

PJC 303.3 **Question and Instruction on Good-Faith Pooling**

QUESTION _____

Did *Larry Lessee* fail to pool the lease in good faith?

When exercising the pooling authority granted in the lease, *Larry Lessee* failed to pool the lease in good faith if *he* failed to act as a reasonably prudent operator would have acted under the same or similar circumstances, taking into account the interests of both *Larry Lessee* and *Paul Payne*.

Answer “Yes” or “No.”

Answer: _____

COMMENT

When to use. PJC 303.3 should be used when the plaintiff claims the lessee has failed to pool in good faith. The exercise of the express right to pool is subject to an implied duty to pool in “good faith.” *Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 21 (Tex. 2008); *Southeastern Pipe Line Co. v. Tichacek*, 997 S.W.2d 166, 171 (Tex. 1999). This duty requires the lessee to act in fairness and good faith when exercising the pooling authority, as would a reasonably prudent operator under the same or similar circumstances, taking into account the interests of both the lessee and the lessor. *Circle Dot Ranch, Inc. v. Sidwell Oil & Gas, Inc.*, 891 S.W.2d 342, 346 (Tex. App.—Amarillo 1995, writ denied); *Elliott v. Davis*, 553 S.W.2d 223, 226–27 (Tex. App.—Amarillo 1977, writ ref’d n.r.e.) (quoting Eugene Kuntz, *The Law of Oil and Gas* § 48.3, p. 218 (1972)). The requirement of good faith in exercising pooling authority does not change the relationship between the lessee and lessor into that of an agent or fiduciary. *Vela v. Pennzoil Producing Co.*, 723 S.W.2d 199, 206 (Tex. App.—San Antonio 1986, writ ref’d n.r.e.); *Elliott*, 553 S.W.2d at 226–27.

Source of question and instruction. PJC 303.3 is derived from *Circle Dot Ranch, Inc.*, 891 S.W.2d at 346, and *Elliott*, 553 S.W.2d at 226–27 (quoting Kuntz, at § 48.3, p. 218).

Good-faith pooling duty. Lessors have challenged the lessee’s exercise of the pooling authority based on a variety of facts, including (1) drawing boundaries of a pooled unit to perpetuate as many leases as possible rather than to accomplish a permissible pooling goal, *Elliott*, 553 S.W.2d at 227; (2) gerrymandering of pooled unit boundaries, *Circle Dot Ranch, Inc.*, 891 S.W.2d at 347; (3) express statements that pooled unit boundaries have been drawn to maintain leases, *Amoco v. Underwood*, 558 S.W.2d 509, 512–13 (Tex. App.—Eastland 1977, writ ref’d n.r.e.); (4) pooling an undrilled tract shortly before the end of the primary term, *Circle Dot Ranch, Inc.*, 891