The Negative Externalities Of Crude Oil Production:
Unfolding The Coase-Kingston Social
And Legal Efficiency Model

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ABSTRACT
The bulk of legal actions within civil litigation is tied to the laws of contract and tort. However, in certain circumstances where the law fails, equity prevails. Thus, in the past few decades, litigants pursuing actions which cause arising from the negative externalities of crude oil production have mainly charted their parts in torts, human rights, and in third parties’ rights in the oil and gas contracts. This paper argues that litigation bordering on torts and the rights of third parties in crude oil production contracts can be substituted by the adoption of Coase-Kingston social and legal efficiency model to resolve the disputes concerning the negative externalities of oil and gas enterprises. It concludes by emphasising that the social costs of negative externalities of crude oil production can be significantly reduced where the parties engage in costless bargain notwithstanding the effects of the rights and standing of land ownership. Therefore, the consistent failure of litigants to hold oil corporations to account for environmental degradation and human rights violations can be circumvented and socio-legal efficiency can be achieved for both the oil firms and the aggrieved private parties.

Keywords: Coase Model, Social Costs, Externalities, Crude Oil.

JEL Codes: D24, E23, L11, L23.

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1. THE CONCEPT OF EXTERNALITIES

Externality is concerned with the economic consequence of goods or services that generate benefits or costs to somebody other than the person determining the quantity of the goods to be produced or consumed. Largely, externalities arise “when firms or people impose costs or benefits on others outside the marketplace. As with any market activity, of course, fuel market carries a number of positive and negative externalities. Following are major external costs associated with [crude] oil [the] negative externalities include: environmental damage; health risks; [and,] security risks – political and military costs of maintaining access to oil recourses.”

The concept of externality is anchored in the field of economics. Externalties (known in law as torts) can therefore be described as third party effects resulting from the production of goods for which no suitable restitution is paid to the third party. In economics, Externality is also known as spill-over. The occurrence and subsistence of negative externalities resulting from the production of crude oil lowers the private cost of the oil producing corporations. Hence, the combination of the private cost of production and the value of the cost of externalities is known as the social cost.

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3 Ronald Coase. The Problem of Social Cost, Journal of Law and Economics 3, 1-44 (1960) reprinted in Ronald H. Coase, The Firm, the Market, and the Law (1990). “Nobel laureate Ronald Coase is Professor Emeritus of Law and Economics at the University of Chicago. He is interested in the “efficiency” of tort rules, i.e., the rules' tendency to bring about an “efficient” outcome, defined as one in which the net sum of social wealth (a proxy for social happiness, but more easily measured) is maximized. Recognizing that safety has costs, Coase and his followers think of an efficient rule as one that minimizes the sum of accident costs and prevention costs, because such a rule will, given other assumptions, subtract the least from social wealth. Note that “efficiency” in this sense (called "Pareto" efficiency after the economist Vilfredo Pareto) does not require that costs be allocated justly between people. Justice is a separate ideal, from the economists' perspective. Some economists (not all) have argued that justice is a confused, contestable idea, and that society would be better off if tort rules were fashioned solely to advance efficiency.” Adapted from: http://laws.gsu.edu/wedmundson/Syllabi/Coase.htm retrieved on 10 March 2018.
production of the commodities imposes social and economic costs on third parties such as the residents of the acreage where the production activities are being undertaken. For example the negative externality of crude oil production includes damages of crops from spills. The farmers that lose harvest suffer monetary and non-monetary cost even though they have nothing to do with the crude oil factory.

For more than two decades, there has been intense debate on the importance of providing legal explanations to economic situations such as the impact of law on the economics vis-a-vis economics of law. The current approach is based on the combined use of Law and economics in the explanation of value chains of economic transactions. Where law and economics are used concurrently, the focus is always on social efficiency. Simply put, a legal state of affair is said to be efficient where a right is allotted to a party that is willing to pay it. The efficiency concept of the law and economics formed the base of the Coase\(^4\) theorem.

Ronald Coase\(^5\) first developed the Coase theorem by claiming that property rights are at the centre of externality effects. Hence, when property rights are at the centre of disagreements, the parties certainly drift toward the best resourceful and reciprocally beneficial outcome. Coase formulated his postulation in view of the directives and control of radio frequencies. He suggested that there was no need to regulate radio frequencies in the sense that the larger or the radio stations that seeks to benefit more than the nearest rivals can achieve their goals by negotiating and paying the competing radio stations as not to interfere their frequencies. Accordingly, this will lead to social efficient solutions. Coase theorem was motivated by \textit{Sturges v Bridgman},\(^6\) where the defendant owned a confectionery that caused routine loud noises for more than 20 years. The claimant built a medical clinic adjacent the confectionery, then brought an action in nuisance seeking to obtain an injunction to stop the protraction of the noise from the confectionery. The

\(^4\) Ibid
\(^5\) Ibid
\(^6\) [1879] 11 Ch D 852

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The court of Appeal of England held that, it was the claimant that came to the nuisance hence, the action failed.

The Coase theorem emphasised that, where the cause of legal action hinge on property rights, the parties involved can negotiate the terms that best suit them instead of litigating to assert property rights. For the bargain to succeed, Coase explained that, the negotiation must not attract any cost. However, where there are associated costs of the negotiation, for example, the expenses incurred in setting up the meetings or enforcement of the agreed terms of bargains, such costs must be very marginal as not to affect the outcome of the bargains. In essence, where property rights are involved in cases of negative externalities, the parties should not automatically consider how the property rights were acquired provided they can trade the rights to arrive at a mutually beneficial outcome.

In reality the Coase theorem, simply stressed that the aggrieved party can be offered financial compensation for the others’ activities that are causing the negative externalities. For example, a chemical industry pollutes the river and the fishermen are considering legal actions to stop the industrial activities that are polluting the river. The socially efficient solution could be achieved by the industry, offering financial compensations to the affected fishermen if that outcome is measured more beneficial to the offending industry than defending legal actions in the courts and shutting down the industry.

2. THE CRITICISMS OF COASE THEOREM

The law and economics approach Ronald Coase is being criticised predominantly by the scholars of the Critical Legal Studies (CLS) school of thought founded by Duncan Kennedy and Roberto Unger of the Havard Law School. In opposition to Coasean scholars, Unger; Kennedy; Kennedy and Michelman, and Kelman

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7 Unger, Roberto Mangabeira (1975), Knowledge and Politics, New York, Free Press

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suggested that the law and economics approach relies on discordant political conclusions. They probed the prudence of the concept of 'efficiency' and the meticulous weightiness of the law and economics opinions; thus, expressed doubts on the validity of the Coase transaction cost analysis.\textsuperscript{11} The CLS further argue that the chosen “analysis of ‘efficiency’ lacks coherence, objectivity and autonomy from the viewpoint of liberal law and economics evaluations; because individuals often request for much more to forfeit their rights than they would tender to gain financial equality.\textsuperscript{12} The process of weighing the cost of externalities requires political judgment which the Coase theorem failed to consider.”\textsuperscript{13} Also, Eastman\textsuperscript{14} expressed dissatisfaction with the Coase theorem as follows:

“To achieve a determinate liberal efficiency calculus falls victim as well to problems of totalitarianism (that is, overcoming externalities and transaction costs entails an overweening state apparatus), wealth effects (that is, valuations and thus the efficiency calculus are distorted by wealth), and multiple equilibria (that is, determinate efficiency analyses break down when bargaining is allowed on all topics, rather than just one or a few).”\textsuperscript{15}

\textsuperscript{12} Wayne Eastman. Critical Legal Studies, Rutgers University, Graduate School of Management, Paper no. 0660; cited in Kato Gogo Kingston, op. cit, p.178
\textsuperscript{13} Kato Gogo Kingston, op. cit.
\textsuperscript{14} Wayne Eastman, op.cit., p. 9
\textsuperscript{15} ibid
Despite the promising nature of the Coase theorem, critics attack the theorem as false on economic logical grounds. One of such criticisms is based on the perceived practical impossibility of achieving zero transaction cost. This is because, the centre pieces of the Coase theorem are, bargain and zero transaction cost. According to Cooter, the paramount pointer of the Coase theorem is that “the initial allocation of legal rights does not matter from an efficiency perspective so long as the transaction costs of exchange are zero.”

Similarly, Kennedy expressed concern as to whether there are valuable purposes for efficiency in law and economic analyses, in that it is impossible to efficaciously use the practical efficiency criteria of the Coase theorem in real life legal transactions. However, the critics admit that, the law and economics analyses, is not in favour of the forcible use of state powers to compel persons to share the property. This acknowledgement gives credence to the Coase theorem hence, there is no need for further discussion of the criticisms.

3. THE KINGSTON RE-MODELING OF COASE THEOREM

The Coase theorem did not suggest how to bargain with multiple victims of negative externalities which is seen as a major loophole with the theorem. However, Kingston remoulded the Coase theorem by fusing the ingredients of Olson’s collective action approach; the Game Theory of Ayres and Talley;[19]

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17 Kennedy, Duncan (1981a), op. cit.
19 Ayres, Ian and Talley, Eric. ‘Solomonic Bargaining: dividing a Legal Entitlement to Facilitate Coasean Trade’ New Haven, Ct.: Program in Civil Liability, Center for Studies
Olson;\textsuperscript{20} and Horowitz\textsuperscript{21} group bargaining action strategies, to provide the framework for the formulation of a single denominator for bargaining transactions involving large and diverse group of persons. This ground-breaking centralisation of the law and economics formulation is the new 

\textit{Coase-Kingston} model.

\section*{3.1 Coase-Kingston Model}

Kingston\textsuperscript{22} explains that the Coase model outlined in \textit{“The Problem of Social Cost,”}\textsuperscript{23} basically views negative externalities as the consequence of industrial undertakings involving two opposing parties namely: The committers and sufferers. However, that, Ronald Coase did not envisage a situation where the bargain will involve more than one claimant. It is this vacuum in knowledge that the Coase-Kingston model sets out to bridge. Hence, Kingston suggests that:

\begin{quote}
“Negative externalities are two-sided in nature. For instance, gas flaring as a vital aspect of crude oil exploration causes harm to the inhabitants of the communities in close proximity of the industrial activities, even though the flaring of the gas may not be an intentional action to cause the harm. If the oil firms were to be forced to stop the flaring of gas, it will harm the business of the oil firms.”\textsuperscript{24}
\end{quote}

According to the Coase-Kingston frameworks, both the oil company and the victims, have mutual interests in reducing the total resulting impairments. Kingston therefore, envisioned a progression of negotiated resolution by which there could

\textsuperscript{22} Kato Gogo Kingston, 2017, \textit{op cit}
\textsuperscript{24} Kato Gogo Kingston, \textit{op cit}, p. 178
be very insignificant costs of the bargain as well as a negligible cost of enforcing the final contracts resulting from the negotiations. The essence, therefore, is to eliminate all barriers and, to create the enabling grounds for the parties to negotiate and settle by which the outcome should be socially efficient. According to Coase and Kingston, “the consideration of the parties is most likely to be rationally weighed on a cost-benefit basis. That is, if the cost of minimizing the gas flaring were less than the damages it cause to the inhabitants of the communities in close proximity of the industrial activities, the oil firms are likely to agree to minimize it, irrespective of the provisions of any existing laws and notwithstanding who hold the rights to the land. Alternatively, if it is less expensive for the oil firms to compensate the other party for damages and treat the environment more efficiently without halting their oil production with the parties’ agreement, the solution will be socially efficient.”

It is important to note that, the Coase bargaining format is intended at attainment of effective solutions for events that usually lead to actions in tort therefore, the bargaining framework is more likely to succeed in resolving disputes bordering on duty of care, negligence and wilful wrongdoing such as pollution by an industry which contaminate crops of parties that are not directly related to the polluters. As an extension and re-development of the Coase theorem, the researcher has created the law and economics framework by which disputes arising within the realm of the law of contract can be settled using the new Kingston-Coase model. The new model is premise on the complex boundary existing between tort and

26 Ronald Coase, op cit.
27 Kato Gogo Kingston, op. cit
28 Ibid, p. 190
29 A typical example of the complex nature of government intervention is such instance where the regulatory agency is captured by the regulated industries as in the case of Nigeria.
contract laws. To fully understand the sustainability of the Kingston-Coase, it is vital to present the interface of contract and tort.

4. THE INTERFACE AND IMPORTANCE OF TORT AND CONTRACT

Generally, civil litigation revolves around three key umbrellas of law, namely – tort, contract and human rights. Particularly prevalent are the interface of contract and tort as explained by Markesinis and Deakin\(^\text{30}\) as follows:

… the courts are discovering tort duties where they could be promoting contractual solutions. Here the flight ‘into tort’ is taking place simply because the tort rules provide the least resistance for the creation of a remedy which the ‘sense of justice’ requires. It could be strongly argued that in most of these cases the less ‘open-ended’ contract law would have provided the better ‘peg’ for the real solution demanded by justice and proposed by our courts. However, the rigidity of the doctrine of consideration made this impossible. So, tort has been ‘stretched’ to make up for the rigidity of contract…

In *Central Trust Co. v. Rafuse*\(^\text{31}\), Canada’s Supreme Court explained *inter alia*: “Where concurrent liability in tort and contract exists, the plaintiff has the right to assert the cause of action that appears to be most advantageous to him in respect of any particular legal consequence” except where the effect of this “concurrent or alternative liability in tort … would be to permit the plaintiff to circumvent or escape a contractual exclusion or limitation of liability for the act or omission that would constitute the tort.” Though, there can be simultaneous actions in contract


\(^{31}\) [1987] LRC (Comm) 492
and tort arising out of the same factual situation. This was illustrated in *Henderson v. Syndicates Ltd.*,\(^{32}\) where Lord Goff said: “… in the present context, the common law is not antipathetic to concurrent liability … and there is no sound basis for rule which automatically restricts the claimant to either a tortious or a contractual remedy. The result may be untidy; but given that the tortious duty is imposed by the general law, and the contractual duty is attributable to the will of parties, I do not find it objectionable that the claimant may be entitled to take advantage of the remedy which is most advantageous to him …”\(^{33}\)

This type of intersection of contract and tort has revealed more intricate nature of the overlap and the pronouncements of some courts have not sufficiently address the matter.\(^{34}\) For example, in *Tai Hing Cotton Mill Ltd. v Liu Chong Hing Bank Ltd.*,\(^{35}\) Lord Scarman upheld that: “Their Lordships [did] not believe that there [was] anything to the advantage of the law’s development in searching for a liability in tort where the parties are in a contractual relationship.”\(^ {36}\) Also, in *Johnstone v Bloomsbury Health Authority*\(^ {37}\) Browne-Wilkinson restated that: “The Tai Hing case shows that there is a contractual relationship between the parties their respective rights and duties have to be analysed wholly in contractual terms and not as a mixture of duties in tort and contract.”\(^ {38}\)

Even when there is a connection with liability in tort and contract, the tort duty is ominously wider than the predetermined duties enabling the claimants to depend on it in preference to the contractual duties. In *BG Checo International Ltd. v. British Columbia Hydro* (1993);\(^ {39}\) the Canadian Supreme Court acknowledged that

\(^{32}\) [1994] 3 All ER 509  
\(^{33}\) B.S Markesinis and S.F Deakin, 1999, ‘Tort Law’, p.17  
\(^{34}\) B.S Markesinis and S.F Deakin, 1999, ‘Tort Law’, p.16  
\(^{35}\) ibid, [1996] AC 80, 107  
\(^{36}\) ibid  
\(^{37}\) [1992] 1 QB 333  
\(^ {38}\) B.S Markesinis and S.F Deakin, 1999, ‘Tort Law’, p.16  
\(^{39}\) 41 CLR, 99 DLR (4th) 577
the parties to a contract can exclude the option of suing in tort for a given wrong in
the presence of express terms in the contract dealing with the matter, it highlighted
that, it is constantly open to the parties to reduce the value or relinquish the duties
which the common law would enforce on them for negligence. The court went
further to deliberate three circumstances that may arise when contract and tort are
applied to the same event as follows:

(i) “Where the contract stipulates a more stringent obligation than the
general law of tort would impose. In that case, the parties are hardly
likely to sue in tort.”40

(ii) “Where the contract stipulates a lower duty than that which would be
presumed by the law of tort in similar circumstances. The most
common means is ... a clause of exemption or exclusion of liability in
the contract. The duty imposed by the law of tort can be nullified only
by clear terms.... In the second class of cases, there is little point in
suing in tort.... An exception might arise where the contract does not
entirely negate tort liability.”41

(iii) "Where the duty in contract and the common law duty in tort are co-
extensive. The plaintiff may seek to sue concurrently or alternatively
in tort to secure some advantage peculiar to the law of tort, such as a
more generous limitation period.”42

In certain circumstances where contemporaneous liability is implored, it is the
contract extent that frequently produces higher financial rewards. For instance, in
negligent advice and misstatement cases, in tort the claimants would almost
certainly be granted any amount lost in dependence on the careless advice or
statement, while in the contract the claimants could be granted the value of the
claim, in addition to the profits that could have been made if the advice was
carefully given. Despite these benefits of contract duties over tort, tort duties are

40 ibid
41 ibid
42 ibid
more advantageous to the claimants. One of the advantages of tort over contract duties is that, contract duties can elapse due to the effects of the jurisdictional restrictions, which are often provided in the limitation laws, for example in Nigeria, contract liabilities cannot be of legal effect if the breach exceeds six years. This is because the cause of action for breach of contract arises from the very moment of the breach. The origination of the limitation of timing is therefore independent of when damage arises. Conversely, in tort the cause of action accrues when the tort is complete as in *Cartledge v Jopling & Sons Ltd*.\(^\text{43}\)

In the United Kingdom, in the event of a cause of action arising from personal injury, the limitation period is three years from the date on which the cause of action ensues or three years from the date of discovery. In reality, the courts often act upon the date of knowledge. The concept of accrual is vital because it signposts the first date at which time start to accumulate. In *Cartledge v E Jopling & Son Ltd*,\(^\text{44}\) the claimant suffered from pneumoconiosis caused by breathing in dust at his place of employment for a long time.

Notwithstanding the fact that the real injury to the claimant could not be identified for a long time, the House of Lords held that the cause of action for personal injury started as soon as the claimant suffered the personal injuries that were not simply inconsequential, notwithstanding that he was unaware of the degree of the injuries at the time of discovery. In England, it is virtually difficult to recover damages in contract where the claim is time-barred. In tort, however, the rule is comparatively malleable for example, in *Clarkson v Modern Foundries*,\(^\text{45}\) the court said: “Where it was not possible to determine what loss was caused within and what loss was caused outside the period, the whole loss could be recovered.” The complexity of cause of action arising in contract and in tort which often involve the courts, is never settled without financial cost to both parties. It is this cost that the Coase-Kingston models seek to eliminate. Moreover, it is important to note that, the

\(^{43}\) [1963] AC 758, 777
\(^{44}\) [1963] AC 758
\(^{45}\) [1957] 1 WLR 1210
outcome of a non-contract bargain geared towards settling a tort cause of action can become contractual upon the attestation of the terms of e outcome of a bargain.

5. THE PRACTICALITY OF THE COASE-KINGSTON MODEL

One of the missing gaps in the Coase theorem is the failure to specify how a party can bargain with a large group. The Coase theorem only envisaged situations where two individual parties in a tort or contractual cause of action could opt for a negotiated settlement without the needs for court intervention. Kingston,\(^46\) attempted to bridge the gaps by merging the ingredients of the works of Horowitz,\(^47\) Olson,\(^48\) Ayres and Talley to re-model the Coase theorem., hence, the Coase-Kingston model.

Horowitz\(^49\) conducted an extensive evaluation of the complex nature of ethnic conflicts and suggested that “ethnic conflict arises from the common evaluative significance accorded by the groups to the acknowledged group differences and then played out in rituals of affirmation and contradiction.” He maintains that the task of settling conflicts among large numbers of ethnic people is not very simple because, in negotiations involving large groups of opposite intentions, there has to be smaller number of representatives from both sides. Where possible, there is the need for nomination of a single denominator for the purpose of negotiations.

In order to achieve this, Horowitz opined that due to the ways by which ethnic peoples organise their societies, laterally in kinship affinity pattern, some of the ethnic groups are thus, well ranked in that, the pecking order is well defined.

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\(^{48}\) Olson (1965), *op. cit*

Where it is well organised, the leaders can easily represent the groups in all matters involving negotiations therefore reduces the transaction cost of the bargains. Conversely, some ethnic groups are not well structured thus, “the command and control mechanism within the unranked ethnic structures are parallel, allowing each segment to engage in dialogues with the outsiders independently and can increase transaction costs.”⁵⁰ On the other hand, Olson’s⁵¹ “theory of collective action” suggests that, it is irrelevant whether large groups are well structured or without a hierarchy. What matters is whether the configuration is “federal” in nature. In essence, he postulates that large groups of affected persons can conform to negotiated terms where the essence of the transaction is for a common good. Therefore, the common good can be retained if the minor costs of reaching the settlement are distributed exactly in the same proportion as the benefits.⁵²

Olson⁵³ and Horowitz⁵⁴ provided good deliberations on how to deal with group actions and ethnic discrepancies, however, they omitted to formulate the structure by which groups could form single denominators for representation in a bargaining process. Hence, Kingston⁵⁵ evaluated Kiewiet and McCubbins⁵⁶ to ascertain the need for delegation. They acknowledged that collective actions can only be pursued through delegation. Nonetheless, Kiewiet and McCubbins recognises that there are some inherent problems with the use of delegates for bargaining. Accordingly, the delegates acting as agents for the groups could diverge from the group’s common interest in that the group may not totally rely on the delegate and may not be permitted to get all the essential information by the delegate regarding the delegated bargains, this leads to "agency loss."⁵⁷ Kiewiet and McCubbins,⁵⁸

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⁵⁰ Kato Gogo Kingston, op. cit, p. 144  
⁵¹ Olson (1965), op. cit  
⁵³ ibid  
⁵⁵ Kato Gogo Kingston, 2017, op. cit  
⁵⁷ Kato Gogo Kingston, op. cit
also expressed concern over the problem of collective principal which occur when the principal is a very large group. Such large group of principals are likely to be problematic in coordination, thereby create the prisoner's dilemma and social choice instability. Kingston\(^{59}\) explains that the three problems can be fixed is three ways: (a) by structuring the agency contract to obligate the agent to perform his duties strictly in compliance with the express terms of the agreement; (b) by painstaking selecting and profiling the agents prior to final appointment as delegates; and, (c) by observing and recording the activities of the agents at the negotiations.

In order to further expunge the defects in the Coase theorem, Kingston\(^{60}\) also adapted the game theory strategies into the bargaining model. The game theory evaluates the dealings of all the parties involved in bargaining process. It enables the predictor to ascertain the “best possible strategic decisions.” Game theory strategies must be adopted in a bargaining process to be able to ascertain the “nature of human conflicts and cooperation between sensible decision-makers.”\(^{61}\) The game theory aspect of a bargaining model of Coase and Kingston is therefore tailored to incorporate the strategic designs of Ayres and Talley whereby the bargainers’ divided ownership that often can create or exacerbate strategic behaviours can be eliminated.\(^{62}\) Simply put, “when several persons own the land designated for a proposed stadium, individual sellers may hold out for a disproportionate share of the gains from trade.”\(^{63}\)

Under the Coase theorem, the transaction costs of collective action concerning the common good may be concealed to the magnitude that it could obstruct bargains in

\(^{58}\) ibid  
\(^{59}\) ibid  
\(^{60}\) ibid  
\(^{63}\) See: Kato Gogo Kingston, 2017, op. cit
that, “the division of a single legal entitlement or of rivalrous entitlements” for the collective beneficiaries could hinder socially efficient transactions, especially when the parties to the bargain have secret knowledge of the preferences of the possible outcome.”

Kingston basically suggests that, when there are numerous parties in a bargaining process, the parties are aware of the authentic value of their privileges and payoffs, hence, where one bargainer’s payoff were to be lowered in value, it is likely to decrease the enthusiasm to continue the bargain. Where this happens, the likelihood of an increased transaction cost of the bargain is inevitable. To circumvent this problem, “a favourable change in payoffs can change the game and lower the transaction cost because the parties may not hold out too long before reaching an agreement.” By infusing the game theory strategies into the bargaining model of Coase, it is practically possible that the bargaining process shall be without huge transaction cost because there are limited chances for the bargainers to quibble. Kingston observed that:

There is the possibility that the parties to a bargain may have mixed motives which is a social dilemma. The mixed motives of the bargaining parties are often linked to the variance between the negotiating agents’ private aspiration to exploit selfish individual interests - "defecting choice" and aspiration to pursue the collective interests of the entire community - cooperative choice.

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64 ibid, op. cit, p. 10
65 ibid, at. p. 178

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The mixed motives problem can be resolved prior to the nomination of the bargainer. According to Shankar and Pavitt:

"One possible tactic for encouraging cooperative choice is to change the payoff structure of a social dilemma through a system of rewards and penalties to make the cooperative choice the one that receives the higher payoff. [However], communication about a dilemma among the people facing it raises rates of cooperation substantially …"  

6. CONCLUSION

The goal of this paper was to explore the socially efficient ways of resolving disputes without relying on the intervention of the courts. The concern of the paper was to highlight the importance of the Coase theorem and to illustrate how the researcher has re-modelled the Coase theorem thereby eliminating the loopholes that rendered the Coase theorem impracticable.

The Coase theorem was developed Professor Ronald Coase to address the problems of social and economic costs. The theoretical model simply suggests that when conflicts arise regarding property rights, the best possible settlement can be achieved if the parties negotiate with each other and, that, such bargaining between the parties could result in a socially efficient outcome notwithstanding of which of the parties is the legal interest holder of the property rights. Coase also suggests that the socially efficient outcome can only be possible if the transaction costs connected with bargaining are minimal or negligible. Hence, "if trade in an

70 Professor Ronald H. Coase’s The Problem of Social Cost, 3 J. LAW & ECON. 1 (1960)
externality is possible and there are no transaction costs, bargaining will lead to an efficient outcome regardless of the initial allocation of property rights."

This paper acknowledged the three key criticisms which led critics to doubt the practicality of the Coase Theorem. The first is supposed falsehood of the zero transaction costs as a deputation for perfect bargain. Secondly, Arrow\(^\text{72}\) established, the argument that the features of many externalities make a perfect competition impracticable because many externalities cannot be internalise. Thirdly, defective information will frustrate the bargaining process for legal entitlements causing the problem of prisoners’ dilemma. Correspondingly, Fitzpatrick,\(^\text{73}\) objects to the Coase theorem by suggesting “that the notable externalities of our age, such as ozone depletion and nuclear pollution, affect a large number of people, implying large transaction costs. This further consolidates the political irrelevance of the theorem.” However, Fitzpatrick seems to misunderstand that the Coase theorem does not extend to events that occur naturally such as ozone depletion. Nonetheless, the present paper addressed and plugged the gaps in the Coase theorem with regards to bargaining with a large group of ‘victims’ or multiple claimants. The paper also stressed that, transaction cost may never be zero, but it should be marginally insignificant as not to create hardship for the bargainers.

The policy and realistic implication of the Coase-Kingston bargaining model is that the social costs of negative externalities of crude oil production should be meaningfully settled to such an extent that the contending parties can participate in negotiations nonetheless the effects of the rights of land ownership. Therefore, there should be no need to approach the court for claims against the oil

\(^{71}\) ibid


corporations on the negative effects of their crude oil production activities including but not limited to environmental pollution.