THE STRIP-AND-GORE DOCTRINE: A TRAP FOR THE UNWARY

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I. Introduction

In recent years, a growing Texas population has pushed real-estate development and attendant infrastructure further and further afield. Meanwhile, higher energy prices and new drilling technologies have made production from unconventional natural-resource plays feasible. Horizontal-drilling techniques have allowed production companies to drill profitable wells in formerly unreachable areas, including populated neighborhoods above formations such as the Barnett Shale in the Fort Worth Basin. For producers saddled with steep land and drilling costs, the ability to maximize recovery through horizontal drilling is critical.

To utilize horizontal drilling, producers are often required to pool many leased tracts together into a single unit to support a horizontal well that traverses numerous tracts. Where easements and rights-of-way pass along strips dividing these tracts, identifying ownership of the mineral interests corresponding to those strips is imperative. Ensuring compliance with applicable spacing regulations and avoiding liability in trespass requires a careful understanding of the strip-and-gore doctrine and its applicability in a variety of circumstances.

II. The Strip-and-Gore Doctrine

A. THE DOCTRINE

Under the strip-and-gore doctrine, when a piece of property abutting a public roadway is conveyed, it is natural to assume, in the absence of an express reservation to the contrary, that the grantor intended to convey the property with all the beneficial rights enjoyed by him in its use.[1] When it appears a grantor has conveyed all land owned by him adjoining a narrow strip of land that has ceased to be of use to him, the presumption is that the grantor intended to include such strip in such conveyance, unless it clearly appears in the deed, by plain and specific language, that the grantor intended to reserve the strip.[2] Thus, the doctrine presumes the grantor's intent to convey narrow strips of land which are small in size and value in comparison to the adjoining tract conveyed by the grantor.[3]

The strip-and-gore doctrine requires a strip that (1) is small in comparison to the land conveyed, (2) is adjacent to or surrounded by the land conveyed, (3) belongs to the grantor at the time of conveyance, and (4) is of insignificant or little practical value.[4]

B. PURPOSE AND POLICY

The rule is based upon a presumption that a conveyance reflects an intention to carry with it the valuable rights and privileges appurtenant to the property at the time of the conveyance.[5] The doctrine is based upon the rationale "that the grantor must not have intended to retain something that could be of no use to him."[6] Historically, the doctrine is applied to strips in which the fee

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1 *Rio Bravo Oil Co. v. Weed*, 50 S.W.2d 1080, 1084 (Tex. 1932); *State v. Williams*, 335 S.W.2d 834 (Tex. 1960).

2 *Cantley v. Gulf Production Co.*, 143 S.W.2d 912, 915 (Tex. 1940); *Moore v. Energy States, Inc.*, 71 S.W.3d 796, 799 (Tex. App.—Eastland 2002, pet. denied); *Angelo v. Biscamp*, 441 S.W.2d 524, 526 (Tex. 1969).

3 *Finkelstein v. Carpenter*, 795 S.W.2d 897, 899 (Tex. App.—Beaumont 1990, writ denied).

4 *Alkas v. United Sav. Ass'n*, 672 S.W.2d 852, 857 (Tex. App.—Corpus Christi 1984, writ ref'd n.r.e); *Glover v. Union Pacific R.R. Co.*, 187 S.W.3d 201, 212 (Tex. App.—Texarkana 2006, pet. denied).

5 *Angelo*, 441 S.W.2d at 526; *Weed*, 50 S.W.2d at 1085; *Cox v. Campbell*, 143 S.W.2d 361, 364–65 (Tex. 1940).

6 *Finkelstein*, 795 S.W.2d at 899.

benefits the grantee but is "of little advantage disconnected with the ownership of" the adjoining tract.[7] Thus, the doctrine applies to conveyances of lots adjoining strips subject to public use when use of those strips is "so essentially connected with the lot itself that grantors have deemed it unnecessary, as a rule, to mention them as being included within the terms of the deed."[8]

Judicial application of the doctrine is more concerned with "arriving at and effectuating the true intention of the pa[r]ties than in enforcing an arbitrary rule of construction based solely upon considerations of public policy."[9] As a practical matter, however, the doctrine is an "expression that it is against public policy to leave title of a long narrow strip or gore of land in a grantor conveying a larger tract adjoining or surrounding this strip,"[10] and has been extended where it "avoids isolated ownership of narrow strips."[11]

C. Applicability to Minerals Beneath Strips

The doctrine may apply not only to conveyances of land adjoining a right-of-way created by easement, but also to a mineral estate beneath a public highway in which the State of Texas holds a fee estate in the surface.[12]

III. The Centerline Principle and Margin Tracts

In discussing the strip-and-gore doctrine, courts often state that deeds conveying land abutting a street, public highway, or railroad right-of-way carry title to the center of the street, public highway, or railroad right-of-way.[13] Private grants of land, they specify, bordering upon streets, highways, and non-navigable streams, even though the corners are marked, the lines definitely located, and the quantity of land exactly ascertained, serve to convey title to the center of the street, highway, or stream, unless the conveyance contains a clause that expressly declares the contrary intent.[14] This centerline principle is frequently cited to support a presumption that a mineral interest extends beyond an adjoining tract's described boundary to the centerline of an easement or right-of-way. In practice, the rule is often misapplied by attorneys and producers. Because the rule is regularly removed from its proper context, the centerline principle generates substantial confusion among practitioners.

A. Evolution of the Centerline Principle

1. The *Couch* Rule

Originally, under the rule set forth in *Couch v. Texas & Pacific Railway Co.*, Texas courts maintained that where a grantor owned land on both sides of a right-of-way, title to the entire right-of-way remained in the grantor following a conveyance of land on one side.[15] The Texas Supreme Court later explained the logic of that ruling. Because the grantor owned land on both sides of the right-of-way, the court apparently believed that the "strip was as

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[7] *See Weed*, 50 S.W.2d at 1085 (quoting *Stuart v. Fox*, 129 Me. 407, 152 A. 413, 414).

[8] *Texas Bitulithic Co. v. Warwick*, 293 S.W. 160, 164 (Tex. Com. App. 1927).

[9] *Weed*, 50 S.W.2d at 1085.

[10] *Strayhorn v. Jones*, 300 S.W.2d 623, 638 (Tex. 1957); *Angelo*, 441 S.W.2d at 526 (quoting *Strayhorn*, 300 S.W.2d at 638).

[11] *Haines v. McLean*, 276 S.W.2d 777, 783–84, 786 (Tex. 1955).

[12] *Reagan v. Marathon Oil Co.*, 50 S.W.3d 70, 80 (Tex. App.—Waco 2001, no pet.); *Melton v. Davis*, 443 S.W.2d 605, 610 (Tex. Civ. App.—Tyler 1969, writ ref'd n.r.e.).

[13] *See*, *e.g.*, *Weed*, 50 S.W.2d at 1084; *Cox*, 143 S.W.2d at 366; *Reagan*, 50 S.W.3d at 77.

[14] *Joslin v. State*, 146 S.W.2d 208 (Tex. Civ. App.—Austin 1940, writ ref'd).

[15] *Couch v. Texas & Pac. Ry. Co.*, 90 S.W.860 (Tex. 1906).

much appurtenant to the grantor's remaining tract as it was to the tract conveyed."[16]

2. Abandonment of the *Couch* Rule: *Weed* and *Cox*

The weight of authority rests with the rule of law that title to the center of the street, public highway, or railroad right-of-way also passes by a deed conveying abutting land. In 1932, the Texas Supreme Court expressly followed the centerline principle in the case of *Rio Bravo Oil Co. v. Weed*. The case involved construction of a partition deed passing title to certain lots on opposite sides of an existing railroad easement. First, the court held that the strip-and-gore doctrine could apply not only to strips containing public highways, streets, and streams, but also to railroad rights-of-way.[17] The court then drew attention to a recital in the deed stating that the parties sought to partition the entire acreage, rather than merely the acreage comprised of the individual lots expressly described, exclusive of the right-of-way. The court reasoned that the parties, in light of this recital, intended to partition the area within the right-of-way, not to retain title to the strip as cotenants. In so holding, the court ruled that although the tract descriptions extended only to the boundary of the right-of-way, each grantee took title to the area between the specific lot allocated under the partition deed and the center of the track.[18] One party to the partition deed, having been allocated lots on opposite sides of the right-of-way, later conveyed an interest in a portion of one such lot to the plaintiff. The court held that the centerline principle also applied to this subsequent conveyance.[19]

Thereafter, in *Cox v. Campbell*, the Texas Supreme Court applied the centerline principle to a deed where a grantor, owning land subject to a railroad right-of-way, conveyed a tract located on one side of the right-of-way by a deed containing a description extending only to the boundary of the right-of-way. Declining to follow *Couch*, the court stated that "[t]he opinion in the Weed case is the latest expression of this Court upon [the centerline issue], and, unless overruled, should control here."[20] With the exception of *Krenek v. Texstar North America, Inc.*,[21] Texas courts have since followed *Weed*, applying the centerline principle to conveyances of property adjoining one side of an existing right-of-way traversing the grantor's property.[22]

3. A Red Herring Named *Krenek*

Notwithstanding the supreme court precedents of *Weed* and *Cox*, an appellate court has cited *Couch* as precedent in *Krenek*. The case involved title to the mineral estate beneath a highway strip traversing a 236-acre mineral tract owned by the decedent. The decedent's will devised land west of the strip to her son and land east of the strip to her daughter, with each description stopping at the edge of the highway strip. Under the court's analysis, neither the strip-and-gore doctrine nor the centerline principle applied to these devises. Instead, presumably following *Couch*, the court assumed that the son and daughter each acquired undivided one-half interests in the strip under the residuary clause of the will.[23]

After the son and daughter—the appellants in the case—conveyed their respective tracts to third parties, they claimed title to the mineral estate beneath the strip, arguing

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[16] *Weed*, 50 S.W.2d at 1087.
[17] *Id*.
[18] *Id.* at 1088.
[19] *Id*. at 1089.
[20] *Cox*, 143 S.W.2d at 365.
[21] 787 S.W.2d 566 (Tex. App.—Corpus Christi 1990, writ denied).
[22] *See Reagan*, 50 S.W.3d at 78 (explaining that the supreme court appears to have disavowed the *Couch* decision).
[23] *Krenek*, 787 S.W.2d at 567–68.

that the strip-and-gore doctrine did not apply. The court ruled against the appellants, holding that the strip-and-gore doctrine applied to divest them of their interests in the strip. Therefore, the court's adherence to the *Couch* rule had no impact on the outcome of the case.[24] *Krenek* was not a case in which the centerline principle was ignored or rejected and the grantor retained title to the entirety of a disputed strip. Rather, regardless of whether the centerline principle applied to the specific testamentary bequests, the *Krenek* plaintiffs ultimately retained no interest in the disputed property because the strip-and-gore doctrine applied to their subsequent conveyances of the abutting tracts. To the extent that this outcome explains the supreme court's decision to deny the plaintiff's writ of error, it appears safe to conclude that the supreme court disavowed the *Couch* rule in favor of the centerline principle long before *Krenek*.

4. Limitations of the Centerline Principle

Although cases discussing the strip-and-gore doctrine routinely reference the centerline principle as set forth in *Weed* and *Cox*, courts characterize the principle as a "general rule."[25] In practice, application of the rule is confined to a narrow set of circumstances. Specifically, every Texas case holding that title passes to the centerline of an adjoining strip involves the following elements: (1) a grantor (or grantors) owning land in fee simple, subject to either an existing right-of-way traversing the property or an outstanding interest in the surface estate of an appurtenant strip traversing the property; and (2) a conveyance by the grantor(s) which describes land on one side only of the right-of-way or strip.[26]

These cases are distinguishable from cases in which a tract owner conveys land under a description extending only to the boundary of a strip which has been established along the margin of the grantor's original tract. In the latter scenario, the centerline principle does not apply.

B. Margin Tracts as Strips or Gores

In *Cantley v. Gulf Production Co.* and *State v. Williams*, the Texas Supreme Court held that title to the entirety of an adjacent strip passes under the strip-and-gore doctrine where the strip was established as a margin tract. *Cantley* states the rule of law as follows: "Where a highway is laid off entirely on the owner's land, running along the margin of his tract, and he afterwards conveys the land, the fee of the whole of the soil of the highway vests in his grantee."[27] Relying on this proposition, the court held that the entirety of a strip of land thirty feet in width at the margin of a tract passed under the strip-and-gore doctrine even though the description stopped at the boundary of the 30-foot strip.

Likewise, in *Williams*, a 7.047-acre highway strip along the southern boundary of a 50-acre tract was laid off entirely on the tract. The supreme court ruled that a conveyance extending only to the boundary of the highway carried title to the entire 7.047-acre strip.[28] Accordingly, *Cantley* and *Williams*

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[24] *Reagan*, 50 S.W.3d at 78.

[25] *See Reagan*, 50 S.W.2d at 78; *Word of Faith World Outreach Center Church, Inc. v. Oechsner*, 669 S.W.2d 364, 367 (Tex. App.—Dallas 1984, no writ); *Moore*, 71 S.W.3d at 799.

[26] *See*, *e.g.*, *Pebsworth v. Behringer*, 551 S.W.2d 501 (Tex. Civ. App.—Waco 1977, n.w.h.); *Lackner v. Bybee*, 159 S.W.2d 215 (Tex. Civ. App.—Galveston 1942, writ ref'd w.o.m.); *State v. Fuller*, 407 S.W.2d 215 (Tex. 1966); *Joslin v. State*, 146 S.W.2d 208 (Tex. Civ. App.—Austin 1940, writ ref'd) (applying the centerline principle where the State of Texas conveyed tracts abutting each side of a railroad right-of-way).

[27] *Cantley*, 143 S.W.2d at 915–16.

[28] *Williams*, 335 S.W.2d at 836.

establish that under Texas law, the centerline principle is not applicable where the strip in question is situated upon the margin of an existing tract.[29]

Indeed, granting title to the centerline in *all* strip-and-gore cases would produce illogical results. In *Reagan v. Marathon Oil Co.*, the plaintiff conveyed the title to a 14.116-acre highway strip traversing his land to the State of Texas, reserving the mineral estate. Next, by a deed containing a description extending only to the highway boundary, the plaintiff conveyed a 55.25-acre tract abutting the strip on the north. Thereafter, the plaintiff conveyed a 3.018-acre strip along the southern boundary of the existing 14.116-acre strip to the State of Texas for highway expansion, again reserving the mineral estate. Following that conveyance, the plaintiff conveyed his remaining land by a deed extending to only the south line of the expanded highway.[30]

Although the *Reagan* court held that the conveyance of the northern adjoining tract included the mineral estate to the centerline of the 14.116-acre strip, the court applied the strip-and-gore doctrine to the conveyance of the south tract without invoking the centerline principle. The court concluded that the conveyance of the south tract included not only the mineral estate beneath the south half of the 14.116-acre strip, but also the mineral estate beneath all of the 3.018-acre strip.[31] Because the centerline of the highway moved upon expansion of the highway, had the court applied the centerline principle, the latter conveyance would have left title to an isolated, narrow strip between the old and new highway centerlines in the grantor. Leaving title to a long, narrow strip which was appurtenant to adjoining lands in a third party would run counter to the policy which the rule promotes.

Illogical results would follow from applying the centerline principle to other scenarios as well. Suppose, for example, that an easement for a road containing six lanes of equal width was established along the boundary of two separately-owned tracts such that one lane overlapped the first tract and the remaining five lanes overlapped the second tract. If either owner conveyed under a description extending only to the easement boundary, application of the centerline principle would relocate the boundary between the two tracts. The principle would effectively divest the owner of the second tract of fee-simple title to two lanes and vest the owner of the first tract with fee-simple title to property in which he previously held no interest. Accordingly, where rights-of-way or appurtenant strips are established asymmetrically along the boundary of separately-owned tracts, the strip should be treated as a pair of margin tracts, and the centerline principle should give way to *Cantley* and *Williams*.

In view of the foregoing jurisprudence, operators and title attorneys should exercise caution prior to assuming a mineral tract extends to the centerline of the strip containing the easement or right-of-way by which the tract is bounded. Where a strip actually consists of one or more margin tracts, to claim title to the strip, the producer must establish that each margin tract passed under the strip-and-gore doctrine with the deed conveying the abutting tract.

IV. Size, Value, Shape, Appurtenance, and the Strip-and-Gore Doctrine

A. SIZE MATTERS

1. *Angelo* and *Haby*

Under Texas caselaw, the relative size or value of a strip of land adjacent to a conveyed tract may be determinative of whether the strip-and-gore doctrine applies.

[29] *See Haines*, 276 S.W.2d at 783–84 (recognizing that the centerline principle does not apply where "different circumstances" govern, as in *Cantley*).
[30] *Reagan*, 50 S.W.2d at 72–74.
[31] *Id*. at 81.

In *Angelo v. Biscamp*, the Texas Supreme Court ruled that a conveyed lot did not carry title to the centerline of an adjoining railroad track where the disputed area was twice the size of the abutting lot. In so holding, the court explained: "It is our conclusion that this doctrine was conceived and intended to apply to relatively narrow strips of land, small in size and value in comparison to the adjoining tract conveyed by the grantor."[32] The court continued, stating that "when it is apparent that the narrow strip has ceased to be of benefit or importance to the grantor of the larger tract, it can be presumed that the grantor intended to convey such a strip."[33]

In *Haby v. Howard*, a long, narrow strip of land containing 1.2383 acres along the waterline of a lake was situated adjacent to a 1.25-acre tract.[34] Emphasizing that the tracts were approximately the same size and noting that fact issues existed as to the value and benefit of the strip in dispute, the court declined to grant summary judgment in favor of the adjoining landowner, holding that the strip-and-gore presumption did not apply as a matter of law.[35]

2. Defining the Abutting Tract: Separate but Contiguous Adjacent Tracts

The petitioners in *Angelo* acquired title under a single deed to five contiguous lots described as Lots 18, 19, 20, 21, and 22. Only Lot 18 abutted the disputed area of land within the railroad right-of-way. Those petitioners thereafter conveyed the same five lots to the respondent by a single deed. As noted above, the strip in issue was twice the size of Lot 18; however, the strip amounted to only forty percent of the size of the five lots together. The supreme court held that the size of only the adjoining lot was material, stating that "in this case, if title to the disputed tract is to pass under the 'strip and gore' doctrine, it must do so by virtue of the conveyance of the adjoining Lot 18."[36]

Consequently, where land adjoining a disputed strip has been subdivided or is described as separate tracts in a conveyance, the size of only the adjoining lot or tract is relevant for purposes of determining whether the strip-and-gore doctrine applies to the conveyance. Therefore, when a grantor conveys a group of lots or tracts adjoining a narrow strip, the doctrine is less likely to apply.

3. Strip-to-Tract Ratios

Although *Angelo* and *Haby* establish that the doctrine does not apply to relatively large adjoining strips of land, their discussions speak in very general terms about the relative size required for the doctrine's application. The decisions fail to identify a threshold strip-to-tract ratio above which the doctrine will not apply as a matter of law.

In *Pebsworth v. Behringer*, the defendant acquired title to a 6.25-acre tract abutting a railroad right-of-way.[37] Holding that the centerline principle applied, the court ruled that the defendant was vested with title to 3.905 acres of land situated between the 6.25-acre tract and the centerline of the right-of-way.[38] Although the court's decision does not expressly analyze the relative size of the strip, it cites *Angelo*, which stands for the proposition that the size of a strip may render the doctrine inapplicable.[39]

Thus, the *Pebsworth* decision helps define the range of size ratios for which courts are unwilling to apply the doctrine. In *Angelo*, where the adjoining strip amounted to twice the area of the abutting tract, and in *Haby*,

[32] *Angelo*, 441 S.W.2d at 526–27.
[33] *Id*. at 527.
[34] *Haby v. Howard*, 757 S.W.2d 34 (Tex. App.—San Antonio 1988, writ denied).
[35] *Id*. at 40.
[36] *Angelo*, 441 S.W.2d at 527.
[37] *Pebsworth*, 551 S.W.2d at 503.
[38] *Id*. at 504.
[39] *Id*.

where the adjoining strip was approximately 99 percent the size of the abutting tract, the strip-and-gore doctrine did not apply. By contrast, the *Pebsworth* court applied the doctrine to a strip which was 62.48 percent the size of the abutting tract.

B. VALUE MATTERS

As noted above, by the standard set forth in *Angelo*, the strip-and-gore doctrine was intended to apply only if a strip is small "in size and value in comparison to the adjoining tract."[40] Under the standard announced in *Alkas v. United Savings Ass'n* and *Glover v. Union Pacific R.R. Co.*, the doctrine applies only if a strip is "of insignificant or little practical value."[41] In determining whether the presumption applies, a disputed tract's value must be measured at the time of conveyance of the adjoining tract.[42]

To the extent that land is fungible, the value of a disputed strip is merely a function of its size. If a tract is not small in comparison to the size of an adjacent, conveyed tract, then it is not relatively small in value. But in practice, factors such as location, well placement, geological information, and regulatory considerations may lift the value of one mineral estate over that of its neighbor.[43] Moreover, where a strip is subject to an easement or right-of-way, value and size usually fail to correlate. Such a strip's value is restrained because the fee owner cannot put the surface to productive use. In that event, the value of the mineral estate becomes important. If the mineral estate is valuable, it accounts for a greater share of the strip's value, and the strip may not be relatively small in value, despite the easement. In those situations, however, it is important to note that value is to be determined as of the date of a conveyance. Mineral-estate values fluctuate with changes in price forecasts, regulatory environments, availability of geological information, and drilling and production costs, among other considerations.

If a mineral estate has been severed from the surface, then the value of the mineral estate within the strip may be juxtaposed against the value of the mineral estate of the adjoining tract. As such, absent special circumstances, the value of a strip's mineral estate will be largely a function of its size.

Courts have yet to clarify whether the standard announced in *Angelo* is consistent with the standard set forth in *Alkas* and *Glover*. Under the *Angelo* standard, a strip's *relative* value is in issue, and the doctrine will not apply unless a strip is small in value relative to the abutting tract. By contrast, *Alkas* and *Glover* merely provide that the doctrine will not apply if the strip is "of insignificant or little practical value." Under the latter standard, if the mineral estate is not valuable enough, the doctrine will apply.

As a practical matter, applying the standard set forth in *Alkas* and *Glover* is difficult, if not impossible, without invoking relativity. Unless value is measured against the value of an adjoining tract, title examiners are left to divine whether a mineral estate meets some undefined threshold of "value" at the time of the conveyance. In areas where mineral-estate values have gradually risen, the uncertainty would be particularly pronounced because an examiner would be called upon to pinpoint the moment in time at which a mineral estate beneath a strip no longer held "insignificant and little practical value." Therefore, although the *Alkas* and *Glover* standard does not directly expressly

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[40] *Angelo*, 441 S.W.2d at 526–27.

[41] *Alkas*, 672 S.W.2d at 857; *Glover*, 187 S.W.3d at 212.

[42] *Simon v. Rudco Oil & Gas Co.*, 132 F.2d 211, 212 (5th Cir. 1943) (identifying value of strip to owners of abutting tract "on the date of their conveyance"); *see also Glover*, 187 S.W.3d at 212–13.

[43] *See*, *e.g.*, *Simon*, 132 F.2d at 212 (explaining that, a disputed strip was "so located that, despite its size, it might have been of use and of appreciable economic benefit" to the grantor).

invoke the principle of relativity, it is likely that these appellate decisions are to be construed as merely restating the supreme court's *Angelo* standard in a new way.

As noted above, the doctrine cannot apply unless an appurtenant tract is relatively small in both size *and* value. If a tract is equal or larger in size, relative to the conveyed tract, *or* if the tract is equal or larger in value, then the strip-and-gore doctrine does not apply. Even if a court would hold that a given tract holds little value relative to an abutting tract, value is only one criterion in determining whether to apply the strip-and-gore presumption.

C. Shape Matters: The Narrowness Requirement

Strip-and-gore jurisprudence addresses, in addition to sizes and values, the shapes that appurtenant tracts must take for the doctrine to apply. In *Cantley*, the Texas Supreme Court defines the presumption in terms of only "a narrow strip" adjoining conveyed lands.[44] In *Angelo*, the supreme court concludes that the doctrine was conceived and intended to apply to "relatively narrow strips of land."[45] As noted above, the supreme court in *Strayhorn v. Jones* recognized the doctrine as an expression of a policy against leaving title to "a long narrow strip or gore of land" in an individual who conveys a larger adjoining tract.[46] A survey of relevant caselaw reveals that courts have been willing to apply the presumption as a matter of law only to relatively thin, narrow strips of land.

Indeed, in *McKee v. Stewart*, the court refused to extend the presumption where the disputed land was "not a long narrow strip or strips."[47] In that case, the disputed tract contained 4.4 acres, roughly 11.892 percent of the size of the adjoining 37-acre tract. However, the land in issue was "irregular in shape," bounded on the east by a creek "which bends to the east and gives to the excluded area a maximum width of about 197 feet."[48] Therefore, despite the disparity in tract sizes, the court declined to indulge the presumption, emphasizing the tract's irregular shape.

D. Character and Preexistence Matter: The Appurtenance Requirement

In *Goldsmith v. Humble Oil & Refining Co.*, the Texas Supreme Court declined to apply the strip-and-gore doctrine to a disputed length of land where the land was not used as an existing appurtenance at the time of the conveyance.[49] Noting that the land was not appurtenant to the adjacent tract if no easement existed in fact, the court held that the strip and its abutting tract were "merely two distinct and separate tracts of land."[50] The court distinguished cases applying the doctrine. In those cases, the conveyance either "expressly referred" to an easement or right-of-way boundary as the boundary of the abutting tract or described land adjoining a strip upon which an easement, road, passageway, or right-of-way had been "created or acquired when the deed was executed."[51]

Goldsmith echoes the logic set forth in the above-described case of *McKee*. There, the excluded parcel was not eligible for application of the doctrine because no ambiguity was found to exist. According to the court, where a deed references a strip such as an easement, roadway, or right-of-way as the boundary of the abutting tract without expressly indicating whether the grantor intended to reserve the fee in the strip, the deed creates uncertainty, and the

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[44] *Cantley*, 143 S.W.2d at 915.
[45] *Angelo*, 441 S.W.2d at 526.
[46] *Strayhorn*, 300 S.W.2d at 638.
[47] *McKee v. Stewart*, 162 S.W.2d 948, 950 (Tex. 1942).
[48] *Id*.
[49] *Goldsmith v. Humble Oil & Refining Co.*, 199 S.W.2d 773 (Tex. 1947).
[50] *Id*. at 776–77.
[51] *Id*. at 775–76.

strip-and-gore presumption may be invoked. But absent the creation of such a strip prior to execution of the deed, and absent a boundary description which coincides with the strip's boundary, no latent ambiguity would be found to exist, and the doctrine will not apply.[52]

In *Simon v. Rudco Oil & Gas Co.*, where a deed's description did not include a long, narrow strip of land, the grantee claimed title under the strip-and-gore doctrine. Despite the strip's size, the court held for the grantor because the strip "did not abut upon or involve a road or right of way, and no ambiguity appeared on the face of the deed or resulted from applying the calls of the description to the ground."[53]

As noted by another court, when grantors own land adjoining public streets, their deeds generally "do not describe property beyond the bounds where the grantee has *exclusive rights*."[54] The opposite held true in *Simon*, where the grantor held exclusive rights to both the described tract and the strip at the time of the conveyance. The strip had not been created as an appurtenance; its exclusion merely effected a subdivision of the property. The same court reached an identical result in *Cities Service Oil Co. v. Dunlap*. Rejecting the grantor's factual argument that the strip in controversy coincided with a nearby road, the court denied the grantor's motion for rehearing because there was "no mention of a road in any of the title papers, and there was no abutting road in fact."[55]

As a practical matter, Texas law appears to indicate that identification of an easement or right-of-way strip alone—without actual use—is sufficient to satisfy the *Goldsmith* requirement of creation or existence of an appurtenant strip. For example, *Cantley* involved a deed with a tract description stopping thirty feet from an adjacent lot "for a road reservation."[56] Despite the fact that no road was ever established upon the strip, the court emphasized that the strip was "created as a road reservation."[57] Because "this strip was reserved for a road," the court explained, the grantors' conveyance of the tract abutting the strip indicated "that they intended to convey all land owned by them," and the doctrine applied.[58] In light of *Cantley*, it appears that mere reference to a designated or proposed roadway boundary line amounts to creation or existence of an appurtenant strip under the *Goldsmith* standard. Accordingly, if a right-of-way has been designed or platted, or if a proposed highway boundary line has been identified, a description of an abutting tract which references or recognizes that right-of-way boundary as the boundary of the conveyed tract may carry title to the portion of the strip situated within the roadway. Absence of an existing, appurtenant use as a right-of-way does not necessarily negate application of the strip-and-gore doctrine.

Notably, even if a strip has been "created" prior to conveyance of an abutting tract, it does not follow that the strip-and-gore doctrine applies. The criteria of size, value, and shape set forth above must each still be met. *Goldsmith* merely holds that creation or existence of a strip such as an easement or right-of-way is a necessary, but not sufficient, prerequisite for application of the doctrine.

V. Specific Applications of the Doctrine

A. DEDICATION: FEE SIMPLE OR EASEMENT?

Texas law holds that a "dedication" of land may convey either a fee-simple estate or a

[52] *McKee*, 162 S.W.2d at 950.
[53] *Simon*, 132 F.2d at 212.
[54] *Texas Bitulithic Co.*, 293 S.W. at 164 (emphasis in original).
[55] *Cities Service Oil Co. v. Dunlap*, 117 F.2d 31, 31 (5th Cir. 1941).
[56] *Cantley*, 143 S.W.2d at 914.
[57] *Id*.
[58] *Id*. at 915.

lesser estate, such as an easement.[59] The extent of the estate conveyed is determined by the grantor's intent. When the language of an instrument of dedication is ambiguous, the circumstances surrounding the execution of the instrument determine the nature of the estate intended to be conveyed by the grantor.[60]

In *Russell v. City of Bryan*, after determining that an instrument titled "Dedication" was ambiguous, the court affirmed the lower court's ruling that the dedication operated to convey fee-simple title to the described property. In that case, several factors supported a finding that fee-simple title was conveyed, including the presence of a habendum and warranty clauses, reference to the interest as "the tract," absence of use of the term "easement," as well as certain extrinsic evidence.[61]

Where a dedication of a strip or roadway operates to convey fee-simple title to the public, the mineral estate under the roadway does not pass under the strip-and-gore doctrine. Rather, the public acquires the strip of land; an oil-and-gas lease from an owner of adjoining property does not cover the mineral estate beneath such a strip because the lessor's title does not extend beyond the boundary of the adjoining tract. Consequently, examiners should exercise caution in construing language in instruments of dedication.

B. SUBDIVISIONS

1. Title to Platted Streets

A dedication by plat of plazas, parks, streets, and alleys shown on the plat to the use and benefit of the public does not convey title; rather, it creates an easement with the fee title remaining in the dedicator, subject to the easement.[62] Accordingly, when a real-estate developer files a plat which dedicates streets and alleys to the use and benefit of the public, the developer remains vested with fee-simple title to the platted land, subject to the easements depicted.

Subsequent conveyances of platted lots by the developer, however, may carry title to the center of the streets and alleys. In *Lackner v. Bybee*, a developer filed a plat dedicating the streets "to public use," expressly reserving all rights to the mineral estate.[63] Where a subsequent conveyance of an abutting lot reserved only a fractional royalty interest, title to all but the reserved fractional interest passed to the centerline of the street. The court held that the reservation language in the dedication instrument merely indicated that the mineral estate was not to pass with the easement; the strip-and-gore doctrine applied to the subsequent conveyance of the abutting lot.[64]

2. The Doctrine As Applied to Subdivision Streets: *Word of Faith*

Similarly, in *Word of Faith World Outreach Center Church, Inc. v. Oechsner*, a developer filed a plat dedicating a street "for public use."[65] Holding that the dedication created an easement, the court explained that "[t]he promoter of a subdivision … owns the fee in the highway only so long as he owns the lots abutting thereon."[66] Although the road in issue occupied the margin of the addition, the court ruled for the appellant and remanded the case. According to the court, evidence that the developer owned

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[59] *See*, *e.g.*, *Russell v. City of Bryan*, 919 S.W.2d 698, 702–03 (Tex. App.—Houston [14th Dist.] 1996, writ denied).
[60] *Id*. at 703.
[61] *Id*. at 705–06.
[62] *Humble Oil & Refining Co. v. Blankenburg*, 235 S.W.2d 891, 893 (Tex. 1951).
[63] *Lackner*, 159 S.W.2d at 217.
[64] *Id*.
[65] *Word of Faith*, 669 S.W.2d at 365.
[66] *Id*. at 367 (citing *Riley v. Davidson*, 196 S.W.2d 557, 560 (Tex. Civ. App.—Galveston 1946, writ ref'd n.r.e.)).

land immediately beyond the boundary of the addition, which indicated that he owned land on both sides of the road, was relevant and material to a determination as to whether the centerline principle applied.[67] Thus, generally, where the developer owns land on each side of the street, his conveyance of a lot adjoining the street on one side carries title to the center of the street, subject to a public easement in the street, in accordance with *Weed* and *Cox*.

But to the extent that an examiner cites the case in support of the notion that a lot owner's title extends to the centerline of the adjoining street in *any* subdivision, reliance on *Word of Faith* is probably misplaced. In applying the doctrine, the decision was silent as to the size, value, shape, and appurtenance requirements set forth above. The controversy, however, centered on application of the centerline principle, not on application of the strip-and-gore doctrine. Because the parties' arguments presumed that the strip-and-gore doctrine applied, analyzing those criteria was unnecessary. When a developer conveys such a lot, the size, value, shape, and appurtenance requirements must still be satisfied to divest the developer of his fee-simple title in the corresponding easement area. Real-estate developers frequently dedicate wide roadways that serve as arteries through subdivisions or extensions to existing thoroughfares. In those instances, the strip-and-gore doctrine may not apply, leaving developers vested with title, rather than abutting lot owners. Likewise, if an adjoining easement area is not small in size or value relative to an adjoining lot, or if the easement area is irregularly-shaped, the developer might remain vested with title. This result might surprise an oil-and-gas lessee who failed to secure a protection lease from a developer of such a subdivision.

[67] *Id*. at 368.

C. BUNDLED STRIPS

Texas law also addresses application of the strip-and-gore doctrine to a strip of land consisting of a set of contiguous, parallel easements or rights-of-way. In *Haines v. McLean*, three adjacent easements—two railroad rights-of-way, each 100 feet in width, as well as a county road sixty feet in width—crossed a section of land. The section's owner executed a conveyance covering the portion located east of the easements using a description which stopped at the boundary of the easternmost of the easements, the county road.[68] The supreme court rejected the grantor's argument that the centerline principle should apply so as to limit the interest conveyed to the eastern half of the roadway adjoining the described tract. Instead, the court concluded that the three easements should be treated as one. Accordingly, the eastern half of all three easements, representing a strip 130 feet in width, passed to the grantee. Recognizing that the centerline rule did not apply to a margin tract in *Cantley*, the court stated as follows: "If the idea of a half is not sacred, as distinguished from a whole, the idea of a single easement strip need not be sacred, as distinguished from a group thereof."[69]

In *Moore v. Energy States, Inc.*, a deed conveyed a tract described as being located south of a railroad right-of-way, and also south of a parallel public highway, the latter of which the deed recited as being immediately south of the railroad right-of-way. In fact, a strip of land existed between the railroad right-of-way and road that was not subject to an easement.[70] According to the court, the recitation that the road and railroad right-of-way were contiguous estopped the grantors from claiming title to the land between the easements. The strip-and-gore doctrine therefore applied, and the

[68] *Haines*, 276 S.W.2d at 778–79.
[69] *Id*. at 784.
[70] *Moore*, 71 S.W.3d at 798.

land situated between the easements passed to the grantee.[71]

VI. Conclusion

Drilling horizontally has allowed producers to access oil and gas in populated areas with minimal surface disruption. Yet doing so poses significant legal risks for those who misunderstand the strip-and-gore doctrine. An evolving body of caselaw has generated a distinction between situations governed by the centerline principle and those involving margin tracts. Meanwhile, with some subtlety, Texas courts have gradually refined the size, value, shape, and appurtenance requirements of the doctrine. Those who heed the lessons to be drawn from this jurisprudence may rest assured that the strips of land traversing their units are leased and that their legal well locations insulate them from liability. But producers and practitioners who overlook the complexities of the strip-and-gore doctrine do so at their peril.

[71] *Id*. at 800.