WHAT IS OWNERSHIP?
Generally, ownership of a thing can be defined as the right to enjoy or dispose of a thing in the most absolute manner without interference by anyone.

In law, ownership of property is largely defined as the decisive and indefinable right convened by a lawful title which is only subject to reasonable limitations, to enjoy, occupy, possess, rent, assign, bequeath, use, transmit, sell and transfer.

Prof. Donna Christie of Florida State University explains as follows:

a) Most people view property as “things” but lawyers view property as “rights.”
b) Property consists of a package of legally recognised RIGHTS held by one person in relationship to others with respect to some THING or other OBJECT. Law now recognizes that property owners also owe DUTIES.
c) Property rights are NOT absolute; they are inherently limited. You cannot do whatever you want with your property. Property rights only exist to the extent that they are socially acceptable.
d) Property law helps reconcile the competing goals of individual owners (freedom to exclude, use and possess, and transfer) and society in general (free alienation of land, stability of land title, productive use of land). Sometimes, society’s concerns outweigh the concerns of the owner.

GENERAL CONCEPT OF OWNERSHIP OF PROPERTY

The concept of private property ownership is fundamental to contemporary democratic society. In general, property law, the ownership of property is normally described as a ‘bundle of legal and equitable rights’. The bundle includes the owner’s right to use and enjoy the property, the right to sell or rent the property to others, and the right to exclude others from using or interfering with the property.

In oil and gas law, the proprietary rights over crude oil and natural gas presents diverse legal challenges thus, we must explore the following theories that underpin any possible claims or disputes arising from contentions with regards to crude oil ownership.
1) **ABSOLUTE OWNERSHIP THEORY**

According to the absolute ownership theory, oil and gas are owned by the owner of the land where they are found and extracted. When they are extracted, they become possessory personal property of the party that captures it. However, the theory also states that the ownership of crude oil can be denied to the landowner when the crude oil migrate and captured by others. Hence, ownership of oil and gas could be lost by reasonable drainage and by the rule of capture. In the United States, this theory is also known as the “ownership in place theory”.

The theory of absolute ownership of crude is built on the doctrine of *ad coelum*. The ad coelum doctrine states that the owner of a piece of land is regarded also as the owner of the petroleum lying underneath the land. Land in this regard includes everything down to the lowest and deepest part of the earth beneath the land and up to the sky.

This theory no longer works in favour of the claimants in many countries such as Nigeria and the UK as in the following cases:

**Barnard v. Monongahela Natural Gas Co., 216 Pa. 362 (1907).**

Defendant drilled for oil on a neighbor's land, but actually obtained oil from an underground well on plaintiff’s land. Plaintiff sues but loses; court holds that gas in an underground well roams free like a wild animal and must be “captured” and contained in order to be owned.


The defendant was chasing a fox and was about to capture it when Pierson came along and took the fox from him. Post sued, but lost on appeal when the court decided that “occupancy” of the fox required actual possession of the animal through capture or kill.

**Bernstein v. Skyviews & General Ltd [1978] 1 QB 479**

**Del Monte Mining v. Last Chance 171 U.S. 55 (1898).**

In the four cases, the courts rejected the argument and claims that invoked the *ad coelum* doctrine. However, where the claimant is a sovereign authority or a national authority (e.g. federal government of
Nigeria) the *ad coelum* doctrine can be sustained to exclude an intruding foreigner.

It should be noted that the theory of absolute ownership is still valid in some parts of the United States and Canada. For example, in the province of Alberta, Canada, and in the US State of Texas, the private landowners are permitted to own the oil and gas found on their lands.

2) **QUALIFIED INTEREST THEORY**

This theory states that no one can claim ownership of crude oil unless he can prove that he captured it. This theory is built upon the rule of capture. The implication of the theory is that a private land owner cannot claim the oil and gas that straddles beneath his land until he drills and extracts the crude oil and gas. The key points to note on this theory are:

a) Where the crude oil has migrated to adjacent land, title of the former owner is now gone. However, the crude oil land owner can stop the oil from migrating by preventing the drain or by drilling several wells to store the draining oil.

b) The party who extracts oil and gas from beneath the land acquires absolute ownership of those extracted substances even though they may be drained from beneath the land of another.

c) The owner thereof may acquire the crude oil without being liable to the owner of the adjacent lands.

d) If the oil well is drilled at a slant or horizontally penetrating the property of another, and if the aggrieved party can prove it, the oil or gas produced from the well belongs to the owner of the land under which the well is bottomed.

**CASELAWS**

*Ohio Oil Company v. Indiana U.S.S.C. [1900] 44 L. Ed. 729, par. 64*
HELD:

"Although in virtue of his proprietorship the owner of the surface may bore wells for the purpose of extracting natural gas and oil, until these substances are actually reduced by him to possession, he has no title whatever to them as owner. That is, he has the exclusive right on his own land to seek to acquire them, but they do not become his property until the effort has resulted in dominion and control by actual possession."

_South Atlantic Petroleum Limited v. Minister of Petroleum Resources_ (2006) 10 CLRN 122

In this case, the plaintiff was granted an oil bloc OPL 246. A half of the OPL area of 1000 square miles was later converted to an OML 130. The government attempted to auction the other half of OPL 246. The contention of the plaintiff was that it was entitled to hold the unexhausted period of the lease while the defendant contended that the remaining portion was deemed relinquished and thus reversionary right was in the federal government as the grantor. In this action, the plaintiff sought orders of injunctions and declarations. In his judgement delivered on 14/10/06, the learned trial judge, Mustapha J. (as he then was) held, inter alia, that “there is nothing unlawful in the government policy that the residue of OPL 246 is automatically relinquished and reverted to the federal government on the grant of an Oil Mining Lease No. 130 to the applicant”. On appeal, the case was struck out on the ground that the issues raised had become academic Academically, and in the humble opinion of this writer, a licence and a lease, in the contemplation of the Act are different authorizations guided by different provisions of the Petroleum Act24. The moment a licence is converted to a lease, the terms, duration as well as financial obligations change. The duration of oil rights in licences are issues of discretionary powers of the Minister of Petroleum and the discretion of the Minister whether or not to grant an additional OML cannot be challenged in court. Surely, the international law position is that every nation has the sovereign control of its mineral resources. This practice is based on the Latin maxim: _quicquic plantatur solo solo cedit._ This means he who owns
land, owns what is in it deep down the earth and he also owns what is on top of the earth space up to the sky and beyond for example, mountains, forests, rivers, grasses, stones and minerals. It is because of this principle, there have been agitations that the Niger-Delta people of Nigeria should have ownership of mineral oil in their land and is the basis upon which the Niger Delta region of Nigeria gave birth to the issue of resource control which culminated in the case of A-G Federation v. A-G Abia & 36 ors(2006)1 SCNJ 1.

3) NON-QUALIFIED OWNERSHIP THEORY

The non-ownership theory emphasises that no person owns the crude oil until produced, extracted or captured and controlled. However, the right to produce or extract crude oil is limited to those persons who own or have the rights to drill on the land where the straddle of the crude is embedded.

This theory states that petroleum is not capable of being owned since it is fugacious (has capacity to migrate). In essence, since crude oil is in fluid form and can move from one place to another, it cannot be owned in the strict sense of the word. There is not much support for this theory as modern practice show that petroleum though may move from one place to the other is still subject to ownership by the person or authority that captures it at any particular point in time.

CASES


HELD

"Owing to the peculiar characteristics of oil and gas, the foregoing rule of ownership of oil and gas in place should be considered in connection with the law of capture. This rule gives the right to produce all of the oil and gas that will flow out of the well on one's land; and this is a property right. And it is limited only by the physical possibility of the adjoining landowner's diminishing the oil and gas under one's land by the exercise of the same right of capture."

HELD
"... no absolute right or title to the oil or gas which might permeate the strata underlying the surface of their land, as in the case of coal or other solid minerals fixed in, and forming part of, the soil itself.

Strother v. Mangham (1915) 138 La. 437

HELD
"The doctrine that the owner of the land has no property right in the oil and gas beneath the surface until he has reduced it to possession in no manner denies to such owner the exclusive right to the use of the surface for the purposes of such reduction, or for any other purpose not prohibited by law, but, to the contrary, concedes that right, as inherent in the title to the land, and subject only to the control of the state, in the exercise of its police power; and the right may be sold, as may any other right, and may carry with it the right to the oil and gas that may be found and reduced to possession."


HELD
"The substances are fugacious and are not stable within the container although they cannot escape from it. If any of the three substances (petroleum, gas or water) is withdrawn from a portion of the property which does not belong to the appellant but lies within the same container and any oil or gas situated in his property thereby filters from it to the surrounding lands, admittedly he has no remedy. So, also, if any substance is withdrawn from his property, thereby causing any fugacious matter to enter his land, the surrounding owners have no remedy against him. The only safeguard is to be the first to get to work, in which case, those who make the recovery become owners of the material which they withdraw from any well which is situated on their property or from which they have authority to draw."
4) **THE EMINENT DOMAIN THEORY**

The theory of eminent domain states that the government or the monarch of a country can compulsorily take private lands for public use with or without compensation.

The implication of this theory is that, the government can enact coercive legislation to back its desire to seize any land from private persons for any purpose it may classify as public good.

In Nigeria, the examples of coercive statutes that empowers the eminent domain are:

(a) **Section 18 of the Interpretation Act**

"Land includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals"

(b) **Land Use Act 1978**

- Section 1 vest all lands in the governor of each state
- Section 28(1) states the “it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.”

(c) **1999 Constitution FRN (as amended)**

- Section 44(3) states:
  
  “.... entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic zone of Nigeria shall rest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.”

(d) **Exclusive Economic Zone Act 1978**

- Section 2(1)
  
  “.... sovereignty and exclusive rights with respect to the of exploration and exploitation of the natural resources of the seabed, subsoil and superjacent waters of the Exclusive economic Zone shall vest in the
Federal Republic of Nigeria and such rights shall be exercised by the Federal Government…….”

(c) **Petroleum Act 1969**

- Section 1 provides as follows:
  “... to the effect that the entire ownership and control of all petroleum in, under or upon any lands, including and covered by water) which is: (a) is in Nigeria or (b) is under the territorial waters of Nigeria, (c) forms part of the continental shelf; or (d) forms part of the Exclusive Economic Zone of Nigeria.”

(F) **UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) 1982**

*Article 77 (1):* The coastal sovereign state has ownership, control and development of natural resources in the exclusive economic Zone.(Which Nigeria became a party of in 1986), this rights are prevented from extending to interfere with the territory and territorial rights of neighboring states.