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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 practiced 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.

KOGI STATE

IJUMU LOCAL GOVERNMENT AREA

EKINRIN ADE’s Customary land Tenure system is solely that of the family where the family owns the land and the land in question is managed by the head of the family in question. Under land law, the term “ownership” signiﬁes the largest claim to land under customary law and it is, therefore, a recognized concept of customary law. Under the Nigerian customary law, ownership may be held by (a) the community; (b) family and (c) the individuals.

A communal land holding is the land vested in the community as a corporate whole and in which no individual member of the community could claim exclusive ownership to any portion of such land. A communal land has been characterized as land belonging to a vast family of which many are dead, few are living and countless members are unborn. Communal land belongs to a community, past, present and future. In Amodu Tijani v Secretary Southern Nigerian, the court held that land belongs to the community, village or the family, and never to the individual. A community land or communal ownership may arise from the initiatives or decisions of the founders of the land. The founders of the land or its original settlers may decide to designate the land to the entire community and if this is the case, the particular land remains a communal land.

Factors that affect communal land holding Members' Rights . . . . Members of the community have deﬁnite rights in communal lands which vary from locality to locality. Generally, a member of the community has equal right to a portion of communal land upon which to build and to farm. In Arase v. Arase, it was held that due to the principles of the Bini customary tenure system, all land is owned by the community which is held by the oba who can transfer Ownership when he sees it ﬁt

**In Coker v Coker, Carey J. stated that it is well established that the primary meaning of the term “family” refers to the children. The term “family” in relation to a family property means a group of persons who are entitled to succeed to the property of a deceased founder of a family. Such persons are usually the children of the deceased founder of the family. In the strict sense of it, the brothers, sisters, cousins or uncles of the deceased founder of a family do not come within the meaning of the term “members of the family.” However, the deceased may by his declaration, for example, in a Will, enlarge the family to include such relatives. Thus, in Sogbesan v Adebiyi, the question was whether the term “family” included the testator’s brothers and sisters or the children only. It was held that the Will as a whole made it clear that the testator intended the word “family” to include his brothers and sisters and their descendants as well as his own children.**

**Creation of Family Land, Family property may arise by operation of law or by acts of the parties. Where it may arise, ﬁrst settlement conquest purchase Gift Management of Family Land. The family head takes charge of the management and control of the land in a loose made of speech, he is sometimes referred to as the owner and trustee of the land.**

**Determination of family property Absolute Transfer is the transfer of the totality of the family's land interest to another person. Either by way of sale or gift**

**Partition is the act of sharing family property among the members of the family. This process is permanent division of not just land usability but also its ownership. It can be voluntary or court ordered.**

INDIVIDUAL LANDHOLDING: although in my locality individual landholding is not used, it is submitted that the basic factor responsible for this development was the economic emancipation of the individual as a result of new patterns of economic activity. Considering the family structure and its relationship to land before the advent of the British, it is correct to say that the whole idea of communal or family ownership emanated from individual ownership. Land was originally owned by the individual and the concept of communal ownership of land was a later development. In Aganran v Olushi, it was held that where a family sells its family land to a member or stranger, the purchaser becomes an absolute owner thereof. There is a judicial presumption in favor of communal ownership thus; any person who claims to be the absolute owner would have to prove it with credible evidence in order to succeed.

DECREASE IN COMMUNAL AND FAMILY LAND Communal landholding is now on gradual decrease in Nigeria. Many factors are responsibility for this phenomenon. The combined effect of these events over the years has been the depletion of communal lands in favor of the State, the individual purchasers and grantees of communal land.

CUSTOMARY RELATIONSHIPS Customary law recognizes certain customary land relationships in the use of land. Some relationships exist as a means of providing land for strangers in the community (customary tenancy) while others operate as secured credit transactions (institution of pledges).

Customary tenancy involves the transfer of an interest in land from the customary landlord to the customary tenant, and which interest entitles the customary tenant to exclusive possession of the land and which interest, subject to good behavior, he holds in perpetuity. Customary tenancy is created where a land-owning individual grants a right of occupation of land to another person who is usually a stranger to live in or farm in return for which they acknowledge the title of their grantor by the payment of customary tribute.

DETERMINATION OF CUSTOMARY TENANCIES Abandonment Accomplishment of Purpose Forfeiture is a determination of the customary tenancy by a court order upon a proven allegation on the complaint of the overlord of act(s) of misbehavior constituting denial of his title by the customary tenant.

.KOLA TENANCY • When a person needed a piece of land and a grantor wanted a ﬁxed tribute to be paid to him as an acknowledgment of the grantor’s title, the grantor and grantee might agree on ten or ﬁfty kola nuts to be given to the grantor annually by the grantee. The tenant cannot sublet; the landlord too cannot evict or replace the tenant with others willing to improve his cash returns. In Daniel v Daniel, it was held that a piece of land granted under kola tenancy could not be alienated by the successors of the grantee.

In conclusion in my locality (Ekinrin Ade), the system used is that of the family, where the family owns the Land.

REFRENCES:

Taiwo, Adewale, The Nigerian Land Law, 2nd ed. (Princeton & Associates Publishing Co. Ltd, Lagos, 2016).