NAME: AMOS ANN MELA

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COURSE TITLE: LAND LAW II

QUESTION: Prepare a brief paper on the customary land tenure system as practiced in your locality. This should briefly cover the creation, ownership, management and determination of family or communal land in your locality.

I am from Gombe state, Shongom local government and my hometown is Boh. According to my research the land tenure system is diverse. Land tenure is the system of landholding in a given society. According to Prof Mqeke, customary law is defined as the “custom and usages traditionally observed among the indigenous African peoples and which form part of the culture of those peoples. 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*,[[1]](#footnote-2) 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.

1. **CREATION OF FAMILY LAND :** If a landowner who is subject to customary law dies without a Will, his acquired property, devolves on his children as family property in accordance with the applicable customary law rules. This is the way family property is commonly created. Family property may also arise from a declaration under a Will as where a testator devised a property to his heirs jointly to hold as family property.[[2]](#footnote-3)
2. **OWNERSHIP:** The term “ownership” signifies the largest claim to land under customary law and it is, therefore, a recognised concept of customary law. Under the Nigerian customary law, ownership may be held by the community, family, and the individuals. In my community, ownership of land is held by (a) family and (b} the individuals.
3. **FAMILY LAND**

In *Okulade v Awosanya*,[[3]](#footnote-4) Uwaifo, JSC defined family as “the body of persons who live in one house or under one head, including parents, children, servants…The group consisting of parents and their children, whether living together or not. In Boh, family land ownership of land is held. The family members use the land together or separately each taking turns, like this year a family member will use the land then give the next sibling the next year. The circle keeps going till the last family member. In situations where the family member meant to use the land in the year is not interested in using the land, he can give it to any willing family member of his choice. This does not disrupt the circle. In situations where the family members decide to sell the land a family meeting will be held where they will vote whether to sell the land or not. If majority are for selling the land, it will be sold, if not the meeting will be adjourned.

In situations where the family members are not available, the extended family will hold the land. Women can also inherent land when. Land is also given as a gift to a family member getting married. It is however not included as bride price but a gift.

1. **INDIVIDUAL LANDHOLDING**

 Ownership of land is also held by individual land holding in my hometown. Although not unknown, individual ownership was rare in the olden days.[[4]](#footnote-5) However, today it has gained tremendously in prevalence, owing to modern conditions. ; any person who claims to be the absolute owner would have to prove it with credible evidence in order to succeed. It should be pointed out that improvements of family property by a member doe not divest the property of its original character as a family property. It remains a family property notwithstanding the improvement by a member.[[5]](#footnote-6)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.[[6]](#footnote-7) The next is the transformation of the indigenous subsistence economy into a monetized one. Thus, customary land became freely saleable.[[7]](#footnote-8)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, chieftaincy land, communal play grounds, communal farm lands and ponds.

**DETERMINATION OF FAMILY LAND**

Family land is determined when the members of the family decide to sell the land or gift it to a family member as a wedding gift. In situations where the family members decide to sell the land a family meeting will be held where they will vote whether to sell the land or not. If majority are for selling the land, it will be sold, if not the meeting will be adjourned. In situations where the family members are not available, the extended family will hold the land. . Land is also given as a gift to a family member getting married. It is however not included as bride price but a gift.

1. (2016) 11 NWLR (pt 1523) 335 at 355. [↑](#footnote-ref-2)
2. See *Sogbesan v Adebiyi* (1941) 16 NLR 26. [↑](#footnote-ref-3)
3. (2002) FWLR (pt 25) 1666. [↑](#footnote-ref-4)
4. *Ibid,* at 35. [↑](#footnote-ref-5)
5. *Gbadamosi Rabiu v Silifatu Abasi* (1996) 7 SCNJ 53 at 57. [↑](#footnote-ref-6)
6. See Land Tenure Law, 1962, Highway Act, 1971, Land Use Act, 1978 etc; *Peenok Investmetns Ltd v Hotel Presidential Ltd* (1982) 12 SC 1 at 60-61. [↑](#footnote-ref-7)
7. See *Balogun v Balogun* 9 WACA 78 at 82. [↑](#footnote-ref-8)