# **38 Am Jur 2d Gas and Oil § 9**

***American Jurisprudence 2d (AMJUR)* > *Gas and Oil* > *II. Interest of Landowner with Full Gas and Oil Rights***

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**§ 9 "Exclusive right" to extract and related doctrines of ownership of gas and *oil***

In criticism of the "ownership-in-place" doctrine as related to gas and ***oil***, [[1]](#footnote-2)1it has been said that the ownership-of-gas-and-***oil***-in-place doctrine does not take into account the circumstance that the ***oil*** actually brought to the surface may be not only the ***oil*** in place beneath the surface of the driller's land but also ***oil*** drawn off from beneath the surface of other lands. [[2]](#footnote-3)2Another difficulty in applying the doctrine is that it implies a present transfer of definite corporeal real property even under a lease for a fixed period of years during which the ***oil*** may not be exhausted. [[3]](#footnote-4)3Accordingly, some authorities maintain that gas and ***oil*** in situ are not subject to absolute ownership [[4]](#footnote-5)4but hold that the landowner's interest in unproduced gas and ***oil*** is limited to an exclusive right to extract them and reduce them to his or her possession. [[5]](#footnote-6)5

The ownership of land has also been held not to include the ownership of ***oil*** and gas although the landowner has the exclusive right to explore and develop his or her property for the production of such minerals and to reduce them to possession and ownership. [[6]](#footnote-7)6In other words, a landowner does not have title to the ***oil*** and gas that may underlie the property; rather, the landowner has the exclusive right to drill for ***oil*** and gas and to retain all substances brought to the surface. [[7]](#footnote-8)7Under this view, ***oil*** and gas themselves are not owned by anyone until removed from the ground. [[8]](#footnote-9)8

**Reference**

West's Key Number Digest, Mines and Minerals [westkey]47, 48

A.L.R. Index, Gas and ***Oil***

West's A.L.R. Digest, Mines and Minerals [westkey]47, 48

West's Key Number Digest, Mines and Minerals [westkey]47, 48

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1. 1 As to "ownership-in-place" doctrine, see § 6. [↑](#footnote-ref-2)
2. 2 Walls v. Midland Carbon Co., 254 U.S. 300, 41 S. Ct. 118, 65 L. Ed. 276 (1920). [↑](#footnote-ref-3)
3. 3 Callahan v. Martin, 3 Cal. 2d 110, 43 P.2d 788, 101 A.L.R. 871 (1935). [↑](#footnote-ref-4)
4. 4 Murbarger v. Franklin, 18 Ill. 2d 344, 163 N.E.2d 818 (1960); Shell ***Oil*** Co. v. Secretary, Revenue and Taxation, 683 So. 2d 1204 (La. 1996). [↑](#footnote-ref-5)
5. 5 NCNB Texas Nat. Bank, N.A. v. West, 631 So. 2d 212 (Ala. 1993); Feely v. Davis, 1989 OK 163, 784 P.2d 1066 (Okla. 1989). [↑](#footnote-ref-6)
6. 6 Energy Management Corp. v. City of Shreveport, 467 F.3d 471 (5th Cir. 2006) (applying Louisiana law); SEMO, Inc. v. Board of Com'rs for Atchafalaya Basin Levee Dist., 993 So. 2d 222 (La. Ct. App. 1st Cir. 2008). [↑](#footnote-ref-7)
7. 7 California Minerals, L.P. v. County of ***Kern***, 152 Cal. App. 4th 1016, 62 Cal. Rptr. 3d 1 (5th Dist. 2007). [↑](#footnote-ref-8)
8. 8 Chevron USA, Inc. v. County of ***Kern***, 230 Cal. App. 4th 1315, 179 Cal. Rptr. 3d 372 (5th Dist. 2014), as modified on denial of reh'g, (Nov. 19, 2014). [↑](#footnote-ref-9)