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MATRIC NUMBER: 16/LAW01/206  
COURSE TITTLE: LAND LAW  
COURSE CODE: LPB 402  
DATE: 20TH APRIL, 2020.**

**QUESTION:**

**INSTRUCTIONS:**

READ THROUGH THE COURSE MATERIAL ON CUSTOMARY LAND TENURE SYSTEM AS PREPARED BY PROF E.A TAIWO (FIND BELOW)**QUESTION:** PREPARE A BRIEF PAPER (NOT MORE THAN 3 PAGES, 12PT, TIMES NEW ROMAN, 1.5 LINE SPACING) ON THE CUSTOMARY LAND TENURE SYSTEM AS PRACTISED IN YOUR LOCALITY (STATE THE LOCALITY, STATE, LOCAL GOVERNMENT OR COMMUNITY YOU ARE WRITING ABOUT). THIS SHOULD **BRIEFLY** COVER THE CREATION, OWNERSHIP, MANAGEMENT AND DETERMINATION OF FAMILY OR COMMUNAL LAND IN YOUR LOCALITY. NOTE THAT THE EXAMINER EXPECTS YOU TO WRITE BASED ON YOUR RESEARCH OR KNOWLEDGE ACQUIRED WITH RESPECT TO CUSTOMARY LAND TENURE IN YOUR LOCALITY.

**ANSWER:**

The question above is in regards to the customary land tenure system. Land tenure is the system of landholding in a given society.[[1]](#footnote-1) Customary law is 'living law' of the community concerned and current practice is more important to the legal status of an alleged rule than its historical pedigree.[[2]](#footnote-2) In our context here, customary land tenure system refers to the system of land holding governed by the customary law. It should be noted that since 1978, the Nigerian customary land tenure has been modified to a large extent, by the provisions of the Land Use Act, 1978. The Act provides for a new uniform land tenure system in Nigeria. In *Otunba Hakeem Sobande v Barrister Andy Igbowkwe*,[[3]](#footnote-3) the Supreme Court held that the object of the Land Use Act is not intended to destroy incidence of customary law, but it modified its application.  
 With the brief introduction above, I am to discuss the customary land tenure practiced in my locality but before that I will give a very short summary on the topic **‘CUSTOMARY LAND TENURE SYSTEM’.** Customary land tenure system as defined above refers to the system of land holding governed by the customary law. Concerning land tenure system they are some customary law concepts that will be discussed briefly which are:

* **Ownership:** this concept is unknown to customary ideas but has longed be part of Nigerian customary law also referred to as **‘right of occupation’**. In customary land tenure system, they are different ways one can own a land which are:   
  1.) Communal Landholding: this is when the land is of the community that cannot be owned by any individual but its claimed by the community, village or the families in the community. In *Amodu Tijani v Secretary Southern Nigerian*,[[4]](#footnote-4) the principle of management of communal land is by the chiefs or headman stated by LORD HALDANE in *Amodu Tijani v Secretary Southern Nigerian*, (supra). Indigenes of the community can be land owners and they are covered by Members’ Rights in Arase v Arase,[[5]](#footnote-5) but for non-indigenes are regarded as strangers and they cannot claim a land they are only given to as tenants.  
  2.**)** Family land: a family is the body of persons who live in one house or under one head. In *Coker v Coker,* CAREY J. stated that “family” refers to the children. In *Sogbesan v Adebiyi* there was a question if family includes the testator’s brothers and sisters or children only. In customary land tenure system the kids are those regarded as the family.  
  3.) Individual landholding.
* **Decrease in Communal and Family Land:** Communal landholding is now on gradual decrease in Nigeria. Many factors are responsibility for this phenomenon. These include state powers of compulsory acquisition under the various laws which transform land held under customary law into State lands. The next is the transformation of the indigenous subsistence economy into a monetized one. Thus, customary land became freely saleable. This development transformed many a communal land into individual tenure. Another factor is the grant to individual members of community where such grants divested the community of title and vested same in the grantees where customary law permits. The combined effect of these events over the years has been the depletion of communal lands in favour of the State, the individual purchasers and grantees of communal land. Notwithstanding this, communal landholding is still a strong feature of Nigerian customary land law. In modern times, communal title still exist in relation to market places, communal shrines, sacred bush, and chieftaincy land, communal play grounds, communal farm lands and ponds.[[6]](#footnote-6)

In relation to the summary of customary land tenure system, I will be discussing the customary land tenure practised in my locality. I am from Cross River state, and reside there. The land tenure system in Nko, Yakurr L.G.A precisely where I come from will be discussed. The land tenure system can be divided into four (4) basic points of which are:

1. First time forest farmers: the wild forest is open to anyone to farm, so any portion that is first possessed from the wild forest for cultivation by a particular person or individual is owned by that individual who may bequeath it to his immediate family such inheritance can also be bequeathed to anyone of the owners choice. It is created by an individual who goes to the wild farm and get plots for themselves and owned by the individuals, as well managed by them. The determination of family in such is discretional the owner can decide to give it out to a total non-related person or to his relations depending on what he wants but in view of communal leaders they have no rights over the land. They can only come in when dispute arises.
2. Inheritance from the individual owners: land that is inherited from an individual is held by the new owner as his own. It is created by an individual who either bought it or inherited from a previous owner, as well managed by them. The determination of family in such is discretional the owner can decide to give it out to a total non-related person or to his relations depending on what he wants but in view of communal leaders they have no rights over the land but the individual even in event of dispute.
3. Family inheritance: the family can inherit and hold land inherited from any member of the family or apportioned according to the tradition which allocates certain parcels of land to maternal or paternal family linages in this case the head of the family holds the land in trust for other members and proceeds over its allocation to members of the family. It also runs from ancestry to decadency.
4. Community ownership: this is often associated with claims through conquest against neighbouring community tussle over the land under consideration. Sometimes, the community embarks on her project and her member collectively contributes to the opening of virgin forest for such a project.  
    In my community we have such a situation which resulted in litigations and eventually the land was handed over to the government for cultivation of rubbers, thus, **“NKO RUBBER** **ESTATE”.** The community development council proceeds over their affairs and royalties that accrue from the estate.

Conclusively, the land tenure system in my locality basically has all the elements of ownership discussed in the topic. They are communal land holding, family landholding and as well individual landholding.

1. *THE NIGERIAN LAND LAW BY ADEWOLE TAIWO* [↑](#footnote-ref-1)
2. www.sciencedirect.com [↑](#footnote-ref-2)
3. (2016) 11 NWLR (pt 1523) 335 at 355. [↑](#footnote-ref-3)
4. (1921) 2 A.C. 399 at 404. [↑](#footnote-ref-4)
5. (1981) 5 SC 33 at 58, Idigbe JSC. [↑](#footnote-ref-5)
6. *THE NIGERIAN LAND LAW BY ADEWOLE TAIWO* [↑](#footnote-ref-6)