

# Staying Out of Treble: A Comprehensive Civilian Approach to the Louisiana Mineral Code Provisions on Damages for Unpaid Royalties

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### Repository Citation

Nathan Telep, *Staying Out of Treble: A Comprehensive Civilian Approach to the Louisiana Mineral Code Provisions on Damages for Unpaid Royalties*, 76 La. L. Rev. (2016)  
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# Staying Out of Treble: A Comprehensive Civilian Approach to the Louisiana Mineral Code Provisions on Damages for Unpaid Royalties

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## INTRODUCTION

Louisiana’s economy has not been the same since September 1901, when oil was first discovered near Jennings, Louisiana.<sup>1</sup> Since this

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1. See Patrick H. Martin, *Preface* to STATE OF LOUISIANA MINERAL CODE AND FORMS, at iii (2009); Patrick S. Ottinger, *From the Courts to the Code: The Origin and Development of the Law of Louisiana on Mineral Rights*, 1 LSU J. ENERGY L. & RESOURCES 5, 9 (2012).

discovery, the oil and gas industry has expanded immensely in the state, establishing itself as a vital part of Louisiana's economy.<sup>2</sup> The oil and gas industry had a \$73.8 billion impact on the Louisiana economy in 2011 and provided nearly 287,000 energy-sector jobs throughout the state.<sup>3</sup> Louisiana ranks second in the United States in the production of crude oil, second in the production of natural gas, and second in its capacity to refine petroleum.<sup>4</sup> Given the prevalence of mineral leases in the state, the interests of Louisiana mineral lessors and lessees contribute significantly to the sizeable economic impact of the oil and gas industry.<sup>5</sup>

Because mineral leases can typically be very valuable, it is unsurprising that lease disputes often result in litigation between mineral lessors and lessees.<sup>6</sup> Several different articles in the Louisiana Mineral Code provide remedies for one of these types of disputes—a mineral lessee's failure to pay royalties.<sup>7</sup> These articles provide that “[t]he court may award as damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney's fee.”<sup>8</sup> Over the years, Louisiana courts and scholars alike have interpreted this code provision differently, and the Louisiana Supreme Court has yet to provide any guidance on the interpretation.<sup>9</sup>

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2. See generally LOREN C. SCOTT, *THE ENERGY SECTOR: STILL A GIANT ECONOMIC ENGINE FOR THE LOUISIANA ECONOMY* (2014) (an economic impact study of the oil and gas industry commissioned by Mid-Continent Oil and Gas Association in partnership with Grow Louisiana Coalition).

3. *Id.* at iii.

4. *Id.*

5. See *Louisiana State Mineral Royalty Revenue*, LA. DEP'T NAT. RESOURCES, [http://dnr.louisiana.gov/assets/TAD/data/facts\\_and\\_figures/table28.htm](http://dnr.louisiana.gov/assets/TAD/data/facts_and_figures/table28.htm) [perma.cc/7G9D-MYLB] (last updated May 27, 2015) (showing that the state of Louisiana had a revenue of \$568.42 million from mineral leases in 2013).

6. *Id.*

7. See LA. REV. STAT. ANN. §§ 31:139, :140, :212.23(C) (2000). Title 31 of the Louisiana Revised Statutes is typically referred to as the “Louisiana Mineral Code,” and the sections of the Title 31 are typically referred to as “articles.” *Id.* § 31:1. Accordingly, this Comment will refer to all sections of Title 31 as articles of the Louisiana Mineral Code.

8. *Id.* § 31:139; accord *id.* § 31:140; see also *id.* § 31:212.23(C) (“[T]he court may award as damages double the amount due, legal interest on that sum from the date due, and a reasonable attorney's fee . . .”). Louisiana Mineral Code article 31:138.1(D) uses the same language, except the award is mandatory rather than discretionary. *Id.* § 31:138.1(D).

9. Compare *Cimarex Energy Co. v. Mauboules*, 40 So. 3d 931, 952 (La. 2010) (Knoll, J., dissenting) (stating that the natural reading of Mineral Code article 212.21 calls for double, rather than treble the amount of royalties due as damages), with *Cimarex Energy Co. v. Mauboules*, 6 So. 3d 399, 407 (La. Ct. App. 3d 2009) (holding that Mineral Code article 212.23(C) provides for treble damages), and *Wegman v. Cent. Transmission, Inc.*, 499 So. 2d 436, 451–52 (La. Ct. App. 2d 1986) (affirming the trial court's JNOV award of triple the amount of

One side of this debate believes that the statute clearly provides for damages worth twice the amount of royalties due. The other side asserts that the damages clause is separate and that the court must add the double royalties penalty to the original unpaid royalty, essentially resulting in treble damages.<sup>10</sup> This interpretive discrepancy has the potential to create a multi-million dollar difference in the amount of damages awarded.<sup>11</sup>

Louisiana courts should recognize that Mineral Code articles 138.1, 139, 140, and 212.23 do not provide for treble damages. In an effort to increase the clarity of the law, the legislature should revise the wording of these Mineral Code articles to expressly state that courts may grant a total award in an amount less than twice the value of royalties due. At a minimum, the legislature should add a comment to the applicable articles and explain that the articles allow for double rather than treble damages.

This Comment seeks to end the debate over the interpretation of Mineral Code articles 138.1, 139, 140, and 212.23 by showing that treble damages are not appropriate for a lessee's failure to pay royalties. Part I gives a brief overview of the applicable laws regulating the oil and gas industry, including a short history of how the Louisiana Supreme Court molded the body of mineral law through its decisions, which were later codified in the Louisiana Mineral Code. Part II uses civilian interpretive methods to illustrate the two conflicting interpretations of the Mineral Code articles. Part III concludes that the Mineral Code provides for double damages and proposes two possible legislative actions to make this abundantly clear.

#### I. THE LAW OF THE LAND: THE LOUISIANA MINERAL CODE

Louisiana courts and scholars have disagreed on the interpretation of several Mineral Code articles.<sup>12</sup> The language from Mineral Code articles 139, 140, and 212.23 states that "the court may award as damages double the amount of royalties due."<sup>13</sup> An exploration of the development of

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royalties due pursuant to Mineral Code article 140 after the jury awarded double damages).

10. See *supra* note 9. Treble damages refer to penalty damages amounting to three times the value of actual damages. For example: John (lessee) was supposed to pay \$1,000 in royalties to Steve (lessor) and did not. Under these articles, a court could award Steve a total of \$3,000 if it interprets the articles to allow for "treble damages."

11. See *Cimarex*, 6 So. 3d at 407 (deciding whether the total award for unpaid royalties worth \$3.2 million should amount to \$6.4 million (double the unpaid royalties) or \$9.6 million (treble the unpaid royalties)).

12. See *supra* note 9.

13. LA. REV. STAT. ANN. §§ 31:139, :140, :212.23.

Louisiana law, stemming from the Civil Code and the Mineral Code, helps to interpret these articles.

*A. The Development of Mineral Law in Louisiana*

After the discovery of oil and gas in Louisiana, the courts had significant difficulties with issues related to oil and gas because the Civil Code did not provide specifically for mineral interests.<sup>14</sup> In fact, the legislature did not add the term “mineral interest” to the Civil Code until 1940.<sup>15</sup> This presented a unique problem in Louisiana—unlike the 49 common law states, legislation and custom are Louisiana’s only recognized sources of law.<sup>16</sup> The restriction to rendering decisions based on legislation or custom proved to be difficult for courts once oil and gas issues arose.<sup>17</sup> The Louisiana Supreme Court recognized the potential value of the oil and gas industry and attempted to lay the ground rules of the industry on a case-by-case basis.<sup>18</sup> The Court began developing a body of law through its decisions by analogizing new mineral law issues to existing Civil Code articles, attempting to remain true to the principles of the Civil Code.<sup>19</sup>

The Louisiana Supreme Court case of *Frost-Johnson Lumber Co. v. Salling’s Heirs* illustrates this inductive process.<sup>20</sup> In *Frost-Johnson*, the Court decided the nature of a grant or reservation of minerals under Louisiana law.<sup>21</sup> The Court needed to determine whether the right to

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14. See *Natalie Oil Co. v. La. Ry. & Navigation Co.*, 69 So. 146, 147 (La. 1915) (“The difficulty with the articles of the Code of Practice is that they were framed at a time when the nature and existence of oil under the soil of this state was not supposed or known, and the laws were not therefore framed to meet such things and the conditions surrounding them.”).

15. Ottinger, *supra* note 1, at 11 (“The words ‘mineral interest’ were first introduced into the Civil Code by amendments to Article 741 . . . by Act No. 336 of 1940 . . .”).

16. LA. CIV. CODE art. 1 (2015) (“The sources of law are legislation and custom.”).

17. Ottinger, *supra* note 1, at 11; see also Albert Tate, Jr., *Techniques of Judicial Interpretation in Louisiana*, 22 LA. L. REV. 727, 728 (1962). The main source of civil legislation in Louisiana can be found in the Louisiana Civil Code, which is a “comprehensive, systematic, and coherent enactment regulating most of the area of private law.” *Id.*

18. Ottinger, *supra* note 1, at 11.

19. James L. Dennis, *Interpretation and Application of the Civil Code and the Evaluation of Judicial Precedent*, 54 LA. L. REV. 1, 8 (1993).

20. See *Frost-Johnson Lumber Co. v. Salling’s Heirs*, 91 So. 207, 215 (La. 1922) (analogizing articles in the Civil Code to a mineral law issue to find that oil and gas beneath the surface of a property owner’s land is not owned until extracted and possessed).

21. *Id.* at 213–16.

extract oil and gas from the land owned by another is a servitude, which expires after ten years of nonuse, or some other type of property interest.<sup>22</sup> In this seminal case, the Court implemented a classic example of civilian analysis by analogizing the facts to several articles in the Civil Code, while also disregarding other applications of articles that were contrary to public policy or incompatible with Louisiana's civil law.<sup>23</sup> The Court found support in Civil Code article 505 for the notion that minerals are susceptible of ownership in place—that is, still in the ground.<sup>24</sup> The article provided then, as it does now, that the “ownership of the soil carries with it the ownership of all that is directly above and under it.”<sup>25</sup> This view seemingly lent support to the existence of a “mineral estate,” which allows a surface owner to sell the rights to the minerals below his property, and those rights are never required to revert back to the land.<sup>26</sup> The Court found additional support for this argument in the actual language of the disputed contract, which was more indicative of a sale in place or a mineral estate, especially as to the solid minerals.<sup>27</sup>

In contrast, a concurring opinion found a codal foundation for the proposition that oil and gas beneath one's land *must* belong to the landowner in Civil Code article 519.<sup>28</sup> This article provided, “[p]igeons, bees or fish, which go from one pigeon-house, hive or fish pond, into another pigeon-house, hive or fish pond, belong to the owner of those things; provided, such pigeons, bees or fish have not been attracted thither by fraud or artifice.”<sup>29</sup> One justice analogized these animals to oil because both are migratory in the sense that they are capable of moving back and forth between properties.<sup>30</sup> This view would allow the mineral rights to revert back to the land after a certain amount of time.<sup>31</sup>

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22. *Id.*

23. *Id.* at 221 (“Contracts excepting ores and minerals from grants of land, with a reservation of the right to enter upon the portion thereof granted, are in accordance with long established usage and have been invariably held by the courts to be valid; hence they are not contrary to public policy.” (quoting 18 RULING CASE LAW § 84 (William M. McKinney & Burdett A. Rich eds., 1917) (internal quotations marks omitted))).

24. *Id.* at 215.

25. LA. CIV. CODE art. 505 (1870); *see also* LA. CIV. CODE art. 490 cmt. a (2015) (“This provision reproduces the substance of Article 505 of the Louisiana Civil Code of 1870.”).

26. *See Frost-Johnson*, 91 So. at 223 (Provosty, J., concurring).

27. *Id.* at 209 (majority opinion); *see also* Ottinger, *supra* note 1, at 23.

28. *Frost-Johnson*, 91 So. at 224 (Provosty, J., concurring); LA. CIV. CODE art. 519 (1870); *see also* LA. CIV. CODE art. 3415 cmt. (2015) (“This provision is based on Article 519 of the Louisiana Civil Code of 1870 . . .”).

29. LA. CIV. CODE art. 519 (1870); *see also* Ottinger, *supra* note 1, at 23.

30. *Frost-Johnson*, 91 So. at 224 (Provosty, J., concurring).

31. *See id.*

The Court weighed the different interpretations by considering various policy concerns associated with each approach<sup>32</sup> and it eventually decided that mineral rights are analogous to servitudes, rejecting the idea of “mineral estates” in Louisiana.<sup>33</sup> Overall, *Frost-Johnson* created a strong template for courts to handle future cases involving mineral law disputes, which the redactors of the Civil Code did not foresee.

The Louisiana Supreme Court continued to develop this body of law by analogizing mineral issues to provisions in the Civil Code relating to servitudes and the general rules of conventional obligations and leases. The Court initially struggled, however, given the lack of specific legislative guidance.<sup>34</sup> Although forming the body of mineral law, justices of the Louisiana Supreme Court often expressed their frustrations with bending and warping articles of the Civil Code to fit the peculiarities of mineral law without receiving any direct legislative guidance.<sup>35</sup> As a result, a Mineral Code was proposed as early as 1938.<sup>36</sup> It was not until 1974, however, that the Louisiana Legislature finally enacted the Mineral Code, which codified preexisting jurisprudence in this area of law.<sup>37</sup> The Mineral Code contains 13 chapters and is divided by subject matter, similar to the Civil Code.<sup>38</sup> Because the Mineral Code is a specialized extension of the Civil Code, provisions of the Civil Code and other legislation are applicable when the Mineral Code does not expressly or impliedly provide for a given situation.<sup>39</sup>

The committee responsible for drafting the Mineral Code submitted recommendations for the creation of a mineral code to the Council of the

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32. Ottinger, *supra* note 1, at 23–26.

33. *Frost-Johnson*, 91 So. at 230–31 (Provosty, J., concurring); *see also* *Wemple v. Nabors Oil & Gas Co.*, 97 So. 666, 668–69 (La. 1923) (“And we therefore conclude that there is in this state no such estate in lands as a corporeal ‘mineral estate,’ distinct from and independent of the surface estate; that the so-called ‘mineral estate’ by whatever term described, or however acquired or reserved, is a mere servitude upon the land in which the minerals lie, giving only the right to extract such minerals and appropriate them.”).

34. Martin, *supra* note 1, at vii.

35. *See, e.g.*, *St. Martin Land Co. v. Pinckney*, 33 So. 2d 169, 172 (La. 1947) (noting that the Court was “compelled to apply the articles of the Civil Code that were most applicable to the nature of the rights asserted” because the Legislature refused to adopt statutes to guide the court); *Natalie Oil Co. v. La. Ry. & Navigation Co.*, 69 So. 146, 147 (La. 1915) (noting the difficulty in applying articles from the code because they were framed before the nature and existence of oil and gas was known in this state).

36. Ottinger, *supra* note 1, at 33.

37. Martin, *supra* note 1, at iv–v.

38. LA. REV. STAT. ANN. § 31:3 cmt. (2000).

39. *Id.* § 31:2; LA. CIV. CODE art. 561 cmt. a (2015).

Louisiana State Law Institute in 1971.<sup>40</sup> In this document, the committee noted that dissolution of mineral leases for nonpayment of royalties “is one of the most, if not the most, confused and unsatisfactory areas of Louisiana mineral law.”<sup>41</sup> The committee thought that the biggest problem with the jurisprudence in this area of the law was that mineral lessors were only entitled to mere interest upon unpaid royalties when a lessee failed to pay royalties due.<sup>42</sup> But the committee disfavored the harsh remedy of lease dissolution because a lease might involve the investment of millions of dollars.<sup>43</sup> Thus, the drafters of the Mineral Code took these recommendations and created Mineral Code articles 137 through 141, hoping to deal with the longstanding issue.<sup>44</sup>

*B. Mineral Leases and Remedies for Nonpayment of Royalties*

The term “royalty” is used throughout the Mineral Code in different contexts, but this Comment focuses on how the term is used in connection with mineral leases. The Code defines “royalty,” in the context of mineral leases, as:

[A]ny interest in production, or its value, from or attributable to land subject to a mineral lease, that is deliverable or payable to the lessor or others entitled to share therein. Such interests in production or its value are “royalty,” whether created by the lease or by separate instrument, if they comprise a part of the negotiated agreement resulting in execution of the lease. “Royalty” also

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40. LA. STATE LAW INST., SUGGESTED PRINCIPLES OF LOUISIANA MINERAL LAW—A BASIS FOR REFORM (George W. Hardy, III rep., 1971) [hereinafter LA. LAW INST., SUGGESTED PRINCIPLES]. The recommendations were in the form of an *Exposé Des Motifs*, which translated into English means “Explanatory Memorandum.”

41. *Id.* at 186. The drafters of the Mineral Code implemented this section into the comment to article 137. LA. REV. STAT. ANN. § 31:137 cmt.

42. *Id.*

43. *Id.*

44. See LA. LAW INST., SUGGESTED PRINCIPLES, *supra* note 40, at 188 (“[T]he intent of paragraph (c) of this recommendation to provide lessors with a meaningful remedy while simultaneously giving operators who have made substantial investments in producing properties the security of title which the nature and size of their investment deserve.”); LA. REV. STAT. ANN. § 31:137 cmt. (noting that the intent of articles 137 to 141 is verbatim to the one expressed in the *Exposé Des Motifs*).



includes sums payable to the lessor that are classified by the lease as constructive production.<sup>45</sup>

If a mineral lessor wants to recover damages for a lessee's failure to make timely or proper payment, the lessor is required to give the lessee written notice of the failure to pay before the lessor makes a judicial demand for damages or dissolution of the lease.<sup>46</sup> Several articles in the Louisiana Mineral Code allow for damages to a mineral lessor when a mineral lessee fails to pay royalties due.<sup>47</sup> These articles state in part that "[t]he court may award as damages double the amount of royalties due, interest on that sum from the date due and a reasonable attorney's fee."<sup>48</sup> The purpose of these articles is to provide a mineral lessor with something more meaningful than just the amount of unpaid royalties plus interest, while still protecting the lessee against the harsh penalty of lease dissolution.<sup>49</sup>

Article 138.1 provides that the court shall award as damages double the amount of royalties due to a mineral lessor when a lessee fails to pay royalties solely because the lessor has not executed a division order.<sup>50</sup> This treatment is consistent with the intent of the revision of the law governing nonpayment of royalties to protect the lessors by providing an adequate remedy if royalties are not paid, while still avoiding the harsh penalty that dissolution of the lease would impose upon the lessee.<sup>51</sup> Although other articles contain this damages provision, only article 138.1 imposes a mandatory award.<sup>52</sup>

Article 139 allows the court to impose damages double the amount of royalties due if the lessee's failure to pay is either fraudulent or willful and

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45. LA. REV. STAT. ANN. § 31:213(5). This Comment focuses on royalties in connection with mineral leases and not as mineral royalties are defined in other articles of the Mineral Code.

46. *Id.* § 31:137.

47. *Id.* §§ 31:139, :140, :212.23(C); *see also id.* § 31:138.1(D).

48. *Id.* § 31:139; *accord id.* § 31:140; *see also id.* §§ 31:212.23(C), :138.1(D).

49. *Id.* § 31:137 cmt.

50. *Id.* § 31:138.1(D) ("If the lessee fails to pay royalties solely because his lessor has not executed a division order as defined in this Article, the court shall award as damages double the amount of royalties due, legal interest on that sum from the date due, and reasonable attorney's fees."). A division order is defined as "an instrument setting forth the proportional ownership in oil or gas, or the value thereof, which division order is prepared after examination of title and which is executed by the owners of the production or other persons having authority to act on behalf of the owners thereof." *Id.* § 31:138.1(A).

51. Thomas H. Kiggans, *Article 138 of the Mineral Code: A Reasonable Cause for Nonpayment of Royalties*, 43 LA. L. REV. 1271, 1278-79 (1983).

52. *See* LA. REV. STAT. ANN. §§ 31:138.1(D), :139, :140, :212.23(C).

without reasonable grounds.<sup>53</sup> The jurisprudence has been unclear on what exactly amounts to “reasonable grounds,” except for two scenarios.<sup>54</sup> First, courts have held that an administrative or clerical error that leads to nonpayment constitutes reasonable grounds.<sup>55</sup> Second, the courts have held that failure to pay is reasonable when payments were not due in light of the custom of the industry.<sup>56</sup>

The Code also provides this discretionary award in other circumstances.<sup>57</sup> One such example is article 140, which instructs that the court may award double the amount of royalties due as damages if the lessee fails to pay the royalties due or fails to inform the lessor of a reasonable cause for failure to pay after the lessor gives the lessee notice as required by article 137.<sup>58</sup> For example, if a mineral lessee fails to pay \$1,000 in royalties owed to the lessor and also fails to inform the lessor of a reasonable cause for the failure to pay, the court has the option of awarding the lessor damages up to \$2,000.<sup>59</sup> Under the current ambiguity in the law, however, courts may award a total of \$2,000 or \$3,000.

The Mineral Code also provides this remedy in article 212.23 for when production and royalty payments are owed to someone other than a mineral

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53. *Id.* § 31:139 (“If the lessee pays the royalties due in response to the required notice, the remedy of dissolution shall be unavailable unless it be found that the original failure to pay was fraudulent. The court may award as damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney’s fee, provided the original failure to pay royalties was either fraudulent or willful and without reasonable grounds. In all other cases, such as mere oversight or neglect, damages shall be limited to interest on the royalties computed from the date due, and a reasonable attorney’s fee if such interest is not paid within thirty days of written demand therefor.”).

54. Kiggans, *supra* note 51, at 1275.

55. *See* Hebert v. Sun Oil Co., 223 So. 2d 897, 899 (La. Ct. App. 1969) (holding that a clerical error that resulted in overpayment to the lessor of \$13.61 was reasonable and did not constitute a serious basis for dissolving the lease).

56. *See* Canik v. Tex. Int’l Petroleum Corp., 308 So. 2d 453, 457 (La. Ct. App. 1975) (holding that the lessees withholding of royalty payments so that all royalty owners could be paid at one time was in good faith and constituted a reasonable cause for nonpayment).

57. *See* LA. REV. STAT. ANN. §§ 31:140, :212.23(C).

58. *Id.* § 31:140 (“If the lessee fails to pay royalties due or fails to inform the lessor of a reasonable cause for failure to pay in response to the required notice, the court may award as damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney’s fee regardless of the cause for the original failure to pay royalties. The court may also dissolve the lease in its discretion.”); *id.* § 31:137.

59. *See id.* § 31:140. Whether this means that the \$2,000 is the total award or is an additional award on top of the original royalties due, resulting in a \$3,000 total award, is the subject of this Comment and will be addressed in detail.

lessor.<sup>60</sup> This situation can occur when royalty payments are owed to the owner of a mineral royalty under Mineral Code article 80.<sup>61</sup> In this situation, the mineral royalty owner is not a mineral lessor and merely has the passive right to collect mineral royalty payments.<sup>62</sup> The issue then arises as to which interpretation of these articles is preferable—double or treble damages.

## II. CIVILIAN INTERPRETATION OF THE MINERAL CODE ARTICLES

Proper use of civilian interpretative methods reveals that Mineral Code articles 138.1, 139, 140, and 212.23 provide for a total award worth double, rather than treble, the amount of unpaid royalties. Civilian interpretative theorists typically differ in their favored methods, but most experts agree that a sound interpretation of the law requires the use of multiple methods.<sup>63</sup> Many scholars and judges utilize at least one of two popular methods of civilian interpretation: exegetical and teleological.<sup>64</sup> The exegetical method looks to three different features of a given text—grammatical, logical, and historical—to ascertain the legislative intent

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60. *Id.* § 31:212.23(C) (“If the obligor fails to pay and fails to state a reasonable cause for failure to pay in response to the notice, the court may award as damages double the amount due, legal interest on that sum from the date due, and a reasonable attorney’s fee regardless of the cause for the original failure to pay.”).

61. *See id.* § 31:80 (“A mineral royalty is the right to participate in production of minerals from land owned by another or land subject to a mineral servitude owned by another. Unless expressly qualified by the parties, a royalty is a right to share in gross production free of mining or drilling and production costs.”).

62. *Id.*

63. FRANÇOIS GÉNY, *METHODE D’INTERPRÉTATION ET SOURCES EN DROIT PRIVÉ POSITIF* no. 223, at 565 (La. State Law Inst. trans., 2d ed. 1954); *see also* JULIO C. CUETO-RUA, *JUDICIAL METHODS OF INTERPRETATION OF THE LAW* 274–75 (1981); JEAN-LOUIS BERGEL, *MÉTHODOLOGIE JURIDIQUE* 261–63 (2001); Katie Drell Grissel, Comment, *The Legal Fiction of “Clear Text” in Willis-Knighton v. Caddo-Shreveport Sales and Use Tax Commission*, 67 *LA. L. REV.* 523, 529 (2007); *see generally* Albert Tate, Jr., *Civilian Methodology in Louisiana*, 44 *TUL. L. REV.* 673 (1970) (quoting Clarence Morrow, *Louisiana Blueprint: Civilian Codification and Legal Method for State and Nation*, 17 *TUL. L. REV.* 351, 537 (1943) (referencing the use of several methods of interpretation to ascertain the meaning of legislation, including elements from both the exegetical and teleological methods); Tate, *supra* note 17, at 727 (discussing “some of the techniques available to a Louisiana judge to ‘find the law’ by which to decide the case, once the facts are established”).

64. *See* CUETO-RUA, *supra* note 63, at 274, 275 (“In beginning the dialectical process, the judge attempts to discover the meaning of the rules of law subject to his consideration by simultaneously using two or more judicial methods. He begins with a grammatical and logical approach, but if this procedure does not yield a meaning consistent with the meaning that the judge is discovering in the facts of the case, he will switch to another judicial method of interpretation.”); EVA STEINER, *FRENCH LAW: A COMPARATIVE APPROACH* 69–70 (2010).

behind ambiguous texts.<sup>65</sup> The teleological method, on the other hand, directs courts “to identify the social purpose or objective of the legislation under consideration with a view to applying it in a way which does not conflict with this purpose.”<sup>66</sup> Louisiana courts have not fully utilized these methods of interpretation to ascertain the meaning of the Mineral Code articles at issue. By looking at all of these methods together along with the applicable jurisprudence and doctrine, however, the true meaning of the Mineral Code articles becomes clearer.

*A. Exegetical Method: Using Logical and Historical Interpretations to Show that the Mineral Code Does Not Provide for Treble Damages*

The exegetical method of interpretation looks to the intent of the legislative drafters to clarify ambiguous text in the law.<sup>67</sup> This method attempts to discover the purpose of the statute by utilizing grammatical, logical, and historical interpretation.<sup>68</sup> The exegetical method assumes that the statute is an act of legislative will and the most rational method for interpreting this will is to investigate the legislature’s intent at the time the statute was written.<sup>69</sup> Thus, the interpreter must start by looking to the actual language of the statute in dispute. This method follows the presumption that there is logical coherence and consistency within the system of law, of which the text in question is just one small piece.<sup>70</sup> This method is different from the literal method of interpretation, which only looks to the actual text and grammar of the statute in question to determine the legislative intent without considering sources outside the text of the law.<sup>71</sup> The exegetical method encourages the interpreter to look beyond the text of the statute to ascertain the legislative intent.<sup>72</sup>

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65. STEINER, *supra* note 64, at 63–84; *see also* BERGEL, *supra* note 63, at 236.

66. Grissel, *supra* note 63, at 537 (internal quotation marks omitted); *see also* BERGEL, *supra* note 63, at 241.

67. STEINER, *supra* note 64, at 69.

68. *Id.* The grammatical method of interpretation is not instructive for the issue of this Comment.

69. *Id.*; BERGEL, *supra* note 63, at 240–41; *cf.* LA. CIV. CODE art. 2 (2015) (“Legislation is a solemn expression of legislative will.”).

70. GÉNY, *supra* note 63, no. 14, at 21; *see also* BERGEL, *supra* note 63, at 254.

71. BERGEL, *supra* note 63, at 237–38.

72. *Id.* at 240–41; STEINER, *supra* note 64, at 69–70.

### 1. Logical Interpretation

The basis of logical interpretation is that each piece of law is a product of a rational and logical legislature, and each statute forms a piece that contributes to the meaning of the entire system, while the whole also gives meaning to the individual parts.<sup>73</sup> Portalis's *Discours Préliminaire*, which the drafters of the French Civil Code used, serves as a useful summary of the logical method:

(a) *Quand la loi est claire, il faut la suivre.* Where the meaning of a statute is clear, it must be followed.

(b) *Quand elle est obscure, il faut en approfondir les dispositions pour en pénétrer l'esprit.* Where the language of a statute is obscure or ambiguous, one should construe it in accordance with its spirit rather than its letter in order to determine its legal meaning.

(c) *Si l'on manque de loi, il faut consulter l'usage ou l'équité.* Where there is a gap in the law, judges must resort to customary laws and equity when deciding a case.<sup>74</sup>

The first maxim found its place in Louisiana Civil Code article 9<sup>75</sup> and is often referred to in its Latin iteration, *interpretatio cessat in claris*.<sup>76</sup> In Louisiana, the principle that “[t]he starting point for the interpretation of

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73. PIERRE-ANDRÉ CÔTÉ, *THE INTERPRETATION OF LEGISLATION IN CANADA* 308 (Douglas J. Simsovic trans., 3d ed. 2000).

74. STEINER, *supra* note 64, at 66 (translating JEAN-ÉTIENNE-MARIE PORTALIS, *DISCOURS PRÉLIMINAIRE DU PREMIER PROJET DE CODE CIVIL* 22 (1801)). The third maxim does not apply in this instance, because there is not a “gap” in the law.

75. LA. CIV. CODE art. 9 (2015) (“When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.”).

76. STEINER, *supra* note 64, at 66; *see also* BERGEL, *supra* note 63, at 233. The purpose of this method of interpretation is to keep from extending or restricting the scope of a statute when the text is clear and unambiguous and to accept the intention of the legislature over the plain meaning of the text when the two conflict. STEINER, *supra* note 64, at 66–67; BERGEL, *supra* note 63, at 233. Louisiana Civil Code article 9 has been called the “plain meaning” rule in Louisiana. *Louisiana Municipal Ass’n v. State*, 773 So. 2d 663, 669 (La. 2000) (“[W]hen the intention of the legislature is so apparent from the face of the statute that there can be no question as to its meaning, there is no room for construction.” (quoting NORMAN J. SINGER, *STATUTES AND STATUTORY CONSTRUCTION* § 46.01, at 118–120 (6th ed. 2000)) (internal quotation marks omitted)).

any statute is the language of the statute itself” is firmly established.<sup>77</sup> Reviewing legislative history to unmask legislative intent is inappropriate until after a principled examination of the text of the disputed legislation has occurred.<sup>78</sup> The Civil Code instructs that when a law is clear and unambiguous and its application would not lead to an absurd result, the courts should apply the law as written.<sup>79</sup> The text in question provides that “[t]he court may award as damages double the amount of royalties due.”<sup>80</sup> Judges, scholars, and experts in the field of mineral law have interpreted the articles’ language differently.<sup>81</sup> One argument is that the plain reading of this language means that the unpaid amount of royalties are owed to the lessor in any event, and the double royalties award must be added to the original amount of royalties owed, essentially creating a treble award.<sup>82</sup> The alternative interpretation posits that the most natural reading of the articles is to permit the court to allow a total award equaling double the amount of the unpaid royalties.<sup>83</sup> The fact that there are two competing interpretations of the Mineral Code articles supports that the text is ambiguous as written.

A version of the second French maxim is found in article 10 of the Louisiana Civil Code.<sup>84</sup> This maxim and article 10 both provide that one

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77. *Foti v. Holliday*, 27 So. 3d 813, 817 (La. 2009) (quoting *Dejoie v. Medley*, 9 So. 3d 826, 829 (La. 2009)).

78. *Exxon Pipeline Co. v. Pub. Serv. Comm’n*, 728 So. 2d 855, 860 (La. 1999). The Louisiana Supreme Court emphasized that “[w]hat ‘a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.’” *State v. Sidney Williams*, 800 So. 2d 790, 800 (La. 2001) (quoting SINGER, *supra* note 76, § 46.03, at 135).

79. LA. CIV. CODE art. 9 (2015).

80. *See supra* note 8.

81. *Compare Cimarex Energy Co. v. Mauboules*, 6 So. 3d 399 (La. Ct. App. 3d 2009) (finding that Mineral Code article 212.23 allows for an award worth treble the value of unpaid royalties), *with Cimarex Energy Co. v. Mauboules*, 40 So. 3d 931, 952 (La. 2010) (Knoll, J., dissenting) (concluding that Mineral Code article 212.23 only allows for a maximum award of double the value of unpaid royalties); *compare also* Patrick H. Martin, *Mineral Rights*, 48 LA. L. REV. 387, 409 (1987) [hereinafter Martin, *Mineral Rights*] (believing that the Mineral Code allows for an award worth treble the amount of unpaid royalties), *with* Jonathan A. Hunter, *Louisiana Royalty Disputes*, 12 NAT. RESOURCES & ENV’T 61, 63 (1997), *and* Sarah Y. Dicharry, Comment, *Cimarex v. Mauboules: The Concurus Crisis*, 57 LOY. L. REV. 407, 431 (2011) (arguing that the Mineral Code does not allow for damages worth treble the value of unpaid royalties).

82. *Cimarex*, 6 So. 3d at 407; *see also infra* Part II.C.1–2 (discussing the competing jurisprudence and doctrine).

83. *Cimarex*, 40 So. 3d at 952 (Knoll, J., dissenting); *see infra* Part II.C.1–2 (discussing the competing jurisprudence and doctrine).

84. LA. CIV. CODE art. 10 (2015) (“When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.”).

should interpret and search for legislative intent if the text is ambiguous and susceptible of different meanings.<sup>85</sup> In a situation where the language of the law is susceptible to multiple interpretations, the courts must interpret the law as having the meaning that best conforms to its purpose.<sup>86</sup> A comment to Mineral Code article 137 shows that the intent of articles 137 to 141 was to provide lessors with a meaningful remedy while also giving operators security of title by protecting the lessee from dissolution.<sup>87</sup> Additionally, the comment states that the total effect of these articles is “to provide a spur to timely payment of royalties due while giving lessees a reasonable way in which to avoid the harsh remedy of cancellation.”<sup>88</sup> Because the purpose of the provision is to incentivize lessees to pay on time without dissolving their leases, any multiple damages, whether double or treble, seems to fall in line with the broad intentions of the Mineral Code articles.<sup>89</sup> Still, because the goal of the articles is to diminish lease dissolution while also adding teeth to the remedy, some may view as more logical for a larger potential damages award to apply to give lessees greater incentive to make royalty payments, thus supporting the treble damages theory.

As one of the areas of the Code that the Louisiana Supreme Court used to form the initial body of mineral law, the general contract provisions lend insight into the intent inquiry.<sup>90</sup> Analogizing the Mineral Code provisions to principles of general contract law is useful to ascertain the meaning of these articles by considering the basic civilian proposition that the formal system of law is intertwined as a homogeneous unit.<sup>91</sup> Under this reasoning, the obligation to pay lease royalties is a contractual obligation, and failure to pay—or the underpayment of royalties—constitutes a breach of that contract. Therefore, an action for unpaid or underpaid royalties is an action in contract. According to the Civil Code, “[d]amages are measured by the

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85. *Id.*; STEINER, *supra* note 64, at 69; *see* BERGEL, *supra* note 63, at 233 (noting and criticizing the idea of the “clear text”).

86. LA. CIV. CODE art. 10.

87. LA. REV. STAT. ANN. § 31:137 cmt. (2000). The operators want security of title or the assurance that the lease will not be dissolved.

88. *Id.*

89. *See id.*

90. *See* GÉNY, *supra* note 63, no. 165, at 381 (“[T]he procedure of extension by analogy, resting on the solid basis of written law (exceptionally even customary law) offer[s] interpretation a first-class help . . . .”); Martin, *supra* note 1, at vii; *see also* LA. REV. STAT. ANN. § 31:2 cmt. (“The Mineral Code is a specialized extension of the Civil Code, and in instances where the Mineral Code does not make express or implied provision for a particular situation, it is intended that the principles of the Civil Code will continue to be applicable, either directly or by appropriate analogy.”).

91. GÉNY, *supra* note 63, no. 14, at 21 (discussing Savigny and his successor’s ideas on analogy).

loss sustained by the obligee and the profit of which he has been deprived.”<sup>92</sup> Thus, in a situation where a lessee fails to pay some or all of the royalties owed, the unpaid royalties clearly constitute “damages” because those royalties are what the lessor was deprived by the nonpayment.<sup>93</sup> This theory suggests that, despite arguments to the contrary, the “unpaid royalties” and “damages” are not two separate things.<sup>94</sup> In fact, the unpaid royalties *are* the damages that the lessor suffered from the underpayment or nonpayment, and the Mineral Code allows for the court, in its discretion, to double that amount as the total award—not treble it. Using this interpretation, the language from the Mineral Code articles clearly and unambiguously supports double damages.

Further, at least 12 other Louisiana statutes explicitly use terms such as “triple” or “treble” damages when the legislature has intended for treble damages to apply.<sup>95</sup> For example, the Louisiana Legislature enacted Louisiana Revised Statutes section 3:4278.1, which made the destruction of any trees growing on the land of another unlawful and created a statutory penalty of treble the fair market value of the destroyed trees.<sup>96</sup> In this statute, the legislature explicitly provided “for civil damages in the amount of

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92. LA. CIV. CODE art. 1995 (2015).

93. *See id.*

94. *See id.*

95. *See, e.g.*, LA. REV. STAT. ANN. § 3:4278.1(B) (Supp. 2015) (The unlawful cutting of timber results in damages “three times the fair market value of the trees cut.”); LA. REV. STAT. ANN. § 22:1023(F) (Supp. 2015) (allowing for “treble damages” in cases of unlawful disclosure of private genetic information); LA. REV. STAT. ANN. § 30:2027 (2000) (allowing an employee to receive “triple damages” in cases of retaliatory termination for environmental whistle blowing); LA. REV. STAT. ANN. § 39:2163 (2015) (an employee can recover “treble damages” for retaliatory termination for disclosing employers’ fraud in hurricane relief claims); LA. REV. STAT. ANN. § 51.444 (Supp. 2015) (sales representatives may recover “treble damages” for nonpayment of owed commissions); *id.* § 51:1409 (allowing for the recovery of “three times the actual damages sustained” in claims for unfair trade practices); LA. REV. STAT. ANN. § 3:3671 (Supp. 2010) (making anyone that knowingly receives a “delivery of agricultural products in containers . . . loaned by another to a grower or producer . . . liable in damages in a sum three times the value of the containers received”); LA. REV. STAT. ANN. § 3:4116(B) (Supp. 2010) (providing for damages equal to “three times the actual damages sustained as a result of [the] violation” under Louisiana Dairy Stabilization Law); *Id.* § 3:4690(F) (providing that “the court may award three times the amount of actual damages to the prevailing retailer or petroleum jobber”); LA. REV. STAT. ANN. § 9:3552 (Supp. 2015) (allowing a consumer “the right to recover three times the amount” of a charge if the court finds the extender of credit intentionally violated Louisiana Consumer Credit Law); LA. REV. STAT. ANN. § 45:1166.1(B)(1) (Supp. 2010) (stating that “[c]omplainants whose long distance telephone services have been illegally transferred may file a petition for damages equal to three times the amount of damages incurred”).

96. LA. REV. STAT. ANN. § 3:4278.1(B) (Supp. 2015).



three times the fair market value of the trees cut, felled, destroyed, removed, or diverted.”<sup>97</sup> The Louisiana Supreme Court found that violators of this statute are not required to pay both the value of the trees and an additional amount of triple the value of the trees, which would create a total award four times the value of the destroyed trees.<sup>98</sup> The proper interpretation of this statute is to allow for a total award of triple the value of destroyed trees.<sup>99</sup> Thus, Louisiana Revised Statutes section 3:4278.1 and similar statutes further support the double damages interpretation of the Mineral Code.<sup>100</sup>

Moreover, the prevailing usage of the word “double” has not meant a total award of triple compensatory damages in Louisiana law. Examples throughout Louisiana law abound where the legislature has provided for a recovery worth twice the amount of a certain sum, and Louisiana courts have interpreted these provisions to allow for double—rather than treble—damages.<sup>101</sup> For example, a statute phrased similarly to the articles in the Mineral Code provides for an award “of double the amount of health and accident benefits due” when an insurer fails to pay benefits within 30 days of receiving written notice.<sup>102</sup> The Louisiana Supreme Court has consistently held that this statute does not entitle plaintiffs to treble damages but rather a statutory maximum award of double the benefits due.<sup>103</sup>

The legislature, which understands the prevailing usage of the terms “double” and “treble,” is cognizant of the words it uses when writing laws.<sup>104</sup> For example, the legislature has said that an insurer owes a duty

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97. *Id.* (emphasis added).

98. *See* *Hornsby v. Bayou Jack Logging*, 902 So. 2d 361, 371–72 (La. 2005) (Weimar, J., concurring).

99. *See id.*; LA. REV. STAT. ANN. § 3:4278.1(B).

100. *Hornsby*, 902 So. 2d at 371–72 (Weimar, J., concurring).

101. *See, e.g.,* *Royal Air, Inc. v. Pronto Delivery Serv., Inc.*, 917 So. 2d 1197, 1198 (La. Ct. App. 2005) (interpreting Louisiana Revised Statutes section 9:2782.2, allowing for “damages of twice the amount so owing” when a drawer stops payment on a check “with the intent to defraud or when there is no justifiable dispute as to the amount owed”); *West v. Lincoln Income Life Ins. Co.*, 239 So. 2d 379, 382 (La. Ct. App. 1970) (holding that under Louisiana Revised Statutes section 22:1821—formerly Louisiana Revised Statutes section 22:657—“the statutory provision for ‘a penalty . . . of double the amount of the health and accident benefits due’ does not entitle plaintiff to a total triple the benefits, but only double the benefits” (citing *Frey v. Manhattan Life Ins. Co. of N.Y.*, 162 So. 633 (La. 1935); *Thomas v. Universal Life Ins. Co.*, 201 So. 2d 529 (La. Ct. App. 1967))).

102. LA. REV. STAT. ANN. § 22:1821 (Supp. 2015) (formerly section 22:657).

103. *West*, 239 So. 2d at 382 (citing *Frey*, 162 So. 633; *Thomas*, 201 So. 2d 529).

104. *See, e.g.,* LA. REV. STAT. ANN. § 38:2301(F) (1968), *repealed by* Act No. 18, § 1, 1988 La. Acts 28 (providing that a contractor must pay its worker “the

of good faith to its insured.<sup>105</sup> If the insurer violates that duty, “the claimant may be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater” in addition to any general or special damages the claimant receives.<sup>106</sup> The Louisiana Supreme Court has interpreted this statute to allow for a total award equaling triple the value of the damages because the statute makes clear that “the penalty is calculated based on ‘the amount found to be due from the insurer to the insured’ in addition to the amount of the loss.”<sup>107</sup> If the intent was to provide treble damages in the Mineral Code, the legislature could have chosen language like the following: “In addition to the amount of unpaid royalties, the court may award as damages double the amount of royalties due.”

Based on the many other Louisiana statutes that explicitly provide for treble damages, the drafters of the Mineral Code clearly did not intend for treble damages to apply to these articles. The custom of the Louisiana legislature is to explicitly use the word “double” when intending to award a total award worth double the amount of damages and to expressly use the words “treble” or “triple” or include phrases like “in addition to the royalties due” when intending for a total award worth treble the amount of damages.<sup>108</sup> One must assume that the legislature carefully and purposefully chose each word in accordance with well-settled principles of statutory construction.<sup>109</sup> Thus, the Mineral Code articles addressing damages must be construed to allow a maximum award of double the amount of royalties due, rather than triple that amount.

## 2. *Historical Interpretation*

Unlike logical interpretation, historical interpretation looks beyond the text of the statute to determine the legislative intent or purpose.<sup>110</sup> A

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amount by which he has been underpaid plus, as a penalty, twice that amount”); LA. REV. STAT. ANN. § 22:1973(C).

105. LA. REV. STAT. ANN. § 22:1973(C).

106. *Id.*

107. *Durio v. Horace Mann Ins. Co.*, 74 So. 3d 1159, 1170 (La. 2011).

108. *See supra* notes 95, 101.

109. *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 860 So. 2d 1112, 1119 (La. 2003); *see also* GÉNY, *supra* note 63, no. 101, at 190 (stating that “[s]ince the statute is a product of conscious and reflective thought of its author, not only must he have visualized exactly the rule he intended to establish, but it must be also assumed that he has chosen, with reflection and premeditation, the words which faithfully express his thought and will”).

110. P. RAYMOND LAMONICA & JERRY G. JONES, LEGISLATIVE LAW & PROCEDURE § 7.8, *in* 20 LOUISIANA CIVIL LAW TREATISE 213 (2d ed. 2014); *see also* BERGEL, *supra* note 63, at 240.

look at the history surrounding the enactment of a statute can be crucial in understanding the intentions of the legislature.<sup>111</sup> Under this category of interpretation, one must consider the applicable legislative history and sources upon which the legislature based the language of the statute.<sup>112</sup> Although the legislature used no sources to draft the Mineral Code articles,<sup>113</sup> several pieces of legislative history are particularly useful to determine the drafters' intent.<sup>114</sup>

Using this method of interpretation, two letters provide valuable insight into the intent of the drafters of these Mineral Code articles.<sup>115</sup> George W. Hardy, III, Reporter of the Louisiana State Law Institute's project to adopt the Louisiana Mineral Code, wrote the first letter to the Mineral Law Advisory Committee.<sup>116</sup> This letter shows that the drafters were presented with Recommendation 212(c) for Mineral Code articles 139 and 140.<sup>117</sup> Recommendation 212(c) provided that "the lessor should be entitled to recover treble the amount due plus interest on the total amount which he is entitled."<sup>118</sup> A second letter, from a member of the Committee to Dean Hardy written shortly before the Mineral Code was enacted in 1974, shows that the drafters rejected the treble damages approach from Recommendation 212(c) in favor of Recommendation 132(c), which stated that "the lessor is entitled to recover double the

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111. See GÉNY, *supra* note 63, no. 104, at 201 (stating that legislative records are an important tool when used solely to discover the intent of the legislature).

112. LAMONICA & JONES, *supra* note 110, § 7.8, at 213; see also BERGEL, *supra* note 63, at 242–43 (regarding legislative history).

113. A thorough review of the Law Institute records and legislative history did not reveal any source articles.

114. Legislative history can shed light on the legislative intent of a statute; however, it is merely considered a persuasive authority. LA. CIV. CODE art. 1 cmt. b (2015); see also CÔTÉ, *supra* note 73, at 542. There are two types of sources that together make up the method of "legislative history." LAMONICA & JONES, *supra* note 110, § 7.10, at 231. The first is chronological and sequential, which lays out the variations in the language of a specific law over time by multiple acts of the legislature. *Id.* The second examines legislative materials that reflect the events of passage of a particular act. *Id.*; see also *E. Baton Rouge Parish Sch. Bd. v. Foster*, 851 So. 2d 985, 999 (La. 2003) (stating that contemporaneous statements made during the enactment process should not be regarded as conclusive evidence of the legislative intent because the understanding of one or a few members of the legislature is not determinative of the legislature's intent as a whole).

115. See Letter from Richard E. Gerard to Dean George W. Hardy, III (Apr. 11, 1974) (on file with author); Letter from Dean George W. Hardy, III to Mineral Law Advisory Committee (Aug. 7, 1970) (on file with author).

116. Letter from Dean George W. Hardy, III to Mineral Law Advisory Committee (Aug. 7, 1970) (on file with author).

117. *Id.*

118. *Id.*

amount due plus legal interest from the date on which the royalties were due.”<sup>119</sup>

Afterwards, the advisory committee’s *Exposé Des Motifs*, which was created in preparation of drafting the Mineral Code to highlight recommendations in the area of law to the Council of the Louisiana State Law Institute, included Recommendation 132(c).<sup>120</sup> This recommendation, which advocates for “double” the amount due, is credited as the source for Mineral Code articles 139 and 140, instead of Recommendation 212(c), which called for “treble” the amount due.<sup>121</sup> Some may argue that the correct interpretation of Recommendation 132(c) is to allow for treble damages, which would mean Recommendation 212(c) would have to be interpreted to allow for a total award of quadruple the royalties due. This interpretation is highly unlikely because Louisiana does not have any laws providing for quadruple damages.<sup>122</sup> Even more persuasive, the United States Supreme Court has stated that punitive damages awards of more than four times the value of actual damages may be close to the line of constitutional impropriety.<sup>123</sup> The drafters of the Louisiana Mineral Code probably did not wish to push the constitutional boundaries of due process. Notably, other influential mineral law states do not allow for more than mere interest on royalties due.<sup>124</sup> The drafters of the Mineral Code likely debated between double and treble damages but chose for a double royalties remedy to apply, which becomes even more evident after using both the exegetical and teleological methods of interpretation.

### *B. Teleological Method*

Unlike the exegetical method, which uses grammatical, logical, and historical elements to determine the legislative intent of a statute, the teleological method is more concerned with the social purpose that the

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119. *Id.* at 3; Letter from Gerard, *supra* note 115, at 2.

120. LA. LAW INST., SUGGESTED PRINCIPLES, *supra* note 40, at 188.

121. Letter from Gerard, *supra* note 115, at 2.

122. *See* LA. CIV. CODE art. 9 (2015).

123. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

124. *See, e.g.*, TEX. NAT. RES. CODE ANN. § 91.403 (West, Westlaw through 2015 Regular Session of the 84th Legislature) (providing interest to a payee “at two percentage points above the percentage rate charged on loans to depository institutions by the New York Federal Reserve Bank, unless a different rate of interest is specified in a written agreement between payor and payee”); *see also* OKLA. STAT. ANN. tit. 52, § 570.10 (West 2000) (stating that the portion of proceeds not paid shall earn interest at the rate of 12% per annum to be compounded annually, and be calculated from the end of the month in which production is sold until the day paid, but if the failure to pay is due to an unmarketable title, the interest rate is 6% per annum).

legislature intended and applies the law in a way that does not frustrate that purpose.<sup>125</sup> This method requires the interpreter to identify the legislative intent by consulting legislative history or sometimes by simply looking to the title of the statute in question.<sup>126</sup> Article 10 of the Louisiana Civil Code supports this method of interpretation by stating, “[w]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.”<sup>127</sup>

In the case of Mineral Code articles 137 through 141, the drafters included the intent of the articles in the comment to article 137, noting that “it is the intent of Articles 137–141 to provide lessors with a meaningful remedy while simultaneously giving operators who have made substantial investments in producing properties the security of title which the nature and size of their investment deserves.”<sup>128</sup> The Louisiana State Law Institute committee’s Recommendation 132(c) in its *Exposé Des Motifs*, created in preparation of the drafting of the Mineral Code, gave the same intent.<sup>129</sup>

Both interpretations appear to fall in line with the social purpose and intent of the articles of providing a “meaningful remedy.” In light of the intent and purpose of the articles, making the potential damages remedy as large as possible could sensibly add a greater incentive for the lessees to make royalty payments in a timely manner, thus lending support to the treble damages interpretation.<sup>130</sup> No evidence, however, shows just how large of a remedy the legislature intended to provide for lessors. Additionally, a double remedy is already a substantial award that can be quite “meaningful,” and one cannot infer that the legislature necessarily intended for an even greater award just because it wished to advance a policy that provides a “meaningful remedy.”

Further, a remedy worth triple the amount of unpaid royalties would frustrate the intent of the statute because that penalty might be so great as to deter investment, which is certainly contrary to the goal of the articles.

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125. STEINER, *supra* note 64, at 73; *see also* BERGEL, *supra* note 63, at 241 (noting the teleological method is sometimes referred to as “Méthode du but social” in French, which translated into English is “The Sociological Method”).

126. GÉNY, *supra* note 63, no. 103, at 197 (“[T]o understand the practical scope of the statute the interpreter must reconstruct as exactly as possible the fact situation the legislator intended to regulate, and all the circumstances which determined it and which came from the ethical, political, social, economical and even technical exigencies the statute was supposed to satisfy.”); *see also* STEINER, *supra* note 64, at 73.

127. LA. CIV. CODE art. 10 (2015).

128. LA. REV. STAT. ANN. § 31:137 cmt. (2000).

129. LA. LAW INST., SUGGESTED PRINCIPLES, *supra* note 40, at 188.

130. *See supra* Part II.A.2.

The drafters were not solely concerned with providing a “meaningful remedy” to lessors, as they were also trying to balance that interest against “the harsh remedy of cancellation.”<sup>131</sup> A large treble damages award looming over the heads of potential lessees could deter them from investing in the first place, contravening this policy. A treble damages award might be too large for a potential lessee to risk, and excluding mineral leases from commerce is not what the drafters of the articles intended.

### C. Secondary Sources

In addition to the teleological and exegetical methods of interpreting the Mineral Code articles supporting a finding of double damages, jurisprudence and doctrine also support this conclusion. Unlike the other 49 states, jurisprudence and doctrine are both considered secondary sources of law in Louisiana and are merely persuasive authority.<sup>132</sup>

#### 1. Jurisprudence

Even if judicial decisions are only considered persuasive authority in Louisiana, a thorough review of jurisprudence is crucial to a proper civilian analysis. Currently, only two of the Louisiana circuit courts of appeal have addressed the issue directly.<sup>133</sup> Thus, with respect to the

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131. LA. REV. STAT. ANN. § 31:137 cmt.

132. LA. CIV. CODE art. 1 cmt. b (2015). It has been debated, as a practical matter, whether jurisprudence may have risen above this civilian distinction in Louisiana and become more of a primary source of law. See Jason Edwin Dunahoe, Comment, “*Jurisprudence Désorientée*,” *The Louisiana Supreme Court’s Theory of Jurisprudential Valuation*, *Doerr v. Mobil Oil and Louisiana Electorate of Gays and Lesbians v. State*, 64 LA. L. REV. 679, 695–96 (2004) (noting that in practice, attorneys and judges typically follow rulings of prior courts). This concern is irrelevant with respect to the Mineral Code articles on damages for unpaid royalties, because there is no ruling from the Supreme Court on the issue. See David Gruning, *Bayou State Bijuralism: Common Law and Civil Law in Louisiana*, 81 U. DET. MERCY L. REV. 437, 441 (2004) (“The commonplace, the common learning, is that Louisiana is the odd-state-out because it has the civil law in effect there.”).

133. See *Cimarex Energy Co. v. Mauboules*, 6 So. 3d 399 (La. Ct. App. 3d 2009) (affirming the lower court’s calculation of treble damages); *Wegman v. Cent. Transmission, Inc.*, 499 So. 2d 436 (La. Ct. App. 2d 1986) (affirming the lower court’s decision to allow treble damages but noting that the defendant never argued that the damages were excessive under the Mineral Code).

doctrine of *jurisprudence constante*, a court's interpretation of the issue can start from a clean slate, unclouded by previous jurisprudence.<sup>134</sup>

*a. The Second Circuit Skirts Treble*

The Second Circuit in *Wegman v. Central Transmission, Inc.* was the first appellate court to decide whether the Mineral Code provides for double or treble damages in the event that a mineral lessee fails to pay its lessor owed royalties.<sup>135</sup> The court interpreted Mineral Code article 140 to provide for an award equal to the original royalties due plus an additional damages award equal to twice the amount of royalties due, essentially resulting in a treble damages award.<sup>136</sup> At the trial court level, the jury interpreted the article to allow for a maximum award of twice the unpaid royalties plus attorney's fees and subsequently awarded the plaintiff that amount.<sup>137</sup> After the jury rendered its award, the defendant filed a motion for judgment notwithstanding the verdict, and the trial court modified the judgment to award the plaintiff triple the value of the unpaid royalties.<sup>138</sup>

On appeal to the Second Circuit, the defendant asserted that the trial judge erred by awarding a total award of treble the unpaid royalties, instead of double.<sup>139</sup> The court noted that this defendant never claimed that the award was more than authorized by article 140.<sup>140</sup> After deciding that the trial court's modification of the award was not a substantive change in the law but rather a correction of an error by the jury, the court essentially deferred to the trial court's decision to allow treble damages.<sup>141</sup> What might have happened if the defendant had challenged the damages award as being excessive under article 140 is uncertain, but lessors often cite this case in support of their argument that they are entitled to treble damages.<sup>142</sup>

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134. See *Johnson v. St. Paul Mercury Ins. Co.*, 236 So. 2d 216, 218 (La. 1970) (noting that *jurisprudence constante*, recognized in Louisiana, entitles a principle of law to substantial deference when it has been repeatedly applied by a long line of cases); see also N. Stephan Kinsella, *A Civil Law to Common Law Dictionary*, 54 LA. L. REV. 1265, 1278 (1994).

135. 499 So. 2d 436 (1987).

136. *Id.* at 452.

137. *Id.* at 452–53.

138. *Id.* at 451.

139. *Id.* (“[T]he trial judge erred in doubling the amount of the award (line 5) and then adding that figure to the actual damages (line 4) thereby giving plaintiff three times the amount of actual damages (line 6 vs. line 4).”).

140. *Id.*

141. *Id.* at 451–52.

142. See *Cimarex Energy Co. v. Mauboules*, 6 So. 3d 399, 407 (La. Ct. App. 3d 2009) (stating that the *Wegman* court affirmed the method of calculation that doubled the damages and added that sum to the amount of royalties due); Brief on the Merits by Respondents, *Orange River Royalties, LLP*, at 24–25, *Cimarex*

Ultimately, *Wegman* does not provide meaningful guidance because the Second Circuit only answered whether the trial court was allowed to modify the jury award, not whether the Mineral Code authorizes treble damages.<sup>143</sup>

*b. The Third Circuit Runs into Treble*

The Third Circuit was directly presented with this damages issue in *Cimarex Energy Co. v. Mauboules*.<sup>144</sup> This time, the court addressed the damages clause in Mineral Code article 212.23.<sup>145</sup> The trial court awarded the plaintiffs unpaid royalties of approximately \$3.2 million, plus an additional statutory damages award of roughly \$6.4 million, resulting in a treble remedy totaling nearly \$9.6 million.<sup>146</sup> Unlike the lessees in *Wegman*, the defendants challenged the damages award as being in excess of the amount contemplated by article 212.23.<sup>147</sup> Without providing much discussion on the damages issue, the Third Circuit looked to *Wegman* and affirmed the lower court's method of calculation that resulted in a treble damages award.<sup>148</sup> The court reasoned that the royalties owed to the plaintiffs were not damages but rather a sum of money owed to them because they were the rightful owners of those royalty interests.<sup>149</sup> The court claimed that the Mineral Code clearly states that a court may award double the amount due "as damages."<sup>150</sup> Thus, the court concluded that, in addition to owing the unpaid royalties, the obligor must also pay the additional double royalties as damages to the obligee, creating a total award of triple the amount of the original unpaid royalties.<sup>151</sup>

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Energy Co. v. Mauboules, 40 So. 3d 931 (La. 2010) (Nos. 09-C-1170, 09-C-1180, 09-C-1194), 2009 WL 6352149, at \*24–25 (stating that *Wegman* specifically affirmed the trial court's interpretation of article 140 to allow damages worth triple the amount of the unpaid royalties).

143. See *Wegman*, 499 So. 2d at 451–52 (deciding that the modification of damages was not substantive in nature).

144. *Cimarex*, 6 So. 3d at 399.

145. *Id.* at 407; LA. REV. STAT. ANN. § 31:212.23(C) (2000).

146. *Cimarex*, 40 So. 3d at 952 (Knoll, J., dissenting).

147. *Cimarex*, 6 So. 3d at 407; LA. REV. STAT. ANN. § 31:212.23(C); *Wegman*, 499 So. 2d at 451.

148. *Cimarex*, 6 So. 3d at 407.

149. *Id.*

150. *Id.*

151. *Id.*



*c. Justice Knoll Tries to Bail the Appellate Courts Out of Treble*

The *Cimarex* case went to the Louisiana Supreme Court in 2010, but the majority decided the case on a different basis.<sup>152</sup> Thus, the damages issue was moot, and the majority never addressed it.<sup>153</sup> Justice Knoll, however, addressed the issue in her dissenting opinion.<sup>154</sup> She found that the trial court erred as a matter of law by awarding the plaintiffs excessive damages pursuant to Mineral Code article 212.23.<sup>155</sup> Justice Knoll noted that the trial court was incorrect in effectively tripling—rather than doubling—the damages award by its method of calculation.<sup>156</sup> She pointed out that a far more natural reading of the Mineral Code article would allow the plaintiff a total award of double the amount of unpaid royalties.<sup>157</sup> She came to this conclusion by reasoning that if the legislature intended to permit treble damages, it would have unambiguously permitted an award of treble damages as it did in many other articles throughout the Civil Code.<sup>158</sup> She then pointed to several Louisiana laws that included language such as “treble damages” or “damages triple the amount of royalties due.”<sup>159</sup> Justice Knoll found additional support in the fact that these damages provisions are penal in nature, such that they must be strictly construed in favor of the lessee.<sup>160</sup>

*d. Courts That Stayed Out of Treble*

Several other courts have been presented with damages issues stemming from Mineral Code articles 139 and 140, but none of those cases addressed the issue of double versus treble damages directly at the appellate level.<sup>161</sup> In several cases, however, the trial courts awarded the

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152. *Cimarex Energy Co. v. Mauboules*, 40 So. 3d 931, 946 (La. 2010) (finding that the concursus was properly invoked, thus making any discussion on calculation of damages moot).

153. *Id.*

154. *Id.* at 952 (Knoll, J., dissenting).

155. *Id.* at 947.

156. *Id.* at 952.

157. *Id.*

158. *Id.*

159. *Id.* at 952 n.9 (noting that under Louisiana Revised Statutes section 3:4278.1 the “[u]nlawful cutting of timber” results in damages “three times the fair market value of the trees cut”); *see also supra* note 95.

160. *Cimarex*, 40 So. 3d at 952 (La. 2010) (Knoll, J., dissenting) (citing *La. Bag Co., Inc. v. Audubon Indem. Co.*, 999 So. 2d 1104, 1120 (La. 2008)).

161. *See Broussard v. Union Pac. Res. Co.*, 778 So. 2d 1199 (La. Ct. App. 3d 2001); *Matthews v. Sun Exploration & Prod. Co.*, 521 So. 2d 1192 (La. Ct. App. 2d 1988); *Bailey v. Franks Petroleum, Inc.*, 479 So. 2d 563 (La. Ct. App. 1st 1985).

plaintiffs damages worth double the unpaid royalties, rather than treble.<sup>162</sup> In *Broussard v. Union Pacific Resources Co.*, the Third Circuit affirmed the trial court's damages award equaling double the amount of unpaid royalties, arguably interpreting the language of the statute to only allow for double, rather than treble, the unpaid royalties.<sup>163</sup> Unfortunately, the opinion did not discuss the damages issue in detail and simply affirmed the lower court's award.<sup>164</sup> Although none of these cases addressed this issue directly, they do demonstrate that several trial courts allowed for a maximum of double the royalties due.

## 2. Doctrine

Doctrinal sources of law are another tool that civilian interpreters can use in their quest to ascertain the legislative intent of a statute.<sup>165</sup> Like jurisprudence, doctrine is not considered a true source of law in a civilian system of law such as Louisiana but can be highly persuasive.<sup>166</sup> Considering doctrine looks to writings of those experts in the area of law at issue.<sup>167</sup> Publications from journals of law schools and legal treatises are additional doctrinal sources, along with the work of the Louisiana State Law Institute, which has encouraged a "revival of civilian thinking and theory" since its inception in 1938.<sup>168</sup>

Doctrine has been important in dealing with mineral law issues, as scholars and commentators have weighed in on whether Mineral Code articles 138.1, 139, 140, and 212.23 provide for double or treble damages. For example, after *Wegman* was decided, former Commissioner of

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162. *Broussard*, 778 So. 2d at 1201–02; *Matthews*, 521 So. 2d at 1195; *Bailey*, 479 So. 2d at 565.

163. *Broussard*, 778 So. 2d at 1205.

164. *Id.*

165. Tate, *supra* note 17, at 739; *see also* JEAN CARBONNIER, DROIT CIVIL: INTRODUCTION 269 (26th ed. 1999).

166. CARBONNIER, *supra* note 165, at 269; Grissel, *supra* note 63, at 540.

167. Tate, *supra* note 17, at 728; *see also* Paul M. Hebert, Editorial, *The Law Review and the Law School*, 1 LA. L. REV. 157, 158 (1938). Former Dean of the Louisiana State University Law School Paul M. Hebert expressed the importance of doctrinal materials to the legal profession when he gave a speech commemorating the founding of the *Louisiana Law Review* in 1938. *Id.*

168. Tate, *supra* note 17, at 740. One respected Louisiana jurist, Albert Tate, Jr., believes that doctrine is more influential in Louisiana law than many give it credit, noting that one law review commentary can substantially influence a judge's interpretation and application of certain laws. *Id.* Judge Tate added that the work of law reviews, including student notes and comments supervised by faculty and leading members of the bar, are invaluable aids in helping evaluate the background and context of statutes, while also discerning the legislative or social intent of a law in dispute. *Id.*

Conservation Professor Patrick H. Martin noted that the trial court was correct in entering a judgment allowing for treble damages.<sup>169</sup> Professor Martin agreed with the decision to allow for treble damages in a 1987 law review article but did not provide any analysis or give any reasons as to why he agreed with the interpretation.<sup>170</sup> Further, in a recent interview with this Author, Professor Martin explained that he still agrees with the interpretation calling for treble damages.<sup>171</sup> He also cited a chapter from the Louisiana Mineral Law Treatise to support his stance that the Mineral Code articles provide for treble damages.<sup>172</sup>

This Mineral Law Treatise, a doctrinal source of law in its own right, provides several rationales as to why the treble damages interpretation might be correct.<sup>173</sup> First, the court may “award ‘double the amount of royalties due,’” even when the lessee has already paid all of the royalties under Mineral Code article 138 in response to the written notice.<sup>174</sup> One argument made in this treatise claims that any contrary interpretation of the damages clause in Mineral Code article 139 would make the phrase superfluous, as that article only applies when a lessee has paid all of the royalties due.<sup>175</sup> Proponents of this argument suggest that the damages provision allowing courts to “award as damages double the amount of royalties due” would be rendered meaningless because no royalties would be due.<sup>176</sup> To further this argument in the context of Mineral Code article 140—where the lessee has not paid any royalties due—the treatise argues that it would lead to an absurd result if the penalties made available to an unpaid lessor were limited to double damages, while a paid lessor may recover treble damages under article 139.<sup>177</sup> This argument is incorrect, however, because Mineral Code article 140 also uses the same language and also provides for a maximum penalty of double damages.<sup>178</sup> Further, the treatise cites appellate court cases, such as *Cimarex* and *Wegman*, that

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169. Martin, *Mineral Rights*, *supra* note 81, at 408.

170. *Id.*

171. E-mail from Patrick H. Martin to Nathan M. Telep (Oct. 14, 2014) (on file with author).

172. *Id.* (citing Nancy Scott Degan & Adam B. Zuckerman, *Oil & Gas Leases – Royalty Payments & Remedies*, in LOUISIANA MINERAL LAW TREATISE 287–97 (Patrick H. Martin ed., 2012)).

173. See Degan & Zuckerman, *supra* note 172, §§ 909–11, at 287–97.

174. *Id.* § 909, at 288–89.

175. *Id.* § 909, at 289 (suggesting that “an ‘award of double the amount of royalties due’ would be meaningless, as no royalties would be due” where the lessee paid late pursuant to Mineral Code article 139 but still paid the full amount due).

176. *Id.*

177. *Id.*

178. LA. REV. STAT. ANN. § 31:140 (2000).

decided the Mineral Code articles allow for treble damages to bolster its argument.<sup>179</sup> These courts misinterpreted the provisions, however, by failing to perform a thorough exegetical and teleological analysis. Further, given Louisiana's civil law tradition, these cases should not be given any weight because they are not backed by persuasive authority.<sup>180</sup>

Professor Martin also provides an insightful policy argument to further support his opinion. He points to the comments of the articles to show how the courts created the articles to counteract the strong-arm tactics of producers.<sup>181</sup> He contends that because the goal of the articles is to diminish lease dissolutions, while still having teeth in the remedy, allowing for a larger potential award is more sensible because under many of these articles, the award is up the court's discretion, rather than the jury.<sup>182</sup> Professor Martin further believes that treble damages would fall more in line with the intent of incentivizing the payments of royalties.<sup>183</sup>

Professor Martin may be correct that a larger potential penalty would create more of an incentive for a lessee to pay royalties due, but both a double and treble damages award would seem to deter a lessee from failing to make royalty payments, especially when those payments are often very significant. How large of an incentive the legislature intended to provide to spur the payment of royalties is simply unclear, seeing that double the amount of unpaid royalties could often be considered a substantial amount.

Aside from Professor Martin's views, scholarship in recent years has advocated for the double damages interpretation. Jonathan Hunter, one commentator in favor of an interpretation that embraces double damages, criticizes the Second Circuit's decision in *Wegman* for awarding treble damages without any discussion or analysis.<sup>184</sup> Additionally, he notes that the lessee never challenged the award as excessive under the Mineral Code.<sup>185</sup> This diminishes the usefulness of the *Wegman* decision because it is not binding authority.<sup>186</sup> Another advocate of this interpretation of double damages is Sarah Y. Dicharry, who wrote a student casenote for

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179. Degan & Zuckerman, *supra* note 172, § 909, at 288, 309–310 (citing *Cimarex Energy Co. v. Mauboules*, 6 So. 3d 399 (La. Ct. App. 3d 2009); *Wegman v. Cent. Transmission, Inc.*, 499 So. 2d 436 (La. Ct. App. 2d 1986)).

180. *See supra* Part II.C.1.

181. E-mail from Martin, *supra* note 171.

182. *Id.*

183. *Id.*

184. Hunter, *supra* note 81, at 63.

185. *Id.*

186. *See supra* Part II.C. (showing that jurisprudence is a secondary source of law and merely persuasive authority in Louisiana).

the *Loyola Law Review* in 2011 highlighting the Louisiana Supreme Court case of *Cimarex v. Mauboules*.<sup>187</sup>

In her casenote, Dicharry argues that the courts should interpret the language of the Mineral Code by its plain meaning.<sup>188</sup> She reasons that, if the drafters of the Code intended for the damages to equal treble the amount of unpaid royalties, they would have explicitly stated that intent, but instead, the statutes permit the court in its discretion to award “double” damages.<sup>189</sup> Dicharry focuses on Justice Knoll’s dissenting opinion in *Cimarex v. Mauboules* and opines that Justice Knoll was correct in deciding that the appropriate calculation of damages for the applicable Mineral Code articles was double, and not treble, the amount of royalties due.<sup>190</sup> She states that the correct damages amount should have been “the royalties due plus the royalties due, not the royalties due plus two times the royalties due” because to interpret the Mineral Code otherwise would lead to an excessive damages award.<sup>191</sup>

The scholars and commentators are split on whether these articles allow for a maximum of double or treble damages, just like many of the lower courts in the state.<sup>192</sup> But in Louisiana, both jurisprudence and doctrine are merely persuasive sources of law.<sup>193</sup> The true meaning of the Mineral Code articles must be ascertained from the legislation itself.<sup>194</sup> The most natural reading of the articles does not provide for treble damages, as proven by previously written pieces of legislation. A study of the language contained in other pieces of legislation makes clear that the lawmakers intended for these articles to allow for a maximum award of double damages.<sup>195</sup> Additionally, the fact that the articles are penal in nature means that they must be strictly construed in favor of allowing for a maximum of double damages.<sup>196</sup> Therefore, the doctrinal sources are highly persuasive in their reasoning that the Mineral Code articles provide for double, rather than treble, damages.

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187. Dicharry, *supra* note 81, at 431. In her Casenote, Dicharry discusses the dissent’s interpretation of the Mineral Code articles briefly, along with her opinion on the matter, but does not focus on whether the articles provide for double or treble the amount of royalties due. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 430.

191. *Id.*

192. *See supra* Part II.C.1.

193. *See* LA. CIV. CODE art. 1 (2015); *see also* CARBONNIER, *supra* note 165, at 269.

194. *See supra* Part II.

195. *See supra* notes 95, 101, 190.

196. *See supra* Part II.

### III. A PROPOSAL FOR THE MINERAL CODE TO CLEARLY STAY OUT OF TREBLE

A sound interpretation of any ambiguous statute must include much more than just a literal reading of the text. To only consider one or two interpretive tools that a civilian has at his or her disposal, rather than to pursue every available avenue of interpretation to ascertain the legislative intent of a statute, would be a true disservice to the civilian system of law. The interpretive methods employed in this Comment produce compelling arguments for the Mineral Code interpretation allowing for only double damages and debunk the notion that they may provide for treble damages.<sup>197</sup> After weighing all of the arguments, the legislature clearly intended for a total award of double the unpaid royalties to apply, rather than treble that amount.

Due to disagreement among Louisiana courts, scholars, and practitioners, the need for clarity in the law dictates that the Louisiana legislature should revise the damages provisions in Mineral Code articles 138.1 through 140 and 212.23 to expressly state that the total award may only be worth a maximum of twice the amount of royalties due. Though this conclusion is clear after a thorough civilian analysis of the drafters' intent, the legislature should always strive to have statutes that are facially clear, not requiring interpretation past the plain language of the text. To that end, the Louisiana Legislature should revise the applicable articles with the following language: "The court may award a total award in an amount not to exceed twice the amount of royalties due, not including the interest on that sum from the date due, and reasonable attorney's fees." This revision would end the confusion in this area of law and clarify that these Mineral Code articles do not provide for treble damages, as some have wrongly interpreted them to provide.<sup>198</sup>

If the legislature chooses not to revise the provision, it should at least add a comment to the applicable articles to explain that the total award may amount to a maximum of double the amount of the unpaid royalties. In this comment, the legislature could provide a concrete example to further add clarity. The comment could simply provide:

[T]hese articles allow for a total award equal to a maximum of double the amount of unpaid royalties. For example, if a lessee fails to pay royalties due in the amount \$1 million, the court may

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197. See *supra* Part II.

198. See *Cimarex Energy Co. v. Mauboules*, 6 So. 3d 399, 407 (La. Ct. App. 3d 2009); *Wegman v. Cent. Transmission, Inc.*, 499 So. 2d 436, 451–52 (La. Ct. App. 2d 1986); see also *supra* Part II.C.1.

award an additional \$1 million in damages, for a total award of \$2 million, inclusive of the principal amount of unpaid royalties.

An award equal to double the amount of unpaid royalties is what the drafters of the Mineral Code intended when they created articles 138.1 through 140 and 212.23. Thus it must be applied as such by the courts. A rewording of the language in the statutes or an addition to the comments in the Mineral Code would help solve the dispute by adding clarity to the law.

#### CONCLUSION

The proposed versions of Mineral Code articles 138.1, 139, 140, and 212.23 will clarify that the Mineral Code should not be construed to provide for treble damages. Even a simple comment to the articles would make this area of law clearer. The legislative intent is for these articles to provide for double, rather than treble, damages. The Mineral Code needs to clarify these provisions so that courts do not continue to interpret the articles incorrectly and award lessors with excessive damages that the drafters never intended. As a result, calculating damage awards under these articles will be much easier, and courts will not be inclined to follow prior cases that misinterpreted the statutes and awarded treble damages. A double damages interpretation provides lessors with a meaningful remedy in the event of nonpayment but does not deter lessees from entering into a lease initially. This interpretation is directly in line with the intent of the drafters and advances sound public policy.

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