

Restraints on Alienation and Consent-to-Assign in Light of *Mayo Foundation v. BP*

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Mayo Foundation v. BP – Background

- ***Mayo Found. for Med. Educ. & Research v. BP America Prod. Co.*, 447 F. Supp. 3d 522 (N.D. Tex. 2020)**
 - **Lessor**: Mayo Foundation
 - **Lessee**: BP America
 - **Assignee**: Courson Oil & Gas (also longstanding lease operator)
 - **Provision**: Lessor's consent required, but its approval cannot be "unreasonably withheld"

Note the preferred purchaser, Latigo Petroleum, was owned largely by the Mayo Foundation.

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- **Contract Law**

Rights freely assignable unless otherwise agreed (subject to public policy)
Strong policy of giving effect to the parties' freedom of contract

- **Property Law**

Restraints against alienation are generally invalid

- **Landlord-Tenant Law**

Default is that tenant rights cannot be assigned without consent

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- **What is an oil and gas lease?**

- Louisiana ... profit à prendre (or contractual license)
- Texas, Oklahoma, New Mexico ... real property
- Kansas ... hybrid

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- **Strong bias against restricting ability to transfer**

Language is “strictly construed”

- **Three types of restraints**

Promissory

Disabling

Forfeiture

- **Texas courts look to Restatements for guidance ... for now**

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Promissory Restraints

- **Restatement (First) of Property – Section 404(1)(b)**

Any agreement or covenant not to convey to others

- **Section 406 – promissory restraints valid only if “qualified so as to permit transfer to some though not all transferees ...”**

“This lease shall not be assigned.” **LIKELY INVALID**

“This lease shall not be assigned without lessor consent.”

- **... and the restraint is reasonable under the circumstances**

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