

FOR THE LOVE OF CHRIST JESUS; THE BEGINNING AND THE END.

ESSENTIALS IN OIL AND GAS LAW

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KINDLY NOTE:

1. All you need is to understand the principles, then back it up with one or two popular case(s) therefore this note presents the discussion on this subject area in a succinct and straight-to-the-point manner, identifying the essential authorities.
2. My language and referencing are informal and abbreviations were used in this work. E.g. HC means High Court, CoA means, Court of Appeal, CFRN means, Constitution of the Federal Republic of Nigeria, etc. I apologize.
3. If viewing the notes on your laptop, press Ctrl + F (Ctrl key and Key F at the same time) to find a specific word/phrase. If viewing from a mobile device, select the “search” option from your browser’s tool menu.
4. The next update of the note shall be released on April, 2020.
5. For advanced legal research on any area of law kindly visit vitesolutions.com.ng.

Thank you and hope you find the notes helpful.

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OIL AND GAS LAW PART 1

PETROLEUM: DEFINITION

From the Greek word Petra (rock) Elaion (oil) meaning oil from rock.

By the interpretation of **Section 15 of the Petroleum Act 1969**, petroleum is mineral oil or natural gas as it exists in nature. **Section 362 of the Petroleum Industry Bill** includes condensate, bitumen and mixtures of any of them in its definition of Petroleum. Petroleum does not include coal, bituminous shales, tar sands and the likes-Section 15 PA, 362 PIB.

Scientifically speaking, Petroleum is a *hydrocarbon*¹ compound created over time by the decomposition of microscopic sea organisms (like Zooplankton) millions of years ago.

Crude oil and natural gas are derived from petroleum. **Crude oil**: oil in its natural state (before refinement). It does not include water or oil extracted from bituminous shale, coal *and other foreign substances that can be extracted by destructive distillation*². **Natural Gas**: *gaseous hydrocarbons* as they exist in their natural state... whether associated with crude oil or not³.

Crude oil varies in colour, chemical compositions and weight... These variations determine the commercial value. For example, *lighter* and *sweet*⁴ crudes are more preferable.

Unrefined crude has little or no direct commercial value... Refined crude may yield gas, fuel or residue cuts. Gas is the light end, residue cuts are the heavy bottom end cuts such as bitumen⁵. The weight of crude oil is generally measured with *API* (American Petroleum Institute) grading system. This API system is measured in relation to the weight of water. Crudes of 30-45 are considered light, 22-30 are medium weight, crudes below 22 are considered heavy.

DIFFERENCES AND SIMILARITIES BETWEEN OIL AND GAS.

Oil and gas are similar in the following respects:

1. Both are fossil fuels derived from petroleum (a hydro carbon formed from the decomposition of sea organisms millions of years ago).
2. Both are (non-renewable) forms of energy with varying uses like transportation, heating, power and so on.

¹ Chemical containing Hydrogen and Carbon...

² **Section 15 of the Petroleum Act and Section 362 of the PIBill.**

³ ***Ibid.***

⁴ Sweet crudes are crudes with low sulphur content.

⁵ Used for roads, waterproofing and roofing.

3. Both are greenhouse gases⁶.

The differences between crude oil and natural gas includes:

1. When compared to oil, gas is more difficult to transport and store. In practice, highly sophisticated machineries and specialized pipelines are utilized in storing, transportation and liquefaction⁷ of gas.
2. There is a higher demand for crude oil because of its broad range of uses like manufacturing of plastic, rubber, cosmetics, and so on.
3. When compared to oil, natural gas is cheaper and less harmful to the environment as it burns brighter, cleaner and hotter. Natural gas produces about 30 percent less Co₂ than crude oil and 45% less Co₂ than coal.
4. Unlike gas, oil contains more complex hydrocarbons like cycloalkanes, asphaltene, and so on.
5. Oil is liquid at room temperature while Gas is an aeriform mixture. Gas can be associated with oil or found alone (**Section 362 PIB** (on the definition of natural gas)). It can however be liquefied.
6. Oil has a high density with low rate of diffusion while gas is of a low density and diffuses quickly. This explains the difficulty in trapping and transporting gas. Initially it was flared off until recently where new techniques like liquefaction are used to trap as much gas as possible.

USES AND IMPORTANCE OF OIL.

- Energy: for internal combustion engines and for heating.
- Liquefied gas for cooking and powering cigarette lighters.
- Chemicals used in laboratories (for example sulphuric acid).
- For the manufacturing of pharmaceutical and cosmetic products like Vaseline.
- Fertilizers.
- Lubricants.
- Pesticides.
- Wax used in packaging food.
- Bitumen for roads.
- Used for manufacturing plastics.

In conclusion, the presence of oil has far reaching effects on a nation's economy and politics. However, with the recent development in nuclear, solar and electric energy, the demand for oil is dropping. Petroleum may eventually go extinct (like its predecessor, coal).

⁶ Greenhouse gases contribute to global warming and the depletion of the ozone layer.

⁷ Turning gas to liquid by subjecting it to pressure and low temperatures.

HISTORY.

The occurrence and discovery of petroleum is no new phenomenon. It has been collected (usually from seepages) and used (for lubrication and waterproofing) in ancient times. It has been produced from bamboo-drilled wells in ancient China. The first oil well is alleged to have been dug in shush Iran about **500BC**. The first truly modern and commercial drilling of oil is said to have begun in Pennsylvania, United States in **1859** (*Edwin Drake's well*).

From the discovery by *James Young* in **1847**⁸, the invention of internal combustion engines, the need to fuel war vehicles, and so on, the demand for oil and gas grew. Sooner, oil replaced coal in powering locomotives. At present, about 100 million barrels of oil are needed to meet daily demands.

The Nigerian Positon: With the advent of colonialism, the British discovered the abundance of petroleum in Nigeria. In order to safeguard their interest, the **Petroleum Ordinance 1889** followed by the **Mineral Regulation (Oil) Ordinance 1907** were passed empowering only British subjects to exploit for oil. The **German Bitumen Company** was the first to explore in **1908** in Ondo state although the world war terminated its operations.

Concession was granted to Shell in **1938**. It discovered oil in commercial quantity in **Oloibiri** in 1956. Drilling activities started in 1951. Production of crude oil began in 1957 and by 1960, about 847,000 tonnes of crude oil was exported. Shell exploited vast choice areas until 1959 when the concession was extended to other companies like, MOBIL, TENECO, ELF, AGIP and other International Oil Corporations.

In 1946, the Minerals Act was enacted and **Section 3 of the Act** vested petroleum ownership in the crown.

In 1959, the **Petroleum Profit Tax Act** was promulgated to tax the profits of oil companies engaged in exploration and disposal activities. (It has undergone several amendments).

Following the independence of Nigeria on October 1st 1960 and its severance from the umbilical cord of Britain in 1963, the **Petroleum Act** was enacted in 1969 which vested ownership of all Petroleum in the Federal Government of Nigeria.

In **1971**, Nigeria joined the Organisation of Petroleum Exporting Countries (OPEC) and the Nigerian National Oil Corporation (NNOC) was established in the same year.

In **1977** the Nigerian National Petroleum Corporation (NNPC) was established as a result of the fusion of NNOC with Federal Ministry of Mines and Power.

⁸ James Young found a way to distil kerosene from petroleum.

There are four major oil refineries in Nigeria: The Warri refinery, the Old Port Harcourt Refinery, Old Port Harcourt Refinery and Kaduna Refinery. These notwithstanding, Nigeria still imports refined oil to meet its internal energy demands.

The volatility of oil prices has affected Nigeria in various ways. Nigeria has entered into various MOUs (Memorandum of understanding) with the foreign companies assuring them of a profit margin even if the price of petroleum drops. For example the MOUS of 1980s, 1991 and 2000.

There has been a lot of conflict resulting from ownership of petroleum and pollution from exploration activities... especially in the Niger Delta. Many lives have been lost and people displaced. These pollutions still continue till today.

Nigeria has over 1480 wells in operation and earns most of its revenue from crude oil export. In 2010, Nigeria was ranked as the fifth-largest supplier of crude oil for the United States. Nigeria no longer exports to the U.S following the discovery of shale oil by the U.S. India is now Nigeria's largest customer.

Though Nigeria is a major exporter of petroleum, more than 60 percent of its population lives below the poverty margin. Over 40 percent have no access to clean water.

As at January 2016, the NNPC declared that Nigeria now produces about 6.7 million litres of petrol per day.

At present, various legislations govern Nigeria's oil industry. For example the **Petroleum Profits Tax Act, the Oil pipelines Act, the Petroleum Act 1969, the Petroleum (Drilling and Production) Regulation and so on.**

In conclusion, petroleum has a very strategic place in the history of Nigeria and continues to play a significant role in the present day.

OWNERSHIP OF OIL AND GAS.

Ownership has been described by *Tobi J.C.A in Abraham V Olorunfunmi* as the greatest legal interest in a thing... the power to use, alter, destroy, assign without the consent of another⁹. Because of the economic importance of petroleum, it is important to ascertain who owns the petroleum found in a place.

Initially, the International Oil Companies exercised rights that amounted to sovereign ownership over the petroleum of host states¹⁰. However, with the various conventions,

⁹ This definition would obviously be subject to various exceptions and limitations. Like Nuisance, the rule in *Rylands V Fletcher*, the Land Use Act, trespass, negligence and so on.

¹⁰ Usually by the grant of concessions for the exploration of choice areas.

treaties, the establishment of OPEC, and the Independence of host states, state participation began to gain prominence.

Section 44(3) of the 1999 Constitution, Section 1 Minerals Act, 1 Petroleum Act, Section 2 of the PIB, vest the ownership of all petroleum (and minerals) found in Nigeria, its territorial waters, continental shelf and Exclusive Economic Zone (EEZ) in the FG.

THE OWNERSHIP THEORIES IN THE OIL AND GAS INDUSTRY.

These are principles underlying the ownership of oil and gas.

Absolute Ownership Theory: Here, the landowner has title over oil found under his land. Mr Landlord can lose this right where the oil under his land migrates to another person's land¹¹. Under this theory, the landowner can drain as much as possible provide he complies with good oil practice. Practiced in some parts of Texas, Colorado, Pennsylvania...

Qualified Ownership Theory: Here, the landlord does not own oil found under his land in situ-*Kelly V Ohio Oil*. What he should do is; capture and extract as much petroleum as possible-*State V Ohio Oil*. He can then exercise ownership over the oil that has been captured, extracted and reduced into possession. He can sink as many wells as possible¹² subject to legislations and good practices-*Frost Johnson Lumber Co V Sailing Herts*. In *Barnard V Monongahela Natural Gas*, the plaintiff alleged that his neighbour drained oil from the oil reservoir under his land the court held that his remedy was to sink his own well and drill. This theory is applied in parts of California, Indiana, Oklahoma, Louisiana...

The Domainal System: Here ownership is vested in the sovereign state where the resource is found. This theory is applied in many states like Nigeria as can be seen in **Section 44(3) of the 1999 constitution, Section 1 Petroleum Act, Section 1 EEZ Act, Section 1 Minerals Act Section 2 PIB** (all vesting ownership in the Federal Government). **Professor Sagay** dislikes this system and alleges that it only benefits the rich. **Professor Agomo** on the other hand prefers FG control considering the huge financial, economic, political and legislative manpower and resources needed in the industry. Most international instruments also follow this theory by vesting ownership in the sovereign state where the oil is found.

The Non-Ownership Theory: posits that since petroleum is fugacious, it cannot be owned. The court recognised the fugacious nature of petroleum in *Westmoreland and Cambria Natural Gas Co V Dewitt*, and noted that petroleum is wild and migratory.

¹¹ Yes, oil is fugacious and can migrate to neighbouring land.

¹² To enable him extract as much gas as possible.