2011, the rig count in the Barnett Shale was seventy-eight rigs. See Jack Z. Smith, Barnett Shale Rig Count Up by Three, Star-Telegram.com (Mar. 4, 2011, 3:59 PM), http://blogs.star-telegram.com/barnett shale/2011/03/barnett-shale- rig-count-up-by-three.html. [↑](#footnote-ref-2)
2. 2 With activity increasing in the Permian Basin (West Texas) and Eagle Ford Shale (South Texas), as well as continued development in the Barnett Shale, the rig count in Texas has increased by 147 units year-over-year, as of April 2011. Phaedra Friend Troy, Rig Count Jumps in the US, Drops Dramatically in Canada, PennEnergy.com (Apr. 1, 2011), http://www.pennenergy.com/index/petroleum/display/0625791529/articles/pennenergy/petroleum/exploration/2011/04/rig-count jumps in. html. [↑](#footnote-ref-3)
3. 3 See William G. Bredthauer & Shawna Snellgrove Rinehart, Ownership and Leasing of Minerals Under Highways and Right-of-Ways, 16 Tex. Wesleyan L. Rev. 3, 3 (2009). One can imagine the number of roads a horizontal well-bore 5000 feet long (one mile is 5280 feet) might travel under in an urban area. These urban-area roads can be the subdivision streets, major thoroughfares, and highways of a city, such as Fort Worth, Texas. According to some, the city of Fort Worth lies over the "sweet spot" of the Barnett Shale. See, e.g., Jack Z. Smith, "Monster" Wells Epitomize What the Barnett Shale Has Become, Star-Telegram, Mar. 6, 2010, available at NaturalGasForAmerica.com, http://naturalgasforamerica.com/star-telegram-monster- wells-epitomize-what-the-barnett-shale-has-become.htm. Thus, operators drilling in this urban "sweet spot" will likely encounter the challenge of leasing the correct mineral owners of rights-of-way. Further, the leasing of minerals under rights-of-way is not limited to horizontal drilling only - those operators drilling vertical wells must also properly lease the minerals under the rights-of-way they intend to develop. [↑](#footnote-ref-4)
4. 4 See Joseph Shade, Petroleum Land Titles: Title Examination & Title Opinions, 46 Baylor L. Rev. 1007, 1015 (1994). Shade's article provides a broad overview of the entire title examination process for all lands within a prospect, not just roadways. This Article, however, is specifically focused on the landman's role of researching roadway title in the title examination process. [↑](#footnote-ref-5)
5. 5 See infra Section III(B). [↑](#footnote-ref-6)
6. 6 See Joseph Shade, Primer on the Texas Law of ***Oil*** & Gas 74 (3rd ed. 2004); Roger E. Beecham, Anatomy of a Title Opinion, pg 5, Shannon Gracey 2008 ***Oil*** and Gas Seminar, September 23, 2008 (transcript on file with author). [↑](#footnote-ref-7)
7. 7 This Article is not a treatise on the subjects listed. Rather, the subjects are discussed briefly to support the Author's primary position (and opinion) that a new legal standard is needed to develop a proper chain of title for roadway mineral ownership. [↑](#footnote-ref-8)
8. 8 See Shade, supra note 4, at 1009, 1015; Rocky Mountain Mineral Law Foundation, Landman's Legal Handbook: A Practical Guide to Mineral Leasing 117-19 (4th ed. 1982); see also Lewis G. Mosburg, Jr., Handbook on Petroleum Land Titles (5th prtg. 1981)§§1.01, 1.03-.05 (5th prtg. 1981) (discussing the roles of the landman, the title examiner, and the operator). [↑](#footnote-ref-9)
9. 9 See Shade, supra note 4, at 1015; Mosburg, Jr., supra note 8, at § 4.01-.04; Shade, supra note 6, at 73-74. [↑](#footnote-ref-10)
10. 10 Shade, supra note 4, at 1015. [↑](#footnote-ref-11)
11. 11 See Mosburg, Jr., supra note 8, at § 4.03-.04; see generally Shade, supra note 6, at 73-74 (explaining the title examination process). [↑](#footnote-ref-12)
12. 12 For a more complete illustration of the landman's profession, see the following publications: Rocky Mountain Mineral Law Foundation, supra note 8; Leslie Moses, AAPL Guide for Landmen: "From Lease to Release" (1970). [↑](#footnote-ref-13)
13. 13 About AAPL, AAPL: America's Landmen, http://www.landman.org/WCM/AAPL/ABOUT AAPL/AAPL/About AAPL/About AAPL.aspx?hkey=04c0535f- d6bd-4e38-a29f-39f11a4764c8 (last visited Jul. 5, 2011). [↑](#footnote-ref-14)
14. 14 Id. [↑](#footnote-ref-15)
15. 15 Id. [↑](#footnote-ref-16)
16. 16 Id. [↑](#footnote-ref-17)
17. 17 See infra Section II(C). A company landman might be called a "landman," "in-house landman," "land manager," or "land advisor," to name a few. [↑](#footnote-ref-18)
18. 18 See infra Section II(C). [↑](#footnote-ref-19)
19. 19 The process described above is based on the Author's personal experience. [↑](#footnote-ref-20)
20. 20 See Shade, supra note 4, at 1015; Moses, supra note 12, at 38; cf. Curtis J. Berger, Land Ownership and Use 1137 (3rd ed. 1983) (describing the three major forms of title search and examination) (emphasis added). [↑](#footnote-ref-21)
21. 21 Shade, supra note 4, at 1010. [↑](#footnote-ref-22)
22. 22 See Rocky Mountain Mineral Law Foundation, supra note 8, at 114-18; Mossberg, supra note 8, at § 4.04; cf. Berger, supra, note 20, at 1147 (describing a professional abstractor, working in a real estate transaction, as one "who prepares written summaries of the titles to individual land parcels as disclosed by the public records"). [↑](#footnote-ref-23)
23. 23 See generally Rooms With a View, Inc. v. Private Nat'l Mortg. Ass'n, Inc., 7 S.W.3d 840, 844-47 (Tex. App. - Austin 1999, pet. denied) (discussing the differences between abstract companies and title companies); Tamburine v. Center Sav. Ass'n, 583 S.W.2d 942, 946-47 (Tex. Civ. App. - Tyler 1979, writ ref'd n.r.e.) (discussing the use of abstract companies in real estate transactions); Nicholson v. Lieber, 153 S.W. 641, 644 (Tex. Civ. App. - San Antonio 1913), modified by 206. S.W. 512 (Tex. 1918) (discussing the use of an abstract in a contract to sell real estate). [↑](#footnote-ref-24)
24. 24 See Rooms With a View, Inc., 7 S.W.3d at 846. [↑](#footnote-ref-25)
25. 25 See Shade, supra note 4, at 1021-23; Rocky Mountain Mineral Law Foundation, supra note 8, at 115; Mossberg, supra note 8, at § 4.04. [↑](#footnote-ref-26)
26. 26 The specific difference between an "abstract" and a "runsheet" sheds light on this proposition. Simply put, an abstract is compiled by a function of broader scope than a runsheet. On the one hand, "an abstract of title is defined to be 'a memorandum of concise statement of the conveyances and encumbrances which appear on the public records affecting the title to real property.'" Nicholson, 153 S.W. at 644 (emphasis added); see also Rocky Mountain Mineral Law Foundation, supra note 8, at 115 (defining an abstract as containing instruments that merely "affect or pertain to the title") (emphasis added); Mossberg, supra note 8, at § 4.04 (describing an abstract of title as a collection of verbatim copies of documents that "relate to a particular tract of land") (emphasis added); Shade, supra note 4, at 1019 (citing information in section 4.04 of Mosberg, supra note 8); Moses, supra note 12, at 38 (describing an abstract office to have "complete indices covering every instrument affecting title") (emphasis added). On the other hand, a runsheet is a compilation of "the instruments in a chain of title." Shade, supra note 4, at 1015. Therefore, if an instrument "affects title" but is outside the "chain of title," then it could be included in the abstract but probably not in the runsheet. Accordingly, a runsheet could always be considered an abstract because instruments in the chain of title always "affect" or "pertain to" title. But an abstract cannot always be considered a runsheet because instruments "affecting title" might be outside the "chain of title." Logical reasoning, therefore, follows that a landman may be considered an abstractor, but an abstractor is not necessarily considered a landman. [↑](#footnote-ref-27)
27. 27 See generally Rooms With a View, Inc., 7 S.W.3d at 845-47 (distinguishing between title companies, title insurance companies, and abstract companies). [↑](#footnote-ref-28)
28. 28 See Beecham, supra note 6, at 5. [↑](#footnote-ref-29)
29. 29 See Shade, supra note 4, at 1031-32. [↑](#footnote-ref-30)
30. 30 See Shade, supra note 6, at 74; Beecham, supra note 6, at 6-7. [↑](#footnote-ref-31)
31. 31 See Shade, supra note 6, at 74. [↑](#footnote-ref-32)
32. 32 Moses, supra note 12, at 1030, 1032. [↑](#footnote-ref-33)
33. 33 See Shade, supra note 6, at 74. [↑](#footnote-ref-34)
34. 34 Tex. Prop. Code Ann. T. 2, app., Title Examination Standards § 1.20 cmt. (West 2011). [↑](#footnote-ref-35)
35. 35 Id. [↑](#footnote-ref-36)
36. 36 Shade, supra note 4, at 1021 n.47. [↑](#footnote-ref-37)
37. 37 Moses, supra note 12, at 37. [↑](#footnote-ref-38)
38. 38 See also Beecham, supra note 6, at 5 (discussing the purpose of title opinions). A land manager will order a stand-up opinion when time is of the essence: the land manager cannot wait on a landman to complete a runsheet for the examining attorney. See id. at 5. Other times, the land manager will order a stand-up opinion for economic reasons: many ***oil*** and gas title attorneys performed land work before practicing law so those attorneys know their way around a courthouse. Therefore, combining the title search and examination into one service can sometimes reduce the expense for title opinions. [↑](#footnote-ref-39)
39. 39 See generally, Jesse Dukeminier, et al., Property 560-62 (6th ed. 2006) (describing, in general, the processes for investigating title in a land transaction). [↑](#footnote-ref-40)
40. 40 Many landmen research titles in the courthouse side-by-side with attorneys - all of them searching the indexes to find the chain of title for their subject land. [↑](#footnote-ref-41)
41. 41 See Shade, supra note 4, at 1021. [↑](#footnote-ref-42)
42. 42 But see infra Section II(A) (discussing a real estate abstractor's liability). [↑](#footnote-ref-43)
43. 43 But see Shade, supra note 4, at 1021 (stating that "the examining attorney does not need to know the precise details of how to compile abstracts"). [↑](#footnote-ref-44)
44. 44 See id. at 1015-16, 1018-19. [↑](#footnote-ref-45)
45. 45 See id. at 1053-55. [↑](#footnote-ref-46)
46. 46 See id. at 1055; Beecham, supra note 6, at 5. [↑](#footnote-ref-47)
47. 47 See infra Section II(A). [↑](#footnote-ref-48)
48. 48 See Shade, supra note 4, at 1015. [↑](#footnote-ref-49)
49. 49 See id. [↑](#footnote-ref-50)
50. 50 See id. [↑](#footnote-ref-51)
51. 51 See infra Section III(C). [↑](#footnote-ref-52)
52. 52 This Section is not intended to be a treatise on these subjects nor a select review of the cases on these subjects. Rather, it briefly addresses these subjects to support propositions articulated in this Article. For a broad overview of the general common law governing abstractors and abstracts of title in various jurisdictions, see 1 Am. Jur. 2d Abstracts of Title§§1-40 (2005). [↑](#footnote-ref-53)
53. 53 See Breen v. Morehead, 136 S.W. 1047, 1049 (Tex. 1911) (discussing "ordinary care"). [↑](#footnote-ref-54)
54. 54 Chi., R.I. & G. Ry. Co. v. Duncan, 273 S.W. 908, 910 (Tex. Civ. App. - Dallas 1925, writ ref'd). [↑](#footnote-ref-55)
55. 55 See Guar. Abstract Co. v. Denman, 209 S.W.2d 213, 214-16 (Tex. Civ. App. - Texarkana 1948, writ ref'd) (defendant abstractor had a duty to make a diligent search and, therefore, was found liable, under contract, to the land purchaser - the person who hired him - when the abstractor omitted an instrument in the abstract). [↑](#footnote-ref-56)
56. 56 See Decatur Land, Loan & Abstract Co. v. Rutland, 185 S.W. 1064, 1066-67 (Tex. Civ. App. - Texarkana 1916, no pet.). [↑](#footnote-ref-57)
57. 57 See Duncan, 273 S.W. at 910. Although both causes of action are available, the plaintiff may recover from only one of them. See id. [↑](#footnote-ref-58)
58. 58 Id. [↑](#footnote-ref-59)
59. 59 Id. at 909. [↑](#footnote-ref-60)
60. 60 Id. [↑](#footnote-ref-61)
61. 61 Id. [↑](#footnote-ref-62)
62. 62 Id. at 910. The plaintiff in Duncan could not sue under breach of contract because the two-year limitations period had passed. Id. at 909-10. Instead, the plaintiff sued under a tort claim of fraud, which had a four-year limitations period. Id. The court clarified that the plaintiff could recover damages under only one of the two causes of action. Id. at 910. [↑](#footnote-ref-63)
63. 63 Id. at 910-11. The author of a law journal article on title insurance companies proposed that "neither abstractor nor attorney is liable for failing to find an instrument outside the chain of title being searched." Joyce D. Palomar, Bank Control of Title Insurance Companies: Perils to the Public that Bank Regulators Have Ignored, 44 Sw. L.J. 905, 928 (1990). [↑](#footnote-ref-64)
64. 64 See Duncan, 273 S.W. at 911. [↑](#footnote-ref-65)
65. 65 Id. [↑](#footnote-ref-66)
66. 66 See Shade, supra note 4, at 1019; Shade, supra note 6, at 73-74; Beecham, supra note 6, at 5-7. [↑](#footnote-ref-67)
67. 67 See Duncan, 273 S.W. at 909-11; see also Guar. Abstract Co. v. Denman, 209 S.W.2d 213, 214-16 (Tex. Civ. App. - Texarkana 1948, writ ref'd) (land purchaser relied upon abstractors "certified" abstract and was injured as a result of abstractor's omission of an instrument in the abstract); Decatur Land, Loan & Abstract Co. v. Rutland, 185 S.W. 1064, 1066 (Tex. Civ. App. - Texarkana 1916, no pet.) (abstractor "reaffirmed and recertified" an abstract to the seller where the abstract was originally certified to the purchaser, and seller was injured as a result of the abstract's omission of an instrument). [↑](#footnote-ref-68)
68. 68 See Shade, supra note 4, at 1054; Shade, supra note 6, at 74. [↑](#footnote-ref-69)
69. 69 See supra Section II(B). [↑](#footnote-ref-70)
70. 70 See id. [↑](#footnote-ref-71)
71. 71 This sentence is the Author's opinion, in which the quoted words were borrowed from Duncan. Duncan, 273 S.W. at 910; see also 1 Am. Jur. 2d Abstracts of Title § 10 (2005) (describing that an abstractor "impliedly represents that he has the requisite degree of skill to perform the duties required of an abstractor"). [↑](#footnote-ref-72)
72. 72 First S. Props., Inc. v. Vallone, 533 S.W.2d 339, 340 (Tex. 1976). [↑](#footnote-ref-73)
73. 73 See generally Tex. Prob. Code Ann. § 4C (West 2010) (providing that a statutory probate court, county court at law, or county court could have original jurisdiction in a probate proceeding, in certain circumstances); id. § 4D (providing that a district court could have jurisdiction in a contested probate proceeding, in certain circumstances); Tex. Prop. Code Ann. § 21.001 (West 2010) ("District courts and county courts at law have concurrent jurisdiction in eminent domain cases."). [↑](#footnote-ref-74)
74. 74 See, e.g., Lesley v. City of Rule, 255 S.W. 312, 314 (Tex. Civ. App - Eastland 1953, no writ) (holding that a city ordinance, recorded in the minutes of the city council, that opened an alleyway is not in the purchaser's chain of title for the land upon which the alley exists). "In the absence of some fact which would put [a purchaser] on inquiry, he had no duty to inspect the records of the city." Id. [↑](#footnote-ref-75)
75. 75 See Hahn v. Love, 321 S.W.3d 517, 532 (Tex. App. - Houston [1st Dist.] 2009, no pet.). [↑](#footnote-ref-76)
76. 76 Havis v. Thorne Inv. Co., 46 S.W.2d 329, 332 (Tex. Civ. App. - Amarillo 1932, no writ). [↑](#footnote-ref-77)
77. 77 See Vallone, 533 S.W.2d at 340-44. [↑](#footnote-ref-78)
78. 78 Texas Rules of Civil Procedure provide the rules regarding the use of abstracts of title in suits for trespass to try title. Tex. R. Civ. P. 791-94. [↑](#footnote-ref-79)
79. 79 Certain "limitations" to which a title searcher must search records for a chain of title are found in several cases, three of which are discussed in Section III(B), infra. The implications of how these limitations affect a title search could be construed to indicate a particular process for a title search. See infra Section III(B). [↑](#footnote-ref-80)
80. 80 See Dukeminier, et al., supra note 39, at 561-65. [↑](#footnote-ref-81)
81. 81 Apparently, the "title search" process in Texas is a practice that is passed down from an experienced landman to a novice landman. [↑](#footnote-ref-82)
82. 82 See Vallone, 533 S.W.2d at 340; Dukeminier, et al., supra note 39, at 561-65 (describing how to search title in the grantor-grantee index); Shade, supra note 4, at 1021 (describing the procedure for a title search of the indexes); John G. Sprankling, Understanding Property Law 398-400 (2d ed. 2007) (instructing on the specific process for researching the grantor-grantee index). In the United States, two types of indexes are used: (1) the tract index; and (2) the grantor-grantee index. See Dukeminier, et al., supra note 39, at 561. Texas uses the latter. See Vallone, 533 S.W.2d at 340. Therefore, only the grantor-grantee index is analyzed here because the Article focuses on the search in a Texas title examination. Further, this Section is not intended to cover every scenario one might encounter in researching title. Rather, the rules are analyzed under basic fact patterns to merely illustrate the concepts. [↑](#footnote-ref-83)
83. 83 In Texas, the county clerk is charged with maintaining a cross-index for the real property records affecting title to lands in the county. See Tex. Loc. Gov't Code Ann. § 193.002 (West 2010); see generally Murphy v. Cadle Co., 257 S.W.3d 291, 298-99 (Tex. App. - Dallas 2008, pet. denied) (determining whether the county clerk properly indexed an abstract of judgment in the property records). [↑](#footnote-ref-84)
84. 84 See Dukeminier, et al., supra note 39, at 561. [↑](#footnote-ref-85)
85. 85 Id. [↑](#footnote-ref-86)
86. 86 See Dukeminier, et al., supra note 39, at 561-62; Sprankling, supra note 83, at 398; see also Shade, supra note 6, at 73-74 (describing how a landman traces title backwards using the grantee index and traces title forwards using the grantor index). [↑](#footnote-ref-87)
87. 87 See Dukeminier, et al., supra note 39, at 562-63. [↑](#footnote-ref-88)
88. 88 See Sprankling, supra note 82, at 398. [↑](#footnote-ref-89)
89. 89 The mineral owner generally has the "executive right," which gives that person the right to execute an ***oil*** and gas lease. See Day v. Texland Petroleum, 786 S.W.2d 667, 668-69 (Tex. 1990). [↑](#footnote-ref-90)
90. 90 In Texas, the fee owner may sever the mineral estate from the surface estate, therefore leaving two or more separate owners for the property. See Pounds v. Jurgens, 296 S.W.3d 100, 107 (Tex. App. - Houston [14th Dist.] 2009, no pet.); In re Estate of Slaughter, 305 S.W.3d 804, 808 (Tex. App. - Texarkana 2009, no pet.). Thus, a mineral severance could occur decades prior to the time a title search begins. A landman cannot find the mineral owner of a tract of land merely by searching a list of current mineral owners in each county because no such mineral-ownership list exists in county records. [↑](#footnote-ref-91)
91. 91 Not only must a purchaser of land search the records, but "he must also make inquiry to the rights and title of the possessor, for possession is equivalent to registration, in that it gives constructive notice of the possessor's rights." Hoover v. Redwine 363, S.W.2d 485, 489 (Tex. Civ. App. - Fort Worth 1962, no writ). [↑](#footnote-ref-92)
92. 92 For simplicity, any reference to an "index" should be read as if the index is a bounded book, as opposed to an electronic index that can be searched by computer. The concepts in this Article do not account for any issues related to computer index searches. [↑](#footnote-ref-93)
93. 93 Dukeminier, et al., supra note 39, at 562. [↑](#footnote-ref-94)
94. 94 See Sprankling, supra note 82, at 398. [↑](#footnote-ref-95)
95. 95 In the context of a landman's title search, the landman typically searches back to the sovereignty of Texas, where he will find a patent (a instrument conveying title) from the Governor of Texas to another person or entity. Many patents were conveyed in the mid-to-late 1800's after Texas became a state. See, e.g., Breen v. Morehead, 136 S.W. 1047, 1047 (Tex. 1911) (subject land patented in 1890). Thus, in ***oil*** and gas circles, the term "patent-to-present title search" is often used. This patent-to-present search can also be laborious and difficult - searching through indexes representing over 150 years of property records. [↑](#footnote-ref-96)
96. 96 One might argue that the case of Breen v. Morehead, implies that a purchaser need not continue searching the grantee index back in time once a conveyance is found into the purchaser. See Breen, 136 S.W. at 1048-49. [↑](#footnote-ref-97)
97. 97 A discussion of Breen is more appropriate to explain the extent of a search in the grantor index, although the case is somewhat instructive for a grantee search. See infra Section III(B)(2)(c). [↑](#footnote-ref-98)
98. 98 See infra Section III(B)(2). [↑](#footnote-ref-99)
99. 99 Dukeminier, et al., supra note 39, at 562. [↑](#footnote-ref-100)
100. 100 If the grantor conveys less than what he owns, the chain is therefore splintered (or forked), and the title searcher must run each person owning an interest in the property through the grantor index. Each interest owner has his own "fork" within the chain of title under that land. [↑](#footnote-ref-101)
101. 101 See Sprankling, supra note 82, at 400. [↑](#footnote-ref-102)
102. 102 If an instrument is recorded well after its effective date, the title searcher must go back to the year in which the instrument was effective to begin searching the next link in the chain. Once a purchaser acquires property (on the effective date of the instrument), he may subsequently convey that property before he records that instrument from which he took title. For example, if R conveys Whiteacre to S in 1900 but S does not record until 1905, S may, nevertheless, convey Whiteacre any time after he receives it in 1900. Therefore, the title searcher will find the R-to-S conveyance in 1905 as he moves forward through the grantor index; however, he must go back to the grantor index for 1900 (the effective date of the conveyance) not the index for 1905 (the recording date) in his continued search for the next link in the chain of title. [↑](#footnote-ref-103)
103. 103 A mineral deed severs the mineral estate from surface estate (a horizontal severance) and creates separate ownership interests. See Pounds v. Jurgens, 296 S.W.3d 100, 107 (Tex. App. - Houston [14th Dist.] 2009, no pet.); In re Estate of Slaughter, 305 S.W.3d 804, 808 (Tex. App. - Texarkana 2009, no pet.). [↑](#footnote-ref-104)
104. 104 In this case, the chain of title for Blackacre is splintered into two estates: (1) a one-half mineral estate in favor of Jones; and (2) all the surface estate and the remaining one-half mineral estate in favor of Clark. See supra note 99 and accompanying text. [↑](#footnote-ref-105)
105. 105 See In re Estate of Slaughter, 305 S.W.3d at 808-09 ("A conveyance of land without reservations would include all minerals and mineral rights."). [↑](#footnote-ref-106)
106. 106 Cribbet et al., Property: Cases and Materials 1182 (9th ed. 2008). [↑](#footnote-ref-107)
107. 107 Id. [↑](#footnote-ref-108)
108. 108 White v. McGregor, 50 S.W. 564 (Tex. 1899); see also Swanson v. Grassedonio, 647 S.W.2d 716 (Tex. App. - Corpus Christi 1982, no writ) (citing White's holding that a purchaser is not bound to look beyond a subsequent deed from his purchaser). [↑](#footnote-ref-109)
109. 109 Breen v. Morehead, 136 S.W. 1047 (Tex. 1911). [↑](#footnote-ref-110)
110. 110 See White, 50 S.W. at 564. [↑](#footnote-ref-111)
111. 111 See id. [↑](#footnote-ref-112)
112. 112 See id. [↑](#footnote-ref-113)
113. 113 See id. [↑](#footnote-ref-114)
114. 114 Id. at 565 (quoting Holmes v. Buckner, 2 S.W. 452 (Tex. 1886)). [↑](#footnote-ref-115)
115. 115 See id. [↑](#footnote-ref-116)
116. 116 Id. [↑](#footnote-ref-117)
117. 117 Id. [↑](#footnote-ref-118)
118. 118 Id. [↑](#footnote-ref-119)
119. 119 See Hous. ***Oil*** Co. of Tex v. Kimball, 122 S.W. 533 (Tex. 1909) ("[A] purchaser is required to look only for conveyances made prior to his purchase by his immediate vendor, or by any remote vendor through whom he derives title."). [↑](#footnote-ref-120)
120. 120 See White, 50 S.W. at 566. [↑](#footnote-ref-121)
121. 121 A lessee is a "purchaser" of property because he is purchasing an ***oil*** and gas lease, which is a fee simple determinable transaction. See Natural Gas Pipeline Co. of Am. v. Poole, 124 S.W.3d 188, 192 (Tex. 2003). Therefore, the lessee purchases the mineral estate for a period of time, which could be indefinite, while the lessor has a possibility of reverter. See id. [↑](#footnote-ref-122)
122. 122 Breen v. Morehead, 136 S.W. 1047, 1047 (Tex. 1911). [↑](#footnote-ref-123)
123. 123 Id. [↑](#footnote-ref-124)
124. 124 Id. [↑](#footnote-ref-125)
125. 125 Id. [↑](#footnote-ref-126)
126. 126 Id. [↑](#footnote-ref-127)
127. 127 Id. [↑](#footnote-ref-128)
128. 128 Id. at 1047-48. [↑](#footnote-ref-129)
129. 129 Id. at 1048. [↑](#footnote-ref-130)
130. 130 Id. [↑](#footnote-ref-131)
131. 131 Id. [↑](#footnote-ref-132)
132. 132 Id. at 1048-49. [↑](#footnote-ref-133)
133. 133 See id. [↑](#footnote-ref-134)
134. 134 Id. at 1049. [↑](#footnote-ref-135)
135. 135 Id. [↑](#footnote-ref-136)
136. 136 Leonard v. Benfford Lumber Company, 216 S.W. 382, 383 (Tex. 1919) (explaining the holding in Breen, 136 S.W. at 1048-49). [↑](#footnote-ref-137)
137. 137 Westland ***Oil*** Dev. Corp. v. Gulf ***Oil*** Corp., 637 S.W.2d 903, 908 (Tex. 1982). [↑](#footnote-ref-138)
138. 138 Id. at 904. [↑](#footnote-ref-139)
139. 139 Id. [↑](#footnote-ref-140)
140. 140 Id. at 905-06. [↑](#footnote-ref-141)
141. 141 Id. at 906. [↑](#footnote-ref-142)
142. 142 Id. at 908. [↑](#footnote-ref-143)
143. 143 Id. [↑](#footnote-ref-144)
144. 144 See First S. Props., Inc. v. Vallone, 533 S.W.2d 339, 340 (Tex. 1976) (describing the various records that must be searched in a title search, e.g., grantor-grantee indexes, deed of trust records, and lis pendens records, to name a few). [↑](#footnote-ref-145)
145. 145 An instrument that is not recorded lies outside the chain of title. See Sprankling, supra note 82, at 403. Further, an instrument recorded outside the chain of title may be deemed "unrecorded." Id. [↑](#footnote-ref-146)
146. 146 See Nguyen v. Chapa, 305 S.W.3d 316, 324-25 (Tex. App. - Houston [14th Dist.] 2009, pet. denied) ("A person may be charged with the duty to make a reasonable diligent inquiry using the facts at hand in the recorded deed."). [↑](#footnote-ref-147)
147. 147 The terms "recording statute" and "recording act" are synonymous. [↑](#footnote-ref-148)
148. 148 Dukeminier, et al., Property 661 (Aspen 5th ed. 2002). [↑](#footnote-ref-149)
149. 149 See Tex. Prop. Code Ann.§§11.001-13.005 (West 2005 & Supp. 2010). [↑](#footnote-ref-150)
150. 150 See Id. § 13.001. [↑](#footnote-ref-151)
151. 151 See Dukeminier, et al., supra note 148, at 687. The other recording acts used in this country are called race statutes and race-notice statutes. For an explanation of all the recording statutes and their differences, see id. at 685-95; Sprankling, supra note 82, at 377-91. [↑](#footnote-ref-152)
152. 152 See Dukeminier, et al., supra note 148, at 685-87. [↑](#footnote-ref-153)
153. 153 Tex. Prop. Code Ann. § 13.001(a). [↑](#footnote-ref-154)
154. 154 Id. § 13.001(b). [↑](#footnote-ref-155)
155. 155 Nguyen v. Chapa, 305 S.W.3d 316, 323 (Tex. App. - Houston [14th Dist.] 2009, pet. denied) (emphasis added). [↑](#footnote-ref-156)
156. 156 See Madison v. Gordon, 39 S.W.3d 604, 606 (Tex 2001). [↑](#footnote-ref-157)
157. 157 Madison, 39 S.W.3d at 606. [↑](#footnote-ref-158)
158. 158 Id.; Nguyen, 305 S.W.3d at 323. [↑](#footnote-ref-159)
159. 159 Madison, 39 S.W.3d at 606; Nguyen, 305 S.W.3d at 324. [↑](#footnote-ref-160)
160. 160 See Sw. Title Ins. Co. v. Woods, 449 S.W.2d 773, 774 (Tex. 1970). [↑](#footnote-ref-161)
161. 161 See id. [↑](#footnote-ref-162)
162. 162 See Sprankling, supra note 82, at 403. [↑](#footnote-ref-163)
163. 163 See Hous. ***Oil*** Co. of Tex. v. Kimball, 122 S.W. 533, 540 (Tex. 1909). [↑](#footnote-ref-164)
164. 164 See Nguyen, 305 S.W.3d at 323; see also Hooks v. Neill, 21 S.W.2d 532, 540 (Tex. Civ. App. - Galveston 1929, writ ref'd) (a case similar to Nguyen, in which section 13.001's predecessor recording statute - article 6627, Revised Statutes - was applied). [↑](#footnote-ref-165)
165. 165 See Nguyen, 305 S.W.3d at 318. [↑](#footnote-ref-166)
166. 166 See id. [↑](#footnote-ref-167)
167. 167 See id. [↑](#footnote-ref-168)
168. 168 See id. [↑](#footnote-ref-169)
169. 169 See id. at 324-26. [↑](#footnote-ref-170)
170. 170 See id. [↑](#footnote-ref-171)
171. 171 See id. at 324. [↑](#footnote-ref-172)
172. 172 See id. at 325-26. [↑](#footnote-ref-173)
173. 173 See Hous. ***Oil*** Co. of Tex. v. Kimball, 122 S.W. 533 (Tex. 1909). [↑](#footnote-ref-174)
174. 174 Id. at 535-36. [↑](#footnote-ref-175)
175. 175 Id. at 535. [↑](#footnote-ref-176)
176. 176 Id. at 536 (emphasis added). [↑](#footnote-ref-177)
177. 177 Id. at 540. [↑](#footnote-ref-178)
178. 178 Id. [↑](#footnote-ref-179)
179. 179 Id. (citing White v. McGregor, 50 S.W. 564 (Tex. 1899)). [↑](#footnote-ref-180)
180. 180 See id. [↑](#footnote-ref-181)
181. 181 See id. [↑](#footnote-ref-182)
182. 182 See id. [↑](#footnote-ref-183)
183. 183 See id. [↑](#footnote-ref-184)
184. 184 A lessee is a "purchaser" of property because he is purchasing an ***oil*** and gas lease, which is a fee simple determinable transaction. See Natural Gas Pipeline Co. of Am. v. Pool, 124 S.W.3d 188, 192 (Tex. 2003). Therefore, an operator that buys an ***oil*** and gas lease is considered a "purchaser" under the Recording Statute and any case law interpreting it. [↑](#footnote-ref-185)
185. 185 See Carter v. Converse, 550 S.W.2d 322, 329 (Tex. Civ. App - Tyler 1977, writ ref'd n.r.e.) (stating that any actual knowledge held by purchaser's attorney is chargeable to purchaser under an agency theory). [↑](#footnote-ref-186)
186. 186 See Wellington ***Oil*** Co. of Del v. Maffi, 150 S.W.2d 60, 63 (Tex. 1941). [↑](#footnote-ref-187)
187. 187 See id.; Hexter v. Pratt, 10 S.W.2d 692, 694 (Tex. Comm'n App. 1928, judgm't adopted); Tex. Loan Agency v. Taylor, 29 S.W. 1057, 1058 (Tex. 1895). [↑](#footnote-ref-188)
188. 188 See Swanson v. Grassedonio, 647 S.W.2d 716, 719 (Tex. App. - Corpus Christi 1982, no writ) ("The question of actual knowledge is one of fact … and the existence, vel non, of that question is for the trier of facts."). [↑](#footnote-ref-189)
189. 189 See id. [↑](#footnote-ref-190)
190. 190 See Thomas W. Merrell & Henry E. Smith, Property: Principles & Policies 923 (Clark et al. eds., Foundation Press 2007); Dukeminier, et al., supra note 39, at 581 n.9. [↑](#footnote-ref-191)
191. 191 Dukeminier et al., supra note 39, at 581 n.9. [↑](#footnote-ref-192)
192. 192 See Lewis v. Johnson, 4 S.W. 644, 645 (Tex. 1887); Kinard v. Sims, 53 S.W.2d 803, 806 (Tex. Civ. App. - Amarillo, 1932, writ ref'd); Omohundro v. Jackson, 36 S.W.3d 677, 682 (Tex. App. - El Paso 2001, no pet.). [↑](#footnote-ref-193)
193. 193 The Author's research resulted in no Texas cases that called this rule the "shelter rule"; however, a bankruptcy court interpreting Texas law referred to this rule as the "so-called shelter rule." In re Jay, 307 B.R. 864, 868 (Bankr. N.D. Tex. 2004). [↑](#footnote-ref-194)
194. 194 See Kinard, 53 S.W.2d at 806. [↑](#footnote-ref-195)
195. 195 Bryant, 2 S.W. at 455. [↑](#footnote-ref-196)
196. 196 See Kinard, 53 S.W.2d at 806; Omohundro, 36 S.W.3d at 682. [↑](#footnote-ref-197)
197. 197 See Walling v. Rose, 2 S.W.2d 352, 355-56 (Tex. Civ. App. - Eastland 1928, no writ). [↑](#footnote-ref-198)
198. 198 Id. (emphasis added). [↑](#footnote-ref-199)
199. 199 See Merrell & Smith, supra note 191, at 923. [↑](#footnote-ref-200)
200. 200 Dukeminier et al., supra note 39, at 581 n.9. [↑](#footnote-ref-201)
201. 201 This practice is not necessarily required. See Joe T. Garcia's Entm't, Inc. v. Snadon, 751 S.W.2d 914, 916-17 (Tex. App. - Dallas 1988, writ denied). The Snadon court determined that a correction deed does not place constructive notice on a purchaser if the original deed was "a perfect conveyance of title" - regular on its face and conveyed the grantor's rights in toto. Id. at 916-17. Any such correction deed subsequently filed is outside the chain of title. Id. at 917. Therefore, it follows that a title searcher need not continue searching the grantor index if the deed conveys all of grantor's interest and appears perfect on its face. Conversely stated, if a deed does not convey all of grantor's interests or the deed appears imperfect on its face, the title searcher should continue searching the grantor index. [↑](#footnote-ref-202)
202. 202 Actual notice cannot be "imputed" to a purchaser like constructive notice. See Swanson v. Grassedonio, 647 S.W.2d 716, 719 (Tex. App. - Corpus Christi 1982, no writ) ("The question of actual knowledge is one of fact … and the existence, vel non, of that question is for the trier of facts."). [↑](#footnote-ref-203)
203. 203 The following rule comes from the race-notice jurisdiction of Utah:

     Each document not recorded as provided in this title is void as against any subsequent purchaser of the same real property, or any portion of it, if:

     (1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and

     (2) the subsequent purchaser's document is first duly recorded.

     Utah Code Ann. § 57-3-103 (LexisNexis 2010) (emphasis added). [↑](#footnote-ref-204)
204. 204 Cf. Paul J. Yale, To Waive or Not to Waive? Analyzing ***Oil*** and Gas Title Opinion Requirements, Landman, Nov. / Dec. 2009, at 23, 25 (stating that in the Barnett Shale play, operators are more commonly instructing title examiners to limit their review of documents found from a certain point in time forward). [↑](#footnote-ref-205)
205. 205 Tex. R. Civ. P. 783-809. [↑](#footnote-ref-206)
206. 206 See Tex. R. Civ. P. 791. [↑](#footnote-ref-207)
207. 207 See Tex. R. Civ. P. 793. [↑](#footnote-ref-208)
208. 208 See Tex. R. Civ. P. 783-809. [↑](#footnote-ref-209)
209. 209 For example, if a title searcher searches the records of a title company in addition to the county's real property records, which was done in First Southern Properties, Inc. v. Vallone, 533 S.W.2d 339, 340 (Tex. 1976), the title searcher could possibly find instruments outside the chain of title. The title company records may contain references to instruments that a title searcher would not find if he strictly followed the rules in White and Breen. [↑](#footnote-ref-210)
210. 210 David E. Pierce, Defining The Role Of Industry Custom And Usage In ***Oil*** & Gas Litigation, 57 SMU L. Rev. 387, 389 (2004). [↑](#footnote-ref-211)
211. 211 Id. [↑](#footnote-ref-212)
212. 212 In modern times, the term "usage" is used instead of the terms "custom" and "usage and custom." Id. at 389-90. [↑](#footnote-ref-213)
213. 213 See id. at 393-94. [↑](#footnote-ref-214)
214. 214 Energen Res. v. Dalbosco, 23 S.W.3d 551, 553-56 (Tex. App - Houston [1st Dist.] 2000, no pet.). [↑](#footnote-ref-215)
215. 215 Id. at 554. See generally Restatement (Second) of Contracts§§219-221 (1981) (defining "usage" and how it is used); id. § 222 (defining "trade usage" and the existence and scope of which is to be determined as a question of fact); Tex. Bus. & Comm. Code Ann. § 1.303(c) (West 2009) ("the existence and scope of such a usage must be proved as facts"). "Usage of trade" is a determined as a matter of law only where the usage is part of "trade code or similar record." Restatement (Second) of Contracts § 222(2); Tex. Bus. & Comm. Code Ann. § 1.303(c). [↑](#footnote-ref-216)
216. 216 Pierce, supra note 210, at 451-52. [↑](#footnote-ref-217)
217. 217 See id. at 452. Apparently, some courts have "perhaps inadvertently, elevated a usage to 'law' status." Id. [↑](#footnote-ref-218)
218. 218 See id. Because "usage" may be used to resolve issues in tort, a particular "usage" may be used to identify a standard of care in a negligence suit as between the parties. See supra text accompanying note 196. [↑](#footnote-ref-219)
219. 219 See infra text accompanying note 73. The court in Vallone described the places to conduct a title search in a real estate transaction, which can be different from a title search in a mineral transaction, such as purchasing an ***oil*** and gas lease. Thus, Vallone is not comprehensively instructive for the proposed standard of a mineral title search. [↑](#footnote-ref-220)
220. 220 Although this scenario would be a rare occurrence, it is possible if a search in the abstract company records was required. For example, an abstract company may provide instruments outside the chain of title in the records for a particular property. Those particular instruments likely would not have been found under a search in the county records, completed under the scope set out in Breen and White. [↑](#footnote-ref-221)
221. 221 Regarding a purchaser's diligence in acquiring property, "there is no uniform standard of diligence in checking title beyond the usual record title search. Beyond [that], purchasers must use that diligence which fits the situation." Carter v. Converse, 550 S.W.2d 322, 330 (Tex. Civ. App - Tyler 1977, no writ). [↑](#footnote-ref-222)
222. 222 According to Baker Hughes, the rig count in Texas for onshore exploration has increased from 388 rigs to 787 rigs from April 2009 to April 2011. See Baker Hughes Investor Relations: Overview and FAQs, Baker Hughes, http://investor. shareholder.com/bhi/rig counts/rc index.cfm. [↑](#footnote-ref-223)
223. 223 The legal principles discussed in this Section may apply to several types of strips of land. Because this Article focuses on the title search for roadways, this Section discusses these principles only in the context of roadway ownership. [↑](#footnote-ref-224)
224. 224 See Bredthauer & Rinehart, supra note 3, at 3. An operator must lease the land making up the road anytime it intends to produce the minerals under the road, whether the operator use horizontal or vertically drilling methods. [↑](#footnote-ref-225)
225. 225 See id. at 3-7, 14. [↑](#footnote-ref-226)
226. 226 See Bredthauer & Rinehart, supra note 3. [↑](#footnote-ref-227)
227. 227 Id. at 4. [↑](#footnote-ref-228)
228. 228 See id. at 4-7. [↑](#footnote-ref-229)
229. 229 See id. Recorded easements and dedications may be found in the county's real property records. Although condemnation records are also sometimes found in the real property records, the underlying eminent domain lawsuit for the condemnation can be found in the court's records. [↑](#footnote-ref-230)
230. 230 See id. at 8-13. [↑](#footnote-ref-231)
231. 231 See id. at 5. A landman might find evidence for an implied easement in a lawsuit found in court records or maybe even an affidavit, describing the implied easement, found in county real property records. [↑](#footnote-ref-232)
232. 232 Generally, a landman will research surface title along with mineral title. In some cases, the landman will focus only on the mineral title, such as if he is directed to do so by the land manager. In those cases, a land manager may not be concerned with surface owners or those who own an implied easement because the operator does not intend to use a particular tract's surface to develop the minerals. [↑](#footnote-ref-233)
233. 233 Mitchell v. Bass, 26 Tex. 372, 380 (1862). [↑](#footnote-ref-234)
234. 234 Id. [↑](#footnote-ref-235)
235. 235 See Tex. Bitulithic Co. v. Warwick, 293 S.W. 160, 162 (Tex. Comm'n App. 1927, judgm't adopted); Bredthauer & Rinehart, supra note 3, at 8. [↑](#footnote-ref-236)
236. 236 See Escondido Servs., LLC v. VKM Holdings, LP, 321 S.W.3d 102, 106 (Tex. App. - Eastland 2010, no pet.). [↑](#footnote-ref-237)
237. 237 Id. (citing Angelo v. Biscamp, 441 S.W.2d 524 (Tex. 1969)). [↑](#footnote-ref-238)
238. 238 See id. at 106 (citing Pine v. Gibraltar Sav. Ass'n, 519 S.W.2d 238, 241 (Tex. Civ. App. - Houston [1st Dist.] 1974, writ ref'd n.r.e.). [↑](#footnote-ref-239)
239. 239 See Angelo, 441 S.W.2d at 526. [↑](#footnote-ref-240)
240. 240 See id. (quoting Strayhorn v. Jones, 300 S.W.2d 623, 638 (Tex. 1957)). [↑](#footnote-ref-241)
241. 241 See Bredthauer & Rinehart, supra note 3, at 11. [↑](#footnote-ref-242)
242. 242 Cantley v. Gulf Prod. Co. 143 S.W.2d 912, 915-16 (Tex. 1940). [↑](#footnote-ref-243)
243. 243 See Haby v. Howard, 757 S.W.2d 34, 36 (Tex. App. - San Antonio 1988, writ denied). [↑](#footnote-ref-244)
244. 244 See Cailla Twin Harbor Volunteer Fire Dep't., Inc. v. Plemmons, 998 S.W.2d 413, 417 (Tex. App. - Beaumont 1999, pet. denied). [↑](#footnote-ref-245)
245. 245 See Cox v. Cambell 143 S.W.2d 361, 365 (Tex. 1940). [↑](#footnote-ref-246)
246. 246 See Haines v. McLean, 276 S.W.2d 777, 783 (Tex. 1955). [↑](#footnote-ref-247)
247. 247 See Booth v. McLean, 267 S.W.2d 158, 169 (Tex. Civ. App - Eastland 1954), rev'd on other grounds sub nom. Haines v. McLean, 276 S.W.2d 777 (Tex. 1955). [↑](#footnote-ref-248)
248. 248 See Mitchell v. Bass, 26 Tex. 372, 380 (1862); Bredthauer & Rinehart, supra note 3, at 11. [↑](#footnote-ref-249)
249. 249 State v. Williams, 335 S.W.2d 834, 836 (Tex. 1960). [↑](#footnote-ref-250)
250. 250 See Tex. Bitulithic Co. v. Warwick, 293 S.W. 160, 162 (Tex. Comm'n App. 1927, judgm't adopted). [↑](#footnote-ref-251)
251. 251 See Lewis v. E. Tex. Fin. Co., 146 S.W.2d 977, 980 (Tex. 1941). [↑](#footnote-ref-252)
252. 252 Bredthauer & Rinehart, supra note 3, at 7. [↑](#footnote-ref-253)
253. 253 As discussed infra Section V(B), this second process is broken down into two possible methods. [↑](#footnote-ref-254)
254. 254 See supra Section III(B). [↑](#footnote-ref-255)
255. 255 See supra Section III(B)(2). [↑](#footnote-ref-256)
256. 256 Although counties do not keep specific records identifying record owners of roads, the Texas Department of Transportation ("TxDOT") keeps some records, such as maps, relating to county and state roads. These records are not "title records" though. If TxDOT's records reference title information for road conveyances on the maps, the references may not always be accurate or complete. Further, some cities and counties may have "Road Minutes" where a city council or county commissioner's court records the minutes for the approvals of road creation and maintenance. Again, these records may not contain accurate or complete title information, if any at all. In addition to city council records, a city may keep similar maps as those kept by TxDOT in the city's engineering department. Though these records described above may help a landman find roadway conveyances in the county's real property records, they should not be relied upon to conduct a title search for a roadway. See generally 1 Am. Jur. 2d Abstracts of Title § 11 (2005) ("Statutes do not impose a duty to search city engineering or water department records."). [↑](#footnote-ref-257)
257. 257 Robbins v. Limestone County, 268 S.W. 915, 918 (Tex. 1925). [↑](#footnote-ref-258)
258. 258 Consider the following example when parts of one roadway are owned by different government entities. A city acquires land 40 feet wide for a road by purchasing 20 feet of land from each adjacent landowner on both sides of the road. The city's population grows so much, resulting in increased traffic in and out of the city, that the state is charged with widening the road and maintaining it as a state highway 60 feet wide. The state acquires the widened portion of the road by purchasing land 10 feet wide from each adjacent landowner on both sides of the road. After widening the roadway, the state maintains the entire 60-foot-wide road as a state highway, even though the city never conveyed the inner 40 feet to the state. Therefore, the city might have deeds for the inner 40 feet of the road, and the state might have deeds for the outer 10-foot portions on each side. A similar scenario could occur where a county road is later widened by a city. Should a title searcher begin his search in the grantee index for a road with the state, the county, the city (if applicable), or all three? [↑](#footnote-ref-259)
259. 259 On May 30, 2011, a search of Tarrant County's Official Public Records from the time of January 1, 1970 to May 27, 2011 in the grantee index returned the following results: 4,439 records for "Tarrant County"; 8,429 records for "State Texas"; 21,621 records for "FT W City." [↑](#footnote-ref-260)
260. 260 See supra text accompanying note 261. [↑](#footnote-ref-261)
261. 261 See Breen v. Morehead, 136 S.W. 1047, 1048-49 (Tex. 1911). [↑](#footnote-ref-262)
262. 262 See infra Section IV. [↑](#footnote-ref-263)
263. 263 Breen, 136 S.W. at 1049. [↑](#footnote-ref-264)
264. 264 See infra Section IV. [↑](#footnote-ref-265)
265. 265 Remember, the attorney, not the landman, makes the legal determination whether these particular rules apply. If the title searcher is not an attorney performing a stand-up examination, he should simply conduct his search under the General Rule's "presumption" - by including all relevant instruments in the runsheet - and leaving the analysis of the exceptions to the examining attorney. [↑](#footnote-ref-266)
266. 266 Though the landman is not charged with making the legal determinations as to whether an exception to the General Rule applies, the landman would benefit by understanding the concepts of these exceptions. [↑](#footnote-ref-267)
267. 267 Expressed easements may come in the form of instruments titled as a Right-of-Way, a Right-of-Way Deed, an Easement, a Deed, and a Warranty Deed. These are commonly found instruments; however, other types exist in a county's records. [↑](#footnote-ref-268)
268. 268 Generally, an "outsale" occurs when a person in a chain of title conveys a portion out of the larger parent tract of land that is not ultimately within the boundaries of the subject tract being researched. (The term "parent tract" as used here refers to a larger tract of land found in the chain of title preceding a smaller tract that comes out of the larger tract.) That portion of the parent tract, after it is sold off, is no longer in the chain of title because it is separate and distinct from the smaller subject tract. Typically, outsales such as this occur as a result of the landowner dividing the larger parent tract into smaller parcels to be sold off to others. [↑](#footnote-ref-269)
269. 269 A runsheet may include title to more than just half of the road next to the land for which the runsheet was created. If the exception applies where the road is solely on the margin of one tract of land, see supra text accompanying note 226, the title to the entire road will be present in the runsheets for the lands on one side of the road - the side where the parent tract of land includes the road in its margin. [↑](#footnote-ref-270)
270. 270 See, e.g., Dall. Title and Guar. Co. v. Valdes, 445 S.W.2d 26, 30 (Tex. Civ. App. - Austin 1969, writ ref'd n.r.e.) (concluding that a title search "in all probability would have revealed" a particular conveyance in this case). A title search, arguably, should produce "certain" results in the chain of title, as opposed to "probable" results. [↑](#footnote-ref-271)
271. 271 See Natural Gas Pipeline Co. of Am. v. Pool, 124 S.W.3d 188, 192 (Tex. 2003). [↑](#footnote-ref-272)
272. 272 See infra Section IV. [↑](#footnote-ref-273)
273. 273 The hypothetical mineral determinations (or "opinions") described in the following paragraphs are not based on an analysis of all applicable Texas laws. For simplicity, the opinions are based only on the laws discussed in this Article as they might apply to the different processes for searching title that are proposed by the Author. Other laws and rules may affect a legal analysis and outcome of actual, real-world opinions based on similar facts. Further, these hypothetical opinions are articulated merely to illustrate the different opinions an attorney might have based on various interpretations of roadway title. In fact, other attorneys may interpret the legal outcome of these hypothetical situations differently than the Author. [↑](#footnote-ref-274)
274. 274 The Author contends that C conveyed fee simple for the road to B under the General Rule; B conveyed fee simple for the road to the state in the 1998 warranty deed, but the state failed to record before B conveyed fee simple for the road to A under the General Rule in its 1999 deed (A did not have actual or constructive notice of the warranty deed to the State). [↑](#footnote-ref-275)
275. 275 See supra Section IV(A). [↑](#footnote-ref-276)