

FOR THE LOVE OF CHRIST JESUS; THE BEGINNING AND THE END.

ESSENTIALS IN LAND LAW

Composed by Nwosu Isochukwu.

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isochukwunwosu@gmail.com

KINDLY NOTE:

1. All you need is to understand the principles, then back it up with one or two popular case(s) therefore this note presents the discussion on this subject area in a succinct and straight-to-the-point manner, identifying the essential authorities.
2. My language and referencing are informal and abbreviations were used in this work. E.g. HC means High Court, CoA means, Court of Appeal, CFRN means, Constitution of the Federal Republic of Nigeria, etc. I apologize.
3. If viewing the notes on your laptop, press Ctrl + F (Ctrl key and Key F at the same time) to find a specific word/phrase. If viewing from a mobile device, select the “search” option from your browser’s tool menu.
4. The next update of the note shall be released on April, 2020.
5. For advanced legal research on any area of law kindly visit vitesolutions.com.ng.

Thank you and hope you find the notes helpful.

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LAND LAW I

A CURSORY INTRODUCTION THROUGH THE CONCEPT OF PROPERTY.

At common-law, property was classified into “real” and “personal”.

:: Property is *real* where a dispossessed owner shall be restored with the property itself. It is *personal* where the court would ask the defendant to either return the property or pay compensation.

:: Real property can be regarded as immovable property like land while personal property (obviously) includes all property other than immovable property.

:: This course deals with real property.

SOURCES OF THE LAW OF REAL PROPERTY IN NIGERIA.

1. **Customary and Islamic Law of Land Tenure**: Customary law is the mirror of accepted usage. It is unwritten, dynamic and varies from locality¹. On the other hand, the Islamic land tenure system applies² predominantly in the North³. Islamic law derives from the Qur’an⁴, Sunnah⁵, Ijma⁶ and Kiyas⁷.

2. **Received English Land Law**: English Common-law, equity and Statute of General Application⁸ in existence as at **January 1 1900** shall apply in Nigeria subject to the extent to which local statutes⁹ permit-**Section 32 Interpretation Act**¹⁰.

¹ Applies in the various states by virtue of the various High Court Laws of the states. E.g. **Section 26 HCL of Lagos**. Note however that before customary law would be applied, it must be established and proved. After a custom has been established, the court must be satisfied that the custom is not inconsistent with existing laws and that it is not repugnant to natural justice, equity and good conscience. It all depends on the facts of each case.

² Unlike customary system, the application of Islamic law depends on the consent and status of the parties.

³ With the Maliki school prevailing.

⁴ Is the Holy Book of Islam which records the revelations of God to Prophet Mohammed

⁵ The teachings and practices of the Prophet Mohammed and interpretation of Qu’ran.

⁶ Consensus of Islamic scholars.

⁷ Reasoning by analogy.

⁸ A Statute of General Application must have been in force as at 1st Jan 1900, apply to all parts of England, all classes of people and in all courts- **AG v John Holt and co, Young v Abina, Labinjoh v Abake**.

⁹ Since Nigeria is a sovereign nation, its local legislature can repeal any of these foreign laws in accordance with the powers granted under **Section 4 of the 1999 constitution**.

¹⁰ Also, **Ordinance No 3 of 1863, Supreme Court ordinance 1914**.

3. **The Land Use Act 1978**: Is a source. It also preserves other existing land tenure systems subject to modifications that would bring them in consonance with the Act (LUA).

5. **Nigerian case law**: Nigerian case laws form an authoritative source of interpretation of principles and statutory provisions on land matters.

4. **Other local enactments relating to land**: like the Land Tenure Law, Property and Conveyancing Law, the Landlord and Tenant Law of the various states...

DEFINITION OF LAND

:: At common-law, land was regarded as the earth's surface, the sub-soil, things attached to or forming part of the land (for example trees) and other incorporeal hereditaments.

:: **Blackstone in *Commentaries on the Laws of England*** notes that land signifies everything that may be holden¹¹ *provided it be of a permanent nature*.

:: **Edward Coke** defines land as; *any ground, soil, or earth whatsoever... An indefinite extend upwards as well as downwards*¹².

:: By **Section 18 of the Interpretation Act**, land can be seen as *anything attached to the earth, except minerals*.

:: For the **Property and Conveyancing Law (PCL)**, land signifies *all chattels real... includes incorporeal rights and other easements as well as profits*. This definition is broader and more acceptable than that of the Interpretation Act as it includes incorporeal hereditaments.

:: In order to be on the right footing, the definition of land shall be determined by the statute governing a particular transaction. Where there is none, the definition of the Interpretation Act shall be used.

From all that we have discussed, land can be regarded as:

- The earth's surface.
- Subjacent things of a physical nature.
- Everything attached to the earth surface.
- Incorporeal rights.

LAND AS THE EARTH'S SURFACE.

¹¹ Anything... just name it.

¹² This definition can be criticised on the basis that in modern times, the "an indefinite extend upwards" may be limited by various laws like aviation laws which enable aircrafts to fly over a person's "land"

The earth's surface consists of top soil. There are various types of lands on the earth's surface. They include:

:: **Stool Land:** Also described as the Oba's official residence. It is land maintained by the community or village for the use and enjoyment of the head. In *Oba Adeyinka V Oba Adele*, the court noted that such lands are made in trust for the use of Obas/heads... They do not belong to the head of the village/Oba, it is just his official residence. He cannot claim ownership over stool land¹³. The maintenance of such lands is now covered by public funds-**Section 3(3) of the Obas and Chiefs Law of Lagos State**. When such land ceases to be stool land the family that owned the land before it was converted to stool land can enforce their right over such land.

:: **Communal land:** Evolved through first settlement or conquest¹⁴ by the settlor. Usually named after the first settlor and owned by the community as a whole. No individual can claim title to the land. Although a portion can be allocated to individuals/families.

:: **Family Land:** Evolves through intestacy¹⁵ first settlement, declaration, and so on. Usually named after the founder of the family. Ownership is vested in the family rather than an individual. *Owoo V Owoo*.

:: **Individual Owned land (Mamluk land):** (obviously) land owned by an individual.

:: **Ceremonial Land:** part of the communal land set aside for ceremonial purposes. (Called Matraka in Islamic law).

:: **Virgin bush/waste land:** the area of communal land left fallow and uncultivated. An individual can acquire transferrable interest in the land where he cultivates it. Such acquired interest can generally be passed to his children. (Mawat Land).

:: **Beach Land:** owned by the community within the boundary of which the beach lies. No single individual can alienate any portion whatsoever-*Henshaw V Henshaw*.

¹³ This scenario can be likened a situation where the former president would have to vacate Aso Rock where a new president is sworn in. Aso Rock then becomes the official residence of the new president. (Although Aso Rock is not really an example of a stool land).

¹⁴ Conquest (forceful taking of land) is an offence under **Section 42 of the Criminal Code** a similar provision can be found in the penal code.

¹⁵ Where the owner of the land dies without stating who gets the land in his will.

Foreshore Land: Reclaimed land. Any reclaimed land belongs to the government. Subject to existing customary usage and rights by the natives within the community. For example access to water.

LAND AS CONSISTING OF SUBJACENT THINGS OF A PHYSICAL NATURE

Consist mainly of minerals found below the surface of the land. **Section 1 of the Minerals Act** vests exclusive control of such minerals in the Federal government. Same can be found in **Section 44 of the 1999 Constitution**.

LAND AS EVERYTHING ATTACHED TO THE EARTH'S SURFACE (*Quic Quid plantatur*)

This brings us to the famous maxim: *Quic Quid plantatur solo solo cedit*: which is the common law position that; *all things attached to the land forms part of the land*.

In ***Francis V Ibitoye*** the court held that where a person builds on another's land without consent, the property so built becomes the property of the landowner. This rule was approved in ***NEPA V Amusa***.

The *Quic Quid* rule examined:

Quic quid rule under Customary Pledge¹⁶: In ***Okoiko V Esedalue***, the court held that improvements made by a pledgee shall belong to the landowner. In summary: Yes the *Quic Quid* rule under customary pledge.

Quic Quid Rule under Family Land¹⁷: In ***Sarteng v. Darkwa***, the WACA held that a building erected on the family land by the deceased was self-acquired property and could pass to beneficiaries under his will. **However**, in ***Owoo V Owoo***, the same WACA doubted the stand in ***Sarteng V Darkwa*** and held that such property still belonged to the family despite improvements made on it. Also in ***Alao V Ajani***, and the case of ***Shelle V Asajon***, the Supreme Court held that improvements made to family land belonged to the family. In summary: Yes, the *Quic Quid* rule applies to family property.

¹⁶ A customary pledge is created where the owner of land (pledgor) gives **possession and use** of the land to the (pledgee) creditor in order to secure an advance of money. The creditor shall give up possession to the owner when the debt is fully paid.

¹⁷ Family property is land vested in the family as a corporate unit.

Quic Quid rule under Customary tenancy¹⁸: In ***Etim V Eke***, the court held that the tenant is entitled to an account of rent gotten from his improvements on the land. In summary: No, the Quic Quid rule does NOT apply to customary tenancies.

Under Islamic Law: Where there has been improvement on his land, the owner of the land can only order the removal of the building/improvement or the restoration of the land back to its original state or claim compensation for its restoration. In summary, No the Quic Quid rule does not apply in Islamic law.

Under the Land Use Act 1978: Section 1 Land Use Act vest title in land on the governor of the State who holds it in trust for the people. **Section 15** however entitles the holder of a statutory right of occupancy to improvements and disposal of same provided the consent of the governor is sought and obtained in accordance with **Section 22** of the LUA. **Section 29** also entitles an innocent holder to compensation upon revocation of his right of occupancy. In summary: No, the Quic Quid rule does NOT apply under the LUA 1978.

Note however¹⁹ the position of the Supreme Court in ***NEPA V Amusa***, that the application of the quic quid rule can be negated by:

- Contractual agreement between the parties.
- The doctrines and rules of equity.
- Statutory provisions. **Section 15 Land Use Act** entitles the holder of statutory right of occupancy to improvements. **Section 1 of the Minerals Act** vests exclusive control of minerals on the Federal Government. Therefore negating the quic quid rule.

LAND AS CONSISTING OF INCORPOREAL HEREDITAMENT

Incorporeal hereditaments are inheritable but intangible rights existing on land which exists in the contemplation of the law. For example easement²⁰, profit²¹ and rent. It is not the same as local customary rights such as right of fishing, passage. **Section 15 of the Land Use Act** incorporates incorporeal hereditaments.

¹⁸ Occurs where a landowner (grantor) grants to another, the right to occupy and use the land **in perpetuity subject to good behaviour**. Good behaviour here usually refers to payment of tribute and recognition of the grantor's title-***Aghenghen v Waghoreghor***.

¹⁹ For those areas where the quic quid rule applies.

²⁰ A right which allows one to use another's land in a particular manner.

²¹ The right to take natural produce from another's land. E.g. pluck mango.