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LEVEL: 400

COURSE TITLE: LAND LAW

QUESTION:

Prepare a brief paper on the customary land tenure system as practiced in your locality. This should briefly cover 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:

Introduction:

It is trite law that land tenure is the system of landholding in a particular society. Nevertheless, the customary land tenure system is the system of land ownership or land holding amongst a particular set of people.

Customary land tenure system is the customary and indigenous system of land holding and use. It is simply put, the manner in which the customary law of the people regulates their land use, and interests existing on the land within the community. The system is unwritten and flexible and it varies from community to community. The customary land tenure system is recognized by the courts but it must not be repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any law for the time being in force.¹

Essentially, under the Nigerian customary law, ownership may be held by the community, family and the individuals. These types of ownership will be discussed seriatim.

¹ Section 26 of the High Court of Lagos State Cap 60 laws of Lagos State of Nigeria.

COMMUNAL LAND HOLDING:

Communal land is vested in the community and no member of the community owns land exclusively. The head of the community decides the basis for land sharing or ownership. In the case *of Amodu Tijani v. Secretary Southern Nigeria*², it was held that land belongs to the community, and never to the individual.

FAMILY LAND:

This is a group of people who are entitled to hold or own the property of a deceased founder of a family. Family land is vested in the family as a whole and as such, no member of the family has a separate claim of ownership to such land.

In my locality, **Koya, Nasarawa State** to be precise, the customary land tenure system practiced is family land holding. It is essential to note that there are 4 ways in which family land can be **created** in my locality;

1. By declaration of an intention to create a family property inter vivo: occurs where land is purchased with money belonging to the family members.
2. By declaration in a Will: arises where a deceased landowner stated in his Will that his personal land should become family property.
3. Intestacy: Under customary law, if a land owner dies intestate, such land devolves to his heirs as family property.
4. By conveyance: The settler confers property on the family under a valid deed.

Management of Family land:

Under the customs of my locality, the family head who is usually the oldest male adult has the power to supervise whatever happens on the family land and if a sale is to occur, all members of the family have to be in agreement. However, the family head cannot use his powers as the manager of the family land to sell the land for his personal benefit.

² (1921) 2 A.C. 399

Determination of family Land:

1. Partition: This is sharing the family property amongst members of the family. Where there is partition of family land, each partitionee becomes an absolute owner of his or her part. Partition can be by mutual agreement among the members of the family or by an order from the court.
2. Transfer: Family land can be transferred where it is given to another person. It may be either by sale or gift. A conveyance to transfer family land to another person without the consent of the family head is void ab initio.

INDIVIDUAL LAND HOLDING:

In this land tenure system, land is owned by an individual. This was however, not so prominent in those days but modernization and urbanization have made individual land holding more prominent.

In conclusion, customary land tenure system vary from community to community and in my locality, it is the family land holding system that is practiced.