

LAW422

LAND LAW II



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 422

COURSE TITLE: LAND LAW II

COURSE CODE:

LAW 422

LAW422

LAND LAW II

COURSE TITLE:

LAND LAW II

COURSE WRITER:

Dr. Violet Aigbokhaevbo
University of Benin

COURSE EDITOR:

Mr. Kunle Aina (Sabbatical)
School of Law, NOUN

COURSE COORDINATORS:

K. Aina, C. Hia, NOUN

AG. DEAN:

Ifidon Oyakhiromen, PhD. BL
School of Law, NOUN



NATIONAL OPEN UNIVERSITY OF NIGERIA

LAW422

LAND LAW II

National Open University of Nigeria
Headquarters
14/16 Ahmadu Bello Way
Victoria Island
Lagos

Abuja Office
No. 5 Dar es Salaam Street
Off Aminu Kano Crescent
Wuse II, Abuja
Nigeria

e-mail: centralinfo@nou.edu.ng

URL: www.nou.edu.ng

Published by
National Open University of Nigeria

Printed 2011

ISBN:

All Rights Reserved

NON – CUSTOMARY LAND LAW

MODULE 1

UNIT 1: THE LAND USE ACT

1.0 INTRODUCTION.

2.0 OBJECTIVE

3.0 STATE CONTROL OF LAND

3.1 PRIVATE INTERESTS IN LAND

3.2 CATEGORISATION OF RIGHTS OF OCCUPANCY

3.3 DISTINCTION BETWEEN GRANT OF STATUTORY AND CUSTOMARY RIGHTS OF OCCUPANCY UNDER THE LAND USE ACT.

3.4 RIGHTS CONFERRED BY RIGHTS OF OCCUPANCY.

3.5 CONDITIONS FOR VALID GRANT OF CERTIFICATE OF OCCUPANCY.

4.0 CONDITIONS IMPOSED ON GRANTEEES OF CERTIFICATE OF OCCUPANCY.

5.0 CONCLUSION

6.0 SUMMARY

7.0 TUTOR MARKED ASSIGNMENT

8.0 SUGGESTED FURTHER READING / REFERENCES

STATUTES

MODULE 1**UNIT 1: THE LAND USE ACT****1.0 INTRODUCTION.**

The Land Use Act which was enacted in 1978 is one of the most far reaching and controversial legislations in Nigeria. The Act vests in the Governor of a state, the ownership of the land in the state. It was enacted primarily to contribute to the stabilization of government projects mostly in urban areas and control the difficulties confronted by government when acquiring land for development purposes. The Land Use Act 1978 was also meant to address the uncoordinated and informal tenorial arrangement in the Southern States which was prone to litigation. Such tenorial arrangements also imposed impediments on modernization of the agricultural sector and was anachronistic.

2.0 OBJECTIVE

The objective of this unit is to expose students to the fundamentals of the Land use Act and to acquaint them with the status of private interest in land under the Act.

3.0 STATE CONTROL OF LAND

The Land Use Act conferred Government with mandatory powers over land acquisition in Nigeria. Section 1 provides that from the commencement of the Land Use Act, all land comprised in the territory of each state in the Federation are vested in the Governor of the State and such Governor of that State and such land should be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act. The previous owners, communities families or individuals by virtue of section 1 of the Land use Act are divested of the ownership of their land whether occupied or unoccupied. Section 49 however expressly provides that such ownership does not affect any title to land

whether developed or undeveloped held by the Federal Government or any agency of the Federal Government at the commencement of the Land Use Act and such land shall continue to be so vested in them. Section 50 (2) also vests the power to manage and control such land in the President or Minister designated by him to exercise such powers

All land in urban areas were designated to be under the control and management of the Governor of each state, all other land were delegated to the management of the Local Government within the area of designation of which the land is located. Each state was however mandated to establish the Land Use Allocation Committee which was foisted with the responsibility of advising the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under the Act. It was also to determine disputes as to the amount of compensation payable under the Act for improvements on land. See section 2 of the Land Use Act.

Each local Government was also mandated to establish a body to be known as the Land Allocation Advising Committee to be vested with the responsibility of advising the Local Government on any matter connected with the management of land in the territory.

It was expected that by systematizing land allocation through the Land Use Allocation Committee, the Act would enhance the possibility of Nigerians with the requisite capital and entrepreneurial skill having access to agricultural land in spite of their ethnic or geographical origin. It would remove the pre-existing obstacle to land use premised on the notion of inalienability of land.

3.1 PRIVATE INTERESTS IN LAND

The Land Use Act did not abrogate private interest in land by vesting all lands in the state in the Governor rather citizens are allowed to hold an interest called a right of occupancy.

In *Adole v Gwar (2008) 11. NWLR (PT 1099)562*, the supreme Court while explaining the aim and purport of the Land Use Act 1978 held that it was not the intention of the Law maker that the Land Use Act be used to divest citizens of their traditional titles to land. Rather the Act is meant to strengthen ownership that derives existence through traditional history. It is for that reason that the Act recognize the existence of the title of a customary Land owner over his parcel of land as a deemed holder where such land existed before the commencement of the Land Use Act. This is however subject to the Governments right of revocation of the holder's right for public interest as specified under the Act.

Section 34 provides that where the land in an urban area was vested in a person before the commencement of the Act, the land should continue to be held by him as if he was a holder of a statutory right of occupancy issued by the Governor under the Act. In the case of land that is undeveloped, where a person in whom it was vested before the Act held more than half hectare, the holder is only entitled to the grant of a statutory right of occupancy over one plot or portion of the land not exceeding half hectare in area. His rights over the excess land were extinguished and vested in the Governor to be administered in accordance with the provisions of the Act.

Where the land is located in a non – urban area, only existing rights over land which was at the commencement of the Act developed or

which was being used for agricultural purpose were recognized. Such land should continue to be held as if the holder was the grantee of a customary right of occupancy issued by the local Government.

Section 3 of the Land Use Act empowers the Governor to:

Subject to such general conditions as may be specified by the National Council of States, the Governor may for the purposes of this Act by order published in the gazette designate the parts of the area of the state constituting land in urban area.

The power of the Governor of a state to grant statutory right of occupancy or customary right of occupancy by the appropriate body must not be exercised whimsically such as to deprive someone who had lawful right or title to a parcel of land prior to the enactment of the Land Use Act. Section 34 (1), (5) and (6) are transitional provisions made for the preservation of interests in land held by persons prior to the commencement of the Land Use Act. The provisions are generally protective of the interest of persons in the land held prior to the commencement of the land Use Act.

See Adole v Gwar (supra).

3.2 CATEGORISATION OF RIGHTS OF OCCUPANCY

Rights of occupancy under the Land Use Act are categorized as follows:

- (a) Statutory right of occupancy expressly granted by the Governor
- (b) Statutory right of occupancy deemed to be granted by the Governor
- (c) Customary right of occupancy expressly granted by the Local Government

- (d) Customary Right of Occupancy deemed to be granted by a Local Government.

A deemed grant comes into existence automatically by the operation of law and the grantee acquires a vested right just as an actual grantee of a right of occupancy.

3.3 DISTINCTION BETWEEN GRANT OF STATUTORY AND CUSTOMARY RIGHTS OF OCCUPANCY UNDER THE LAND USE ACT.

The principal distinguishing factor is whether the deemed right of occupancy was granted by the Governor or the Local Government. The location of the land in an urban or non urban area is also a factor for consideration in the grant of a right of occupancy

3.4 RIGHTS CONFERRED BY RIGHTS OF OCCUPANCY.

The Land Use Act has not been destroyed but redefined the concept of land ownership. Section 5 (1)(a) of the Land Use Act empowers the Governor of a state in respect of land whether or not in an urban Area to grant of occupancy to any person for all purposes. A statutory right of occupancy automatically extinguishes all existing rights in respect of the parcel of land over which it is granted. See *Olagunju v Adeseye (2009) 9 NWLR (PT 1146) 225*. The holder of a statutory right of occupancy is in all respect the proprietor of the land during the subsistence of the right. Section 14 of the land use Act confers the holder of a statutory right of occupancy with exclusive possession of the land against all persons other than the Governor. Such rights are transferable to his heirs. Similarly section 24 of the land Use Act subject to the consent of the Governor been first had and obtained, confirms that the holder of a statutory right of occupancy has an alienable proprietary right.

The tenor of the Land Use Act was to “nationalize” all lands in Nigeria by vesting its ownership in the state. The maximum interest preserved in the hands of individuals is a right of occupancy.

Where there is a subsisting grant of right of occupancy of a land, any other deemed grant in respect of the land would be invalid see *Eleeran v Aderoupe (2008) 11 NWLR (PT 1097) p. 50*

The holding of certificate of occupancy is evidence that a right of occupancy has been conferred on the holder. It is *Prima facie* evidence of title of the land covered by it. Its exclusive possession is however rebuttable

3.5 CONDITIONS FOR VALID GRANT OF CERTIFICATE OF OCCUPANCY.

The prerequisite for a valid grant of a certificate of occupancy is that there must not be in existence the valid title of another person with legal interest in the same land at the time the certificate was issued. In other words there must not be in existence at the time the certificate was issued a statutory or customary owner of the land in issue or dispute who was not divested of his legal interest in the land prior to the grant. Where a certificate of occupancy is granted to a person with a defective title, the certificate of occupancy is invalid and the holder has no valid claim legally cognizable.

Section 34 of the Land Use Act relates to titles of persons with title to land before the coming into force of the land Use Act. Vested rights cannot be defeated by the application of section 1 and 5 of the Act.

In *Oniyale v Macaulay (2009) 7 NWLR (PT 1141) 597* the Supreme Court held that where it is shown by evidence that another person

other than the grantee of a certificate of occupancy had a better right to the land upon which the grant relates, a court would have no option but to set aside the said grant or otherwise discountenance it as invalid, defective and / or spurious.

Once a statutory right of occupancy is issued when a deemed right exists and has been revoked, the statutory right of occupancy becomes a worthless document because there cannot exist concurrently two title holders over one and the same piece of land. Where there exists at the same time, two rights of occupancy to different persons in respect of the same land, one must of necessity be valid. The invalid one must be the latter right granted without first revoking the former pursuant to section 28. A person does not acquire a title by mere possession of a certificate of occupancy

See Nigerian Engineering Work Ltd v Denap Ltd (2001) 18 NWLR (PT 746) 726.

4.0 CONDITIONS IMPOSED ON GRANTEES OF CERTIFICATE OF OCCUPANCY.

Statutory right of occupancy granted pursuant to section 5(1) should be for a definite term and might be granted subject to the terms of any contract which may be made by the Governor and the holder not being in consistent with the provision of the Land Use Act. See section 8, section 9 of the Land Use Act provides that it shall be lawful for the Governor

- (a) when granting a statutory right of occupancy to any person or
- (b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or
- (c) when any person is entitled to a statutory right of occupancy to issue a certificate under his hand in evidence such right of occupancy.

Section 9 (2) provides that such certificate shall be termed a certificate of occupancy and there shall be paid such fee as may be prescribed.

It is provided further by section 10 that every certificate of occupancy shall be deemed to contain provisions to the effect that the holder of a right of occupancy shall bind himself to pay to the Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation. The holder binds himself to pay to the Governor, the rent fixed by the Governor and any rent which may be agreed or fixed on revision in accordance with the Governor's powers of rent revision pursuant to section 16 of the Land Use Act.

Non compliance with the requirement of rent payment renders the certificate of occupancy issued by the Governor susceptible to cancellation and the recovery from such person any expenses incidental to such cancellation and revocation of the statutory right of occupancy granted.

The holder of a statutory right of occupancy also has a duty to allow the Governor or any public officer duly authorized by the Governor to enter upon and inspect the land comprised in any statutory right of occupancy or any improvements effected on it at any reasonable time during the day see section 11 of the Land Use Act.

The occupier of a statutory right of occupancy is also mandated at all times to maintain in good and substantial repair to the satisfaction of the Governor or his appointee beacons or other landmarks by which the boundaries of the land are defined. Failure to comply with a notice of compliance served on him would render such occupier liable to pay the expenses incurred by the Governor

in defining the boundaries which the occupier neglected to define.
See section 13

5.0 CONCLUSION

In spite of the expectations generated by the enactment of the Land Use Act, considerable gaps exist between expectations and achievement. The concept of inalienability of land remains prevalent and endemic in rural areas. Speculation in land is rife and Government acquisition of land for public purposes is often resisted by individuals and corporations.

Due to the inherent controversy in the Act and its failure to provide the touted panacea for land related issues, there have been consistent requests for it to be reviewed.

6.0 SUMMARY

- (1) The Land Use Act "nationalized" all lands in Nigeria by vesting its ownership in the state.
- (2) Citizens are allowed to hold an interest in land called a right of occupancy
- (3) Rights of occupancy are categorized as statutory Right of occupancy and deemed statutory rights of occupancy for lands located in urban areas and customary rights of occupancy and deemed customary rights of occupancy for land in non-urban areas
- (4) The occupier of land pursuant to a right of occupancy is issued a certificate of occupancy.
- (5) The holder of a certificate of occupancy is obligated to pay rents which are subject to revision by the Governor.
- (6) The validity of a certificate of occupancy is rooted in a grantee having a legally cognizable interest in the land in respect of which it is granted.

- (7) The right conferred by a certificate of occupancy is transferable to heirs and capable of been alienated subject to the Governor's consent been first had and obtained

7.0 TUTOR MARKED ASSIGNMENT

- (i) Distinguish between a deemed grant and a grant of statutory and customary right of occupancy.
- (ii) Discuss proprietary interest in land conferred on private individual under the land Use Act.

8.0 SUGGESTED FURTHER READING /REFERENCES

- * The Land Use Act – Report of a National Workshop edited by J.A Omotola (Lagos: Lagos University press, 1982)
- * Niki Tobi Cases and Materials on Nigerian Land Law (Lagos: Mabrochi books, 1997)
- * Itse Sagay, Nigerian Bulletin of Contemporary Law, March 1987

STATUTE

Land Use Act Cap L5 Laws of the Federation of Nigeria 2004.

MODULE 1

- UNIT 2: ALIENATION OF CERTIFICATE OF OCCUPANCY**
- 1.0 INTRODUCTION.**
 - 2.0 OBJECTIVE**
 - 3.0 MAIN CONTENT**
 - 3.1 EFFECT OF ALIENATION OF RIGHT OF OCCUPANCY WITHOUT GOVERNOR'S CONSENT.**
 - 3.2. ASSIGNATION OF GOVERNOR'S DUTY TO SIGN LETTER GRANTING CONSENT**
 - 3.3 BURDEN OF PROOF OF VALIDITY OF CONSENT**
 - 3.4 PENAL SANCTIONS**
 - 3.5. JURISDICTION OF COURT**
 - 4.0 CONCLUSION**
 - 5.0 SUMMARY**
 - 6.0 TUTOR MARKED ASSIGNMENT / SUGGESTED ANSWER**
 - 7.0 SUGGESTED FURTHER READING / REFERENCES**

STATUE

MODULE 1**UNIT 2: ALIENATION OF CERTIFICATE OF OCCUPANCY****1.0 INTRODUCTION.**

The general intendment of the Land Use Act is to expressly vests title, management and control of the use of land in the Governor and regulate the interest of the land holder by prescribing consent to alienate in all cases which involve subsequent transaction in land covered by a right of occupancy.

2.0 OBJECTIVE

The objective of this unit is to acquaint students with the requirement of obtaining of the consent of the Governor of the state where the land is located as a procedural necessity for the conferment of a valid title in land under the Land Use Act and expose them to the requisite application for consent form.

3.0 MAIN CONTENT

By operation of law every holder of a right of occupancy, whether statutory or otherwise is regarded as having been granted the right by the State Government or Local Government for the purpose of control and management of the said land.

The holder of a right of occupancy pursuant to section 5, 34 or 36 of the land use Act requires the prior consent of the Governor before he can transfer, mortgage or otherwise dispose of his interest in the right of occupancy. Section 21 of the Land Use Act 1978 provides that it shall not be lawful for any customary right of occupancy or any part of it to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law or in other cases without the approval of the

appropriate local Government. It is similarly provided by section 22 of the land Use Act that:

It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession , sublease or otherwise however without the consent of the Governor first had and obtained.

Section 23(1) also provides:

A sub-lease of a statutory right of occupancy may with the prior consent of the Governor and with the approval of the holder of the statutory right of occupancy demise by way of sub-under lease to another person the land comprised in the sublease held by him or any portion of the land.

By the tone and tenor of this provision, it is clear and unequivocal that the provision is mandatory. It makes the obtaining of the Governor's consent a pre condition for the validity of any alienation of a right occupancy under the land Use Act 1978. Although there is no time limit to the obtaining of the consent, before the alienation can be valid or confer the desired right on the party intended to benefit from it, the consent of the Governor is mandatory. It does not by any means make the transaction without the requisite consent inchoate. It makes it invalid until consent is obtained.

Section 22 (2) of the Land Use Act takes cognizance of cases where some form of written agreement executed in evidence of a transaction is submitted to the Governor in order to obtain his consent as required by the section. e.g for a transaction in the nature of conveyance to be valid the parties to it must first enter into a binding agreement to alienate subject to the consent of the Governor. It is that consent that vests a valid title on the purchaser. See savannah bank of Nig. Ltd & anor. V Ammiel. O. Ajilo & anor

(1989) ANLR 26 and C.C.C T.C.S Ltd v Ekpo (2008) 6 NWLR (PT 1083) 362

3.1 EFFECT OF ALIENATION OF RIGHT OF OCCUPANCY WITHOUT GOVERNOR'S CONSENT.

The consequence of the unlawful act of alienating a right of occupancy without the requisite consent of the Governor is stated in section 26 of the land use Act 1978 as:

any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void.

As observed by Unsworth F. J in Solanke v Abed (1962) 1 ANLR 230, where a statute not only declares a contract or transaction void but imposes a penalty for making it the contract is not merely void but is also illegal.

The use of the word "shall" makes compliance with the provision mandatory and not directory or discretionary.

In *Awojugbagbe light Ind. Ltd v Chinukwe* (1995) 4 NWLR (PT 390) 379 the supreme court held that the mandatory provision of section 22 (1) does not prohibit the holder of a statutory right of occupancy from entering into some form of negotiations which may end with a written agreement for presentation to the Governor for his necessary consent or approval. It does not cover any transaction which effectively purport to enable an assignee, mortgagee or sublessee of the right of occupancy to exercise his rights thereunder without the prior consent of the Governor. However, such an agreement becomes inchoate until the consent of the Governor is obtained after which it can be said to be complete and fully effective.

See also section 23 (1) of the Land Use Act which provides that:

a sublease of a statutory right of occupancy may with the prior consent of the Governor.

In *P.I.P Ltd v Trade Bank (Nig) Plc (2009) 13 NWLR (PT 1159) 577*, the 2nd Respondent attempted to sell the property charged under the mortgage transaction between it and the appellant without the prior consent of the Governor having first had and obtained. The court held it was attempting the impossible in view of the absolute prescription of section 26 of the Land Use Act.

3.2. ASSIGNATION OF GOVERNOR'S DUTY TO SIGN LETTER GRANTING CONSENT

Section 22 of the Land Use Act postulates that the Governor shall sign the letter granting consent. In a situation where the Governor cannot give the consent himself. Section 45 of the Land Use Act provides that:

- (1) The Governor may delegate to the state commissioner all or any of the powers conferred on the Governor by this Act subject to such restrictions, conditions and qualifications not being inconsistent with the provisions or general intendment of this Act as the Governor may specify
- (2) Where the power to grant certificate has been delegated to the state commissioner such certificates shall be expressed to be granted on behalf of the Governor.

In *U.B.N. PLC v Ayodare & Sons (Nig) Ltd (2007) 13 NWLR (PT 1052) 567*, where the letter of approval for consent was not written by the commissioner of Lands but by an Acting Chief Lands Officer of the Ministry, the Supreme Court held that it negatively affected the validity of the mortgage since for a letter of approval consent to fulfill the consent provision of section 22 of the Land Use Act must be written and signed by the commissioner for Lands as the

Governor's delegate and not a mere officer of the ministry as the exercise of such authority by him was inappropriate

Section 45 (1) of the Land Use Act only gives a Governor the power to delegate the authority granted under the Act. There is no corresponding power of delegation granted to the Local Government
Samples of forms for subsequent transactions for Statutory Rights of occupancy and Customary Rights of occupancy are as indicated in samples 1, 2 and 3

3.3 BURDEN OF PROOF OF VALIDITY OF CONSENT

The burden of proving the invalidity of consent as recognized by the Land Use Act lies on the Plaintiff who alleges that there was no valid consent granted for the subsequent transaction. This is in consonance with the evidential burden placed on the Plaintiff to the effect that he who asserts must prove.

3.4 PENAL SANCTIONS

The Land Use Act criminalized the subdivision and laying out in plots in excess of that granted by a right of occupancy without the prior consent in writing of the Governor. See section 34 (7) of the Land Use Act.

Any instrument purporting to transfer any interest in land in contravention of section 34(7) was declared null and void and of non effect. Any party to such instrument was guilty of an offence and liable on conviction to a term of imprisonment for one year or a fine of N5, 000. see section 34 (8)

Where the land is situated in a non urban area, any instrument purporting to transfer any land shall be void and of no effect whatsoever and every party to any such instrument was guilty of an

offence and on conviction be liable to a fine N5,000 and imprisonment for one year.

3.5. JURISDICTION OF COURT

The High Court was conferred with exclusive original jurisdiction in respect of proceeding relating to any land which was the subject of a statutory right of occupancy granted by the Governor including deemed grants as well as proceedings for a declaration of title to a statutory right of occupancy

See section 39 (1) (a) where the proceedings relate to customary right of occupancy granted by a Local Government under the Land Use Act, an area court or customary court or other court of equivalent jurisdictions was conferred with the jurisdiction to determine issues relating to the grant of a customary right of occupancy

see section 41 of the Land Use Act.

4.0 CONCLUSION

The consent provisions of the Land Use Act is evidently to control land development and land acquisition with a view to ensuring that the vesting of the control and management of land in a State in the Governor of a state is not eroded.

5.0 SUMMARY

- (1) Section 21 and 22 of the Land Use Act prohibits the alienation of a certificate of occupancy by the occupier of land by assignment, mortgage, transfer of possession, sublease or otherwise either wholly or partially.
- (2) The Land Use Act mandates every such subsequent transaction in land to be with the consent of the Governor first

had and obtained by virtue of section 21(a) section 22, and 23 (1) of the Land Use Act.

- (3) The Governor is empowered to delegate his powers to grant consent to alienate land to the state commissioner who can validly grant the requisite consent.
- (4) The Land Use Act criminalizes any subsequent transaction in land without the requisite Governor's consent and an offender is liable on violation to a term of imprisonment of one year or N5,000 fine. See section 34 (8) and section 36 of the Land Use Act
- (5) The High Court of the state is conferred with original jurisdiction to entertain issues relating to land which is subject to a grant of a statutory right of occupancy that is located in an urban area. Area courts or customary courts or courts with equivalent jurisdiction are conferred with jurisdiction to adjudicates on issues arising from land covered by customary right of occupancy. Sections 39 and 41 of the Land Use Act.

6.0 TUTOR MARKED ASSIGNMENT

- * Analyse the effect of alienation of land without Governor's consent under the Land Use Act 1978.

SUGGESTED ANSWER

See section 26 of the Land Use Act 1976 and the cases of:

- * Awojugbagbe Light Industry Ltd v Chinukwe (1995) 4 NWLR (PT 390) 397
- * C.C.C. T.C.S Ltd v Ekpo (2008) 6 NWLR (PT 1083) 362
- * Olalomi Ind. Ltd v NIDB Ltd v N.I.D.B. Ltd (2009) 16 NWLR (PT 1167) 266

7.0 SUGGESTED FURTHER READING / REFERENCES

LAW422

LAND LAW I

NIKI TOBI Cases and Materials on Nigerian Land Law (Lagos: Mabrochi Books, 1997)

J.A Omotola ed. The Land Use Act, Report of a National Workshop (Lagos: Lagos University Press, 1986)

STATUTE

The Land Use Act 1978.

MODULE 1

UNIT 3: REVOCATION OF CERTIFICATE OF OCCUPANCY

1.0 INTRODUCTION.

2.0 OBJECTIVE

3.0 MAIN CONTENT

**3.1 GROUNDS FOR REVOCATION OF STATUTORY
RIGHT OF OCCUPANCY.**

3.1.1 OVERRIDING PUBLIC INTEREST

3.1.2 PUBLIC PURPOSE

**3.1.3 BREACHES OF THE TERMS OF THE GRANT OF THE
CERTIFICATE OF OCCUPANCY.**

**3.2 PROCEDURE FOR REVOCATION OF CERTIFICATE
OF OCCUPANCY**

3.2.1 CONDITION PRECEDENT

3.2.2 MODE OF SERVICE OF NOTICE

3.2.3 CONTENT OF A VALID NOTICE OF REVOCATION

4.0 CONCLUSION

5.0 SUMMARY

**6.0 TUTOR MARKED ASSIGNMENT/
SUGGESTED ANSWER**

7.0 SUGGESTED FURTHER BEADING / REFERENCE

STATUTE

MODULE 1**UNIT 3: REVOCATION OF CERTIFICATE OF OCCUPANCY****1.0 INTRODUCTION.**

From the provisions of the consent provisions of the Land Use Act discussed in the previous Unit. It is apparent that sections 21, 22 and 23 of the Land Use Act 1978 makes the prior consent of the Governor of a state mandatory for the validity of every subsequent transaction relating to a right of occupancy granted in the territory. The penalty of non compliance includes rendering the transaction void pursuant to section 34(8) and 36 (6) of the Land Use Act and revocation of the Right of Occupancy granted in exercise of the power conferred on the Governor by section 28 of the Land Use Act.

2.0 OBJECTIVE

The objective of this unit is to analyse the power of revocation conferred on the Governor of a state for non compliance with the provisions of the Land Use Act. The students are expected to be acquainted with the procedural requirement for a valid exercise of the power of revocation of Statutory Right of Occupancy by a Governor

3.0 MAIN CONTENT

A proper and valid acquisition of land can only be done when the provisions of the Land Use Act are strictly complied with.

section 28 of the Land Use Act empowers the Governor to revoke a right of occupancy earlier granted. The Land Use Act is not as stated by the supreme court in *Adole & Gwar (2008) 11NWLR (PT1099) 562*, a magic wand it is being portrayed to be or a destructive monster that at once swallowed all rights on land and the Governor or Local Government by the mere issuance of a piece of paper cannot divest families of their homes and agricultural lands overnight with a rich holder of certificate of occupancy driving them

out with bulldozers and cranes unless land is acquired compulsorily in accordance with the provisions of the Act.

3.1 GROUNDS FOR REVOCATION OF STATUTORY RIGHT OF OCCUPANCY.

Section 28 (1) of the Land Use Act 1978 empowers the Governor of a State to revoke a right of Occupancy.

The grounds upon which a certificate of occupancy can be revoked include:

3.1.1 OVERRIDING PUBLIC INTEREST

Overriding public interest in the case of the a statutory right of occupancy means:

- (a) the alienation by the occupier, by assignment, mortgage, transfer of possession, sublease or otherwise of any right of occupancy or part thereof contrary to the provisions of the Land Use Act or of any regulations made there under 28(2)(a)
- (b) the requirement of the land by the Government of the state or by a Local Government in the state in either case for public purposes within the state or the requirement of the land by the Government of the Federation for public purpose of the Federation - section 28 (2) (b)
- (c) the requirement of the land for mining purpose or oil pipelines or for ay purpose connected with it section 28(2) (c)

In the case of a customary right of occupancy, overriding public interest means

- (a) the requirement of the land by the Government of the state or by a Local Government in the State in either case for public purpose within the state or the requirement of the land by the Government of the Federation for public purposes of the federation .

- (b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected with it.
- (c) the requirement of the land for the extraction of building materials
- (d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

3.1.2 PUBLIC PURPOSE

Public purpose on the basis of which a certificate of occupancy could be revoked by the Government of a state is expressed in section 51 of the Land Use Act 1978 to include:

- (a) For exclusive Government Use or for general public use
- (b) For use by any body corporate direct established by law or by any body corporate registered under the companies and Allied Matters Act in respect of the Government own shares, stocks or debentures.
- (c) For or in connection with sanitary improvements of any kind.
- (d) For obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government
- (e) For obtaining control over land required for or in connection with development of telecommunications or provision of electricity.
- (f) For obtaining control over land required for or in connection with mining purposes
- (g) For obtaining control over land required for or in connection with economic, industrial or agricultural development
- (h) For obtaining control over land required for or in connection with economic, industrial or agricultural development.
- (i) For educational and other social service.

3.1.3 BREACHES OF THE TERMS OF THE GRANT OF THE CERTIFICATE OF OCCUPANCY.

The Government may revoke a statutory right of occupancy on grounds provided for in section 28(5) :

- (a) a breach of any of the provisions which a certificate of occupancy is by section 10 of the Land Use Act deemed to contain
- (b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8
- (c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor under section 10(3)

3.2 PROCEDURE FOR REVOCATION OF CERTIFICATE OF OCCUPANCY:

The Land Use Act 1978 vests in the Governor administrative or management powers over land in Urban area and constitutes him only a trustee. Unless land is revoked in accordance with the provision of the Land Use Act such revocation is invalid

3.2.1 CONDITION PRECEDENT

Section 28 of the Land Use Act provides that where title of the holder of a right of occupancy is revoked, it is mandatory to put him on notice about the revocation of title and proof of service of such notice to the holder is fundamental to a valid revocation.

Section 28 (6) of the Land Use Act 1978 provides that the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice of it shall be given to the holder.

In *Ononuju v A G Anambra State (2009) 10 NWLR (PT 1148) 182* the supreme court held that revocation of a right of occupancy can

only be valid if notice of same has been issued and served on the owner or occupier of the property concerned

3.2.2 MODE OF SERVICE OF NOTICE

Section 44 of the Land Use Act requires such notice to be effectively served on the holder of the right occupancy by:

- (a) delivering it to the person on whom it is to be served or
- (b) leaving it at the usual or last known place of abode of that person or
- (c) sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at the office.
- (e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates and by delivering it to some person on the premises or if there is no person on the premises to whom it can be delivered by effecting it or a copy of it to some conspicuous part of the premises.

In *Administrators / executors of the Estate of General Sani Abacha (deceased) v Samuel David Eke – Spiff & Ors (2009) 7 NWLR (PT 1139) 97* the supreme court held that it is not only unconscionable to take away a piece of land already allocated and relocate same to someone else without serving a notice of revocation on the earlier allottee. It is also unlawful and unconstitutional to do so in *Nigerian Engineering Works Ltd v Denap Ltd (2001) 18 NWLR (PT 746) 726*

the supreme court similarly held that the powers of the Governor to revoke any right of occupancy must be exercised in the overriding interest of the public and more importantly the holder of the right of occupancy being revoked must be notified in advance of the revocation. The notice must state the reason or reasons for the revocation and will give the holder opportunity to make any representation he or she wishes to make. Where the notice is not given or it is inadequate or not in compliance with the provisions of section 28 of the Act, the revocation will be null and void.

3.2.3 CONTENT OF A VALID NOTICE OF REVOCATION

Section 44(e) requires any notice required by the Land Use Act 1978 to be served on any person to be addressed to "holder" or "occupier" of the premises to which it relates. In *Ononuju v. A. G. Anambra State (2009) 10 NWLR (PT 1148) 182*, the supreme Court emphasized that where a notice of revocation does not bear the word "holder" or "occupier", it is non compliant with section 44 of the Land Use Act and it invalidates the notice of revocation of the Appellant's land and renders it null and void.

The revocation notice should be signified under the hand of a public officer duly authorized in that behalf by the Governor and the notice of it shall be given to the holder – section 28 (6)

see also *Adole v Gwar (supra)*

4.0 CONCLUSION

In conclusion, in spite of the power vested in the Governor to revoke a holder or occupier's right of occupancy, the scope and extent of the exercise of his powers is regulated by the necessity to notify such holder or occupier of the revocation. Non compliance renders the revocation invalid, null and void.

5.0 SUMMARY

1. Section 28 of the Land Use Act empowers the Governor of a state to revoke a right of occupancy granted to a holder or occupier for overriding public interest
2. A Right of occupancy can also be revoked for public purpose – section 51
3. Breaches of the terms of the grant of the certificate of occupancy is one of the grounds pursuant to which a Governor can revoke a right of occupancy – section 8 and 10 of the Land Use Act.
4. Notification of the holder or occupier of the land of the Governments revocation of the right of occupancy is mandatory
5. Non Compliance with the issuance of notice of revocation to the occupier invalidates the revocation and renders it null and void.
6. For a notification to be valid the notice must be served on the occupier personally or conspicuously displayed on the premises to bring it to the attention of the occupier.
7. Such notice is required to be signified under the hand of a public officer duly authorized in that behalf of the Governor and holder should be served with the notice.

6.0 TUTOR MARKED ASSIGNMENT

Lola claims ownership of an expanse of land at Umara in Benin City allegedly compulsorily acquired by government on the revocation of the deemed grant of a right of occupancy in her favour to establish a community hospital. The government is relying on section 28 of the Land Use Act 1978 while Lola contends that no notice of revocation was served on her. Advise the parties.

SUGGESTED ANSWER

- * The scope and extent of power of revocation conferred on the Governor by section 28 is regulated by the Land Use Act.
- * Section 51 (1) (i) stipulates the establishment of a hospital which constitutes a social service as one of the public purposes for which the government can validly revoke a right of occupancy granted a holder or occupier of land.
- * section 44(a) , (b) and (c) of the Land Use Act 1978 however mandates the Government to issue and serve the holder or occupier a notice of revocation. Failure to serve Lola with a notice of revocation constitutes non compliance with section 44 and renders the revocation of Lola's right of occupancy by the government invalid, null and void
- * cite the cases of *Ononuju v A.G. Anambra (supra)* and *Nigerian Engineering Works Ltd v Denap Ltd* Advice the Government to issue Lola a revocation notice as a pre-requisite for a valid exercise of its power to revoke her right of occupancy on grounds of public purpose
- * Advice Lola that the Government is anpowered by the Land Use Act to revoke a right of occupance on the issuance and service of a notice of revocation on the holder. Her only course of action is to insist on been the issuance of a notice of revocation on her. She can subsequently request for compensation from the government for the revocation of her right of occupancy.

7.0 SUGGESTED FURTHER BEADING / REFERENCE

- * The Land Use Act – Report of a National Workshop edited by J.A Omotola (Lagos: Lagos University Press, 1982)

STATUTE

Land Use Act Cap L5, Laws of the Federation of Nigeria 2004.

MODULE 1

UNIT 4: COMPENSATION

1.0 INTRODUCTION.

2.0 OBJECTIVE

3.0 MAIN CONTENT.

3.1 PAYMENT OF COMPENSATION

3.2 QUANTUM OF COMPENSATION

3.3 COMPENSATION FOR LEASEHOLD INTEREST

3.4 INTEREST PAYABLE ON COMPENSATION

3.5 DISPUTE RESOLUTION

4.0 CONCLUSION

5.0 SUMMARY

6.0. TUTOR MARKED ASSIGNMENT

7.0 SUGGESTED FURTHER READING/REFERENCES

STATUTE

MODULE 1**UNIT 4: COMPENSATION****1.0 INTRODUCTION.**

The right of an individual to acquire and own land in any part of Nigeria is one of the fundamental rights guaranteed by the 1999 constitution of the Federal Republic of Nigeria. The legal right of the Government to compulsorily acquire land which is subject to right of occupancy by revoking it is also recognized by the constitution.

section 43 of the constitution provides:

subject to the provision of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

section 44(a) provides:

No moveable property or any interest in an immovable property shall be taken possession of compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that among other things.

- (a) requires the prompt payment of compensation therefore.
- (b) gives to any person claiming such compensation a his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

Pursuant to these constitutional provision, section 29 of the Land Use Act provides that if a right of occupancy is revoked, the holder and the occupier should be entitled to compensation for the value at the date of the revocation and the unexhausted improvements. The holder may also exercise the option to accept resettlement for such revocation.

2.0 OBJECTIVE

The objective of this unit is to establish a balance between the Government's right to revoke a right of occupancy granted on grounds of public interest, public purpose or breach of the terms of the grant and a person's corresponding entitlement to compensation for such deprivation of a right of occupancy which is enforceable against the government

3.0 MAIN CONTENT.

Section 44(1) of the 1999 constitution is that no property of a citizen should be taken from him except in compliance with due process of law. See *Seleh v Monguno (2006) 15 NWLR (PT 1001) 26 at 70.*

Section 29 of the Land Use Act provide that where the right of occupancy has been revoked on grounds that the lands is required for mining purposes, oil pipelines or purposes connected with it or for the extraction of building materials, there is a corresponding obligation on the Government to pay the holder or occupier compensation.

In *Eif Petroleum Nigeria Limited v Daniel C. Umah & ors (2007) 1 NWLR (PT 1014) 44* the court held that having fouled to acquire the Plaintiff's land for the purpose of establishing a gas plant at Obite Community in Ogba /Egbema /Ndoni Local Government Area of Rivers State, by valid revocation and payment of compensation to the Plaintiffs, it was unconscionable for the Defendant Appellant to go on the Plaintiff/Respondent land to conduct oil exploration activities

3.1 PAYMENT OF COMPENSATION

section 29 (3) of the Land Use Act stipulates that if the holder or occupier entitled to compensation is a community, it may be directed by the Governor that such compensation should be made payable to

- (a) The Community
 - or
- (b) The Chief or Leader of the Community to be disposed of by him for the benefit of the community in accordance with the applicable customary 1
 - or
- (c) into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community

3.2 QUANTUM OF COMPENSATION

Compensation to be paid to the holder or occupier in accordance with section 29 (4) relates to :

- (a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked.
- (b) building, installation or improvement thereon for the amount of the replacement cost of the building, installation or improvement that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer.
- (c) crops on land apart from any building installation or improvement thereon for an amount equal to the value as prescribed and determined by the appropriate officer.

Were however the land which is subject to compensation in accordance with 29 (4) forms part of a larger area, in computing the compensation payable, it shall be less a proportionate amount calculated in relation to that part of the area not affected by the

revocation. Any interest payable shall also be assessed and computed in a similar manner.

- Section 2a(5) of Land Use Act

Where there are buildings, installations, or improvements or crops on the land the compensation shall be computed in the same manner as stipulated in 29(5) of the Land Use Act .

Installation is defined in section 29(7) of the Land Use Act as relating to mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment but excludes fixtures inn or any building.

3.3. COMPENSATION FOR LEASEHOLD INTEREST

Section 35 of the Land Use Act stipulates that where the compensation relatestoland held under leasehold whether customary or otherwise and is comprised of an estate laid out by any person, group or family entitled to the reversionary interest, the Governor shall in respect of improvement pay to that person, group or family compensation as specified in section 29 of the Land Use Act discussed in 3.0 and 3.1

There shall also be deductible from the compensation payable under section 3500 any levy by way of development or similar charges paid in respect of the improvement on the land by the lessee to the person group or family in which the reversionary interest of the leasehold vests and the amount to be deducted shall be determinable by the Governor taking cognizance of all the circumstances of the case.

3.4 INTEREST PAYABLE ON COMPENSATION

The Land Use and Allocation Committee by virtue of section 29(4) (b) of the Land Use Act empowers the Land Use and Allocation Committee to calculate the interest payable at bank rate for delayed

payment of compensation and in respect of any improvement in the nature of reclamation works being such cost as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer.

In *Yakubu v M. W.T Adamawa State (2006) 10 NWLR (PT 989) 513* the Land Use Allocation committee delayed payment of compensation for the demolition of the Appellants building in Yola Metropolis over which the Appellants had a valid certificates of occupancy and approved building plans for the property demolished. The court held that the Appellants were entitled to 32 percent interest per annum on the N1,447, 409.34 interest payable by the Respondent as compensation.

3.5 DISPUTE RESOLUTION

Where there is dispute as to the amount of compensation calculated in accordance with section 29 of the Land Use Act, parties are at liberty to refer their dispute to the Land Use and Allocation Committee which is empowered by section 30 of the Land Use Act to resolve such disputes.

Section 44(1) (b) of the 1999 constitution, also gives a person claiming compensation for being dispossessed of his proprietary rights, a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

4.0 CONCLUSION

Sanctity of proprietary rights of citizens is enshrined as a fundamental human right in the 1999 constitution of the Federal Republic of Nigeria. In spite of the fact that the Government right to infringe on this right is recognized under the Land Use Act's

provisions for revocation on grounds of public interest and for public purpose, it is mandated to be subject to the notification of the occupier and the payment to him of compensation for the infringement of his proprietary rights. The right of access to the courts by aggrieved persons whose right of occupancy have been revoked is to ensure that the right of revocation conferred on the Governor by section 28 of the Land Use Act is not exercised arbitrarily and displaced persons are adequately compensated.

5.0 SUMMARY

- (1) Section 44(1) of the 1999 Nigeria constitution provides for the payment of compensation to persons whose property have been compulsorily acquired
- (2) Section 29 of the Land Use Act provides of the payment of compensation to holders or⁴ occupiers of Land who right of occupancy have been revoked or grounds of public purpose pr public interest
- (3) The quantum of compensation payable to the occupier depends on the buildings, installation, improvements or crops on the Land
- (4) The Land Use and Allocation Committee is empowered to calculated interest payable on delayed compensation
- (5) Where there is dispute as to amount of compensation calculated as payable to an occupier, he is at liberty to refer their dispute to the Land Use and Allocation Committee as provided by section 30 of the Land Use Act.
- (6) An occupier can also institute proceedings in the High Court of the State, where he is of the view that his propriety right has been infringed on.

- (7) An occupier whose right of occupancy, has been revoked could opt for resettlement in lieu of the payment of monetary compensation by government.
- (8) Quantum compensation payable under the Land Use Act is also applicable to leasehold interest.

6.0. TUTOR MARKED ASSIGNMENT

A valid revocation of a right of occupancy granted under the Land Use Act 1978 is subject to the payment of compensation to the occupier or holder. DISCUSS

SUGGESTED ANSWERS

* Compensation for revocation of a right of occupancy is only applicable to revocation of right of occupancy on grounds of public interest and for the public purpose as provided by section 29(1) and 29 (2) . Where however the revocation is on grounds of breaches of the provisions of the Land Use Act pursuant to section 28 (5) of the Act

7.0 SUGGESTED FURTHER READING/REFERENCES

Niki Tobi Cases and Materials on Nigerian Land Law (Lagos: Mabrochi Books, 1997).

STATUTE

The Land Use Act 1978.

MODULE 2

STATE CONTROL OF NATURAL RESOURCES

- UNIT 1: STATE CONTROL OF NATURAL RESOURCES**
- 1.0 INTRODUCTION.**
- 2.0 OBJECTIVE**
- 3.0 STATE CONTROL OF MINERALS**
- 3.1 DEFINITION OF MINERALS**
- 3.2 CLASSIFICATION OF MINERALS**
- 3.3 CONTROL AND MANAGEMENT OF MINERAL RESOURCES.**
- 3.4 IMPLICATION OF STATE CONTROL AND MANAGEMENT OF MINERALS**
- 3.4.1 PRINCIPLE OF DERIVATION**
- 4.0 NIGERIAN OIL AND GAS CONTENT DEVELOPMENT ACT 2010.**
- 4.1 WHAT IS NIGERIAN CONTENT**
- 4.2 WHAT DOES NIGERIA OIL AND GAS INDUSTRY MEAN?**
- 5.0 SOVEREIGN INVESTMENT AUTHORITY (ESTABLISHMENT ETC) ACT 2011**
- 6.0 CONCLUSION**
- 7.0 SUMMARY**
- 8.0 TUTOR MARKED ASSIGNMENT/ SUGGESTED ANSWERS**
- 9.0 SUGGESTED FURTHER READING /REFERENCES**

STATUTES

MODULE 2**UNIT 1: MINERALS****1.0 INTRODUCTION.**

A natural resource is any material in its native state which when extracted has economic value. Timberland, oil and gas wells, ore deposits and other products of nature that have economic value are example of natural resource.

The term includes not only timber, gas, oil, coal, minerals, lakes and submerged lands but also features which supply human need and contribute to the health, welfare and benefit of a community and are essential to the well being thereof and proper enjoyment of property devoted to park and recreational purposes.

See A-G Federation V A-G Abia State (No.2) (2002) 6 NWLR (PT 764) 542.

The control and proprietary rights over natural resources in Nigeria under or upon any land in Nigeria rivers, streams, water courses or territorial waters is vested in the Government of the Federation for and on behalf of the people of Nigeria.

Section 1 of the Land Use Act which vests control of all lands in the states of the Federation in the government also divests citizens of both land and natural resources. There have been constant agitation by communities to have greater share in the revenue accruing to the state from the exploitation of the natural resources located in their communities. These have ranged from civil protests, kidnapping to environmental terrorism including blowing up of oil rigs, pipeline vandalism and incineration of vehicles used for transportation of natural resources.

2.0 OBJECTIVE

The objective of this unit is to examine control of natural resources by the state with a view to acquainting the students with the existing laws regulating the management and control of mineral resources in Nigeria.

3.0 STATE CONTROL OF MINERALS

Nigerian Minerals and Mining Act 2007 which repealed the Minerals and Mining Act No 34 of 1999 was enacted for the purpose of regulating all aspects of the exploration and exploitation of solid minerals in Nigeria and related purposes.

3.1 DEFINITION OF MINERALS

Minerals or "mineral resources" is defined by the Nigerian Minerals and mining Act as any substance whether in solid, liquid or gaseous form occurring in or on the earth, formed by or subjected to geological processes including occurrences or deposits of rocks, coal, coal bed gases, bituminous shales, tar sands, any substances that may be extracted from coal, shale or tar sands, mineral water and mineral components in tailings and waste piles but with exclusion of petroleum and water without mineral content.

3.2 CLASSIFICATION OF MINERALS

Minerals are essentially classified into two. They are:

- (e) Floating Mineral: These are minerals which are spilted over the land. It is not necessary to dig the land to have access to it e.g. ash, salt potash, and gas.
- (f) Underground minerals: This refers to minerals that are embedded in the soil and have to be dug out for access to be obtained to them.

3.3 CONTROL AND MANAGEMENT OF MINERAL RESOURCES.

The entire property in and control of all mineral resources in and upon any land in Nigeria, the continental shelf and all rivers streams and water courses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone is vested in the Government of the people of Nigeria. - Section 1 (i) of the Nigeria's Minerals and Mining Act 2007

- Section 1 of the petroleum Act vests the entire ownership and control of all petroleum in, under or upon any lands in Nigeria, under the territorial water and forms part of the Exclusive Economic Zone of Nigeria in the federal Government.

Section 44 (3) of the Nigerian constitution similarly. vests ownership and control of all minerals, mineral oils and natural gas and entire petroleum in Nigeria in the Federal Government

All lands in which minerals have been found in commercial quantities from the commencement of the mining act is liable to been acquired by the government of the Federation in accordance with the provision of the Land Use Act discussed in the previous Module.

The government is however empowered to transfer its proprietary interest to any person by whom the mineral resources are lawfully won upon their recovery in accordance with the Minerals Act.

To ensure the orderly and sustainable development of Nigeria's Mineral resources and the development of a well planned and coherent programme of exploitation of mineral resources taking cognizance of economic development, ecological and environmental functions, the minister responsible for solid minerals is empowered by the Act to monitor compliance with its provisions. See section 4 of the Act.

The right to search for or exploit mineral resources is conferred by the Minister in the form of:

- (a) a reconnaissance permit
- (b) an exploration licence
- (c) a small scale mining lease
- (d) a mining lease
- (e) a quarry lease and
- (f) a water use permit.

Exploitation of mineral resources without the issuance of a valid permit or authority granted by the Minister is punishable under the Act – section 46 (2) of the Act.

Every holder of an exploration licence is obligated to conduct exploration activities in a safe, friendly, skilful, efficient and workman like manner in accordance with the regulations. The licensee is also mandated to conduct exploration activities in an environmentally and socially responsible manner – section 61 of the Act

3.4 IMPLICATION OF STATE CONTROL AND MANAGEMENT OF MINERALS.

The implication of state control and management of resources is that the government has sole power to exploit or grant or revoke licences to individuals or corporations to exploit mineral resources. The government also has the sole responsibility for fixing prices for minerals exploited in Nigeria.

The communities where the minerals are located have no input whatsoever in the exploitation of the mineral since they are mere “occupiers” under the Land Use Act. This is however without

prejudice to their right to enter into negotiations with the prospecting or exploration company to pay rents to them to be granted access to the mineral source and compensation for damage to crops and other property.

Oil producing states in Nigeria are however given preferential treatment in the sharing of revenue accruing to Nigeria from crude oil. Section 162 (2) of the 1999 constitution and item 36 of the Exclusive legislative list vests resource ownership in the Federal Government but provide that the revenue from the resources should be distributed between the federal government and state of the federation from which the resources derived

3.4.1 PRINCIPLE OF DERIVATION

It is provided that under the principle of derivation that revenue accruing to the Federation account from any natural resources is deemed to have been derived from the state where such resources are located, and not less than 13% of the revenue accruing to the federation account directly from any natural resource shall be payable to the state of the federation from which such natural resource is derived.

For a State to qualify for this allocation of funds from the Federation Account, the natural resources must have come from within the boundaries of the state. That is the resources must be located within the state.

The provisions are not limited to littoral states but all states from which revenue is derived from their natural resources.

in **A-G, Federation V A-G Abia State (No.2) 2002 6NWLR (PT 764) 542.**

The Supreme Court affirmed that the fact that Nigeria is a sovereign state, is accorded control and sovereignty over its territorial waters, the contiguous zone and the continental shelf by the municipal and Geneva conventions. None of the littoral state is sovereign. They are part and parcel of the sovereign independent state of Nigeria. None of them can exercise any control beyond the land mass of their respective states. They cannot claim that revenue accruing from mineral resources offshore belongs to any of them. Whatever revenue accrues from drilling offshore belongs to the whole federation of Nigeria based on section 162 of the constitution.

The principle of derivation according to Mudiaga Odje is the:

recognition of a prior beneficial right that was subsequently expropriated. Thus the principle of derivation is a form of compensation and / or reparation for an expropriated interest.

The adequacy of the present 13 percent derivation percentage has been generating considerable agitation in oil producing communities in Nigeria who are demanding autonomous control of the revenue accruing from their states. Such States including Akwa Ibom, Cross River State, Edo, Delta, Bayelsa and Rivers State are unwavering in their demand.

The feeling of discontent among oil producing communities has propelled ethnic militia's to engage in kidnapping, blowing up of oil wells and the perpetration of heinous environmental crimes.

To ensure greater participation of Nigerians and host communities in the oil and gas sector, the Nigerian oil and gas industry Content Development Act 2010 was enacted.

4.0 NIGERIAN OIL AND GAS CONTENT DEVELOPMENT ACT 2010.

The Act provides for the development of Nigerian Content in the Nigerian oil and gas industry. All regulatory authorities, operators, contractor subcontractors alliance partners and other entities involved in any projects operation, activity or transactions in the Nigerian oil and gas industry are mandated to consider Nigerian content as an important element of their overall project development, and management philosophy for project execution. See section 2 of the Act.

4.1 WHAT IS NIGERIAN CONTENT

Nigerian content means the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.

4.2 WHAT DOES NIGERIAN OIL AND GAS INDUSTRY MEAN?

It refers to all activities connected with the exploration, development, exploitation, transportation and sale of Nigerian oil and gas resources including upstream and downstream oil and gas operations.

Section 28 of the Act provides that Nigerians shall be given the first consideration for employment and training in any project promoter in the Nigerian oil and gas industry.

Section 28 (2) however mandates the Board to ensure that the operator or project promoter maintains a reasonable number of personnel from areas it has significant operations.

The above provisions is a palliative measure for host communities in the exploitation of their mineral resource.

In the light of the socio-economic challenges Nigeria is confronted with, the implementation of the National Content Act has been viewed with reservation in view of the fact that is essentially a forced arrangement between multinational corporations operating in the oil and gas sector and indigenes or locals

To ensure that revenue accruing from natural resources is properly managed and controlled, Nigeria established the sovereign investment Authority (Establishment Etc) Act 2011

5.0 SOVEREIGN INVESTMENT AUTHORITY ESTABLISHMENT ETC) ACT 2011

It is known as the Nigerian sovereign welfare fund Act. It was enacted by the National Assembly on May 11, 2011. It established the Nigerian Sovereign Investment Authority (NSIA) and conferred it with the responsibility to receive manage, and invest in diversified portfolios the medium and long term revenue of the Federal Government of Nigeria, the 36 States of the Federation, the Federal Capital Territory and the Local Government Areas and Area Council in Nigeria.

The Act was necessitated by the recognition of the depletion of non renewable natural resources in Nigeria, the need to provide for future consumption, future generation, boost the economic profile of Nigeria to make it attractive to foreign investors as well as engage in infrastructural development.

6.0 CONCLUSION

The control and management of Mineral resources in Nigeria is vested in the federal government irrespective of the community where it is located. The states where the resources are located are

however entitled to 13 percent of the revenue accruing directly from any mineral resources located in their state.

7.0 SUMMARY

- (1) Mineral resources refer to solid, liquid or gaseous substances occurring in or on the earth formed by or subjected to geological processes.
- (2) Minerals are classified into floating minerals and underground minerals.
- (3) The entire property and control of mineral resources in Nigeria, the continental shelf and all rivers, streams and water courses throughout Nigeria any area covered by its territorial waters or constituency and the exclusive economic zone is vested in the Government of the Federation for and on behalf of the people of Nigeria.
- (4) Exploration of mineral resources without a valid licence issued by the Minister for solid minerals constitutes a punishable offence.
- (5) States are entitle to 13 percent of revenue accruing to the Federal Government from mineral resources located in their states.
- (6) The Nigerian Oil and Gas Content Development Act 2010 mandates the Board to ensure that operator or project promoter maintains a reasonable number of personnel from areas it has significant operation.
- (7) To ensure sustainable utilization of revenue accruing from non renewable natural resource for the benefit of the present and future generations, boost Nigeria's economic profile and attract foreign investors, in May 11, 2011, Nigeria enacted the Sovereign Investment Authority (Establishment Etc) Act.

8.0 TUTOR MARKED ASSIGNMENT

Section 1 of the Land Use Act which vests control of the Land comprised in each territory of the state in the Federal Government includes the Mineral Resources, DISCUSS

SUGGESTED ANSWERS

- * Definition of natural resources relates to mineral resources on the land or submerged in the land and are therefore part of the land vested in the Federation.
- * Section (1) (1) of the Minerals and Mining Act 2007
- * Section 1 of the Petroleum Act 1969 refers to petroleum in under or upon any land
- * A-G Federation V A-G Abia State (No.2) (2002) 6 NWLR (PT 764) 542

9.0 SUGGESTED FURTHER READING /REFERENCES

- * The Land Use Act edited by J A Omotola (Lagos: Lagos University Press 1986) 27
- * International Energy Law Review (IELR) issue 2, 2009.
- * Akpo Mudiaga Odje Challenges of True Federalism and Resources Control in Nigeria (Lagos: Quadron Impressions Ltd 2002) 368

STATUTE

Constitution of the Federal Republic of Nigeria 1999

Land Use Act 1978

Nigerian Minerals and Mining Act 2007

Nigerian Oil and Gas Content Development Act 2010.

Sovereign Investment Authority (Establishment Etc) Act 2011

MODULE 2

UNIT 2: STATE CONTROL OF WATER RESOURCES

1.0 INTRODUCTION.

2.0 OBJECTIVE

3.0 STATE CONTROL OF WATER

3.1 DEFINITION OF WATER

3.2 CONTROL AND MANAGEMENT OF WATER RESOURCES.

3.2.1 ACQUISITION OF RIGHTS TO USE OR TAKE WATER

3.3 CONTROL AND MANAGEMENT OF WATER POLLUTION.

3.4. PENALTY FOR BREACH OF REGULATION.

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR MARKED ASSIGNMENT/ SUGGESTED ANSWERS

7.0 SUGGESTED FURTHER READING /REFERENCES

STATUTES

MODULE 2**UNIT 2: STATE CONTROL OF WATER RESOURCES****1.0 INTRODUCTION.**

The Management and control of water which is a natural resource is vested in the Government of the Federation of Nigeria. Any person may however utilize water for domestic purpose, fishing or for watering livestock and for personal irrigation schemes. Rates may however be levied for the usage of water.

2.0 OBJECTIVE

The objective of this unit is to expose students to the designation of water as natural resources.

Due to the unrestricted or free usage of water it is hardly ever strictly regulated as a natural resource could make them oblivious of this fact.

3.0 STATE CONTROL OF WATER

The water Resource Act 1993 Cap W2 laws of the Federation of Nigeria 2004, vests the right to the use and control of all surface and ground water and of any water course affecting more than one state as described in the schedule to the Act which refers to all water, whether surface or underground, from time to time contained within or flowing or percolating through such sources and tributaries and catchments areas thereof together with the bed and banks in the government of the Federation.

See section 1(1) of the Act.

3.1 DEFINITION OF WATER

Water is defined by the Black's Law Dictionary 8th Edition as the transparent liquid that is chemical compound of hydrogen and

oxygen (H₂O) or a body of this liquid as in stream, river, lake or ocean.

3.2 CONTROL AND MANAGEMENT OF WATER RESOURCES.

The Federal Government is vested with the control and management of water resource in Nigeria for the purpose of :

- (a) Promoting the optimum planning development and use of Nigeria's water resources.
- (b) Ensuring the coordination of such activities as are likely to influence the quality, quantity distributions, use and management of water.
- (c) Ensuring the application of appropriate standards and techniques for the investigation use, control, protection management and administration of water resources; and
- (d) Facilitating technical assistance and rehabilitation for water supplies see section 1

Notwithstanding these vesting provision any person may

- (i) Take water without charge for his domestic purpose or for watering his livestock from any water course to which the public has free access

Water Course is defined in section 20 of the Act as including any rivers creek, stream, spring, lake, lagoon, swamp, marsh or any other course for water

- (ii) Use water for the purpose of fishing or for navigation to the extent that such use is not inconsistent with any other law for the time being in force.

- (iii) who has a statutory or customary right of occupancy to any land, may take and use water from the underground water source

or if abutting on the bank of any water course from that water course without charge for domestic purposes for watering livestock and for personal irrigation schemes see section 2 of the Act.

The Minister charged with responsibility for matters relating to water resources is empowered to –

- (a) Define the place from which or the manner in which and times at which water may be taken or used.
- (b) Fix, in times of actual or anticipated shortage of water, the amount which may be taken by any person for such purpose.
- (c) Prohibit temporarily or permanently the taking or use of water from any source for such purpose when in his opinion, the taking or use of such water would be hazardous to health
- (d) Revoke a right to use or take water when such a right is likely to override the public interest.
- (e) Require to be examined or licensed any person undertaking the work of drilling for water.
- (f) Regulate the place, depth, manner of construction or mode of operation of any borehole or well and
- (g) Define the times at which water may be taken from such borehole or well.

3.2.1 ACQUISITION OF RIGHTS TO USE OR TAKE WATER .

Any person or any public authority may acquire a right to use or take water from any water course or any groundwater for any purpose in accordance with the provision of Water Resource Act.

Section 3 prohibits discharge of oil into Nigeria water and mandates the installation of anti pollution equipment in ships.

Section 25, of Petroleum Drilling and Production Regulation established that reasonable measures should be taken to prevent water pollution and end it when it occurs.

Territorial waters Act Cap T5 Laws of the Federation of Nigeria 2004 makes punishable, any act or omission committed within Nigerian water which would be an offence under any other existing law.

The harmful waste (special Criminal Provision Etc) Act prohibits the carrying, depositing and dumping of harmful waste on any land, territorial waters, contiguous zone, Exclusive Economic Zone of Nigeria or its land waterways and prescribes severe penalties for any person found guilty of any crime relating thereto

3.3 CONTROL AND MANAGEMENT OF WATER POLLUTION.

The Water Resource Act mandates the minister for water resources to prohibit or regulate the carrying out of any activities on land or water which are likely to interfere with the quantity or quality of any water in any water course or ground water - section 8.

Pollution is stated in section 20 of the Act to mean any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any water or groundwater so as to render such water or groundwater less fit for any beneficial purpose for which it is or may reasonably be used or to cause a condition which is hazardous or potentially hazardous to public health, safety, welfare to animals, birds, wildlife, fish or aquatic life or to plants.

Section 1 of Oil in Navigable Waters Act/ Cap 06 Laws of the Federation of Nigeria 2004 prohibit the discharge of oil from ships and water pollution by oil spillage.

The National Environmental Standards And Regulation (Enforcement) Agency Act 2007, prohibits the discharge in such

harmful quantities of any hazardous substance into waters of Nigeria or adjoining shorelines except as permitted or authorized by the law in force in Nigeria. section 27(1)

The Agency also has the responsibility of making recommendations to the President of the Federal Republic of Nigeria for the purpose of establishing water quality standard for the inter state waters of Nigeria to protect the public health or welfare and enhance the quality of water to serve fulfill the purpose of the enactment of the Act.

The state governments also exercise control and manage water resources through legislation preventing pollution of water, over consumption of water and water resource wastage. Most states have water management Boards. Some of the states include:

Edo State: water pollution is treated as a public health issue. section 3 of Edo State Environmental Sanitation Edict. The Edict however did not provide for effluent limitation standard.

Abia State: Abia State Environmental Protection Agency Edit stipulates an effluent standard limitation standard.

3.4. PENALTY FOR BREACH OF REGULATION

Any person who contravenes or fails to comply with any of the provisions of the Water Resource Act is guilty of an offence and is liable on conviction to the payment of a fine not exceeding N2,000 or to a term of imprisonment not exceeding six months or to both such fine and imprisonment and where the offence is continuing, to an additional fine not exceeding N100 for every day or part of a day that the offence continues.

Where it is committed by a body corporate or firm or other association of individuals, a person who at the time of the

commission of the offence was any officer thereof or was purporting to act in such capacity is severally guilty of that offence and liable to be prosecuted against and punished for the offence in the like manner as if he had himself committed the offence unless he proves that the act or omission constituting the offence took place without his knowledge consent or connivance .

Edo State Environmental Sanitation Edict imposes a penalty of N500 or one month imprisonment or both for polluting any stream or river section 12 of Environmental Pollution Control Law of Lagos State makes it an offence to cause or permit a discharge of raw untreated human waste into any public drain, water it is punishable with a fine of N100,000 (one hundred thousand naira) and in the case of a corporation a fine not exceeding N500, 000 (five hundred thousand naira)

Inspite of these water pollution regulations, water pollution remains an endemic problem in Nigeria. It occurs in lakes rivers, stream and underground water sources. It affects life through toxicity and results in the killing of aquatic animals and plants and renders the water unfit for use. Oil spills, industrial effluents, agriculture fertilizers and sewage are the major sources of water pollution in Nigeria.

Due to pervading corruption among regulatory officials and infrastructural decay, regulatory laws are unenforced and water source in Nigeria are polluted with impunity.

The World Bank Report "Towards the Development of an Environmental Action Plan for Nigeria" identified water pollution as the second highest potential for future negative impact on the Gross Domestic Product (GDP) estimated at 1 billion dollars annually and puts 40 million people at risk. Water pollution impacts on the urban

and landless poor most. This is because they are not educated about or able to afford defensive sanitary practices. Many Nigerian communities lack water treatment or even water supply facilities and rely on local surface and shallow ground water supplies, even when they are contaminated.

4.0 CONCLUSION .

Inspite of the fact that the control and management of water resource is vested in the Federal Government, its regulation is lax. Water is utilized with impunity and polluted at will.

5.0 SUMMARY

- (1) Control of water whether surface, ground water or water courses is vested in the Federal Government by the Water Resource Act while the control of potable water and rural water supply is vested in the state and local government respectively.
- (2) Acquisition of rights to use or take water must be in accordance with the provision of the water Resource Act.
- (3) The responsibility of regulating compliance with the provisions of the Water Resource Act is vested in the Minister for water resources.
- (4) Carrying out of any activity on water which is likely to interfere with the quantity and quality of the water is prohibited and penalized.
- (5) Pollution is the indirect or direct alteration of the physical, chemical, thermal and biological or radioactive properties of water to render it unfit for use is prohibited.
- (6) The management and control of water utilization in Nigeria is lax.

- (7) The penalty for non compliance with water control regulatory mechanism are not stringent enough to discourage the impunity with which water is overused or polluted.

6.0 TUTOR MARKED ASSIGNMENT

- (a) Discuss the various purposes which has necessitated the control and management of water resources in Nigeria.
- (b) Analyze the penal regime for non sustainable utilization of water resource in Nigeria.
- (c) The Control and Management of water resource in Nigeria is not inimical to the right of the citizen to take and use water. Do you agree?

SUGGESTED ANSWERS

- (a) See Section 1 of the water Resource Act 1993 Cap W2 , Laws of the Federation of Nigeria 2004.
- (b) See the penalty provided for unauthorized usage and fouling of water in
- (i) Water Resource Act 1993
- (ii) National Environmental Standard Regulation (Enforcement) Agency Act 2007
- (iii) Territorial Waters Act
- (iv) Harmful Waste (Special Criminal Provisions Etc) Act.
- (v) Oil in Navigable Waters Act
- (c) Section 2 of the Water Resource Act

7.0 SUGGESTED FURTHER READING /REFERENCES

- * The Land Use Act edited by J A Omotola (Lagos: Lagos University Press 1986)
- * L. Atsegbua etal Environmental Law in Nigeria, Theory and Practice (Benin: Ambik Press 2010).

STATUTE

Water Resource Act 1993

National Environmental Standard Regulation (Enforcement) Agency
Act 2007

Oil in Navigable Waters Act

Harmful Waste (Special Criminal Provisions Etc) Act

Territorial Waters Act

Petroleum Drilling and Production Regulation

MODULE 2

UNIT 3:	AGRARIAN REFORMS
1.0	INTRODUCTION.
2.0	OBJECTIVE
3.0	DEFINITION OF AGRARIAN
4.0	OBJECTIVES OF AGRARIAN REFORMS
5.0	ELEMENTS OF AGRARIAN REFORMS
6.0	PROTAGONIST OF AGRARIAN REFORMS
7.0	ANTAGONIST OF AGRARIAN REFORMS
8.0	AGRARIAN REFORMS IN NIGERIA
9.0	CONCLUSION
10.0	SUMMARY
11.0	TUTOR MARKED ASSIGNMEN
12.0	SUGGESTED FURTHER READING / REFERENCES
	STATUTES

MODULE 2**UNIT 3: AGRARIAN REFORMS****1.0 INTRODUCTION.**

Land is the most important agricultural resource. Agrarian reform is essentially concerned with the redistribution of land. Its aim is to improve the agrarian system including agricultural activities like redistribution of agricultural land to cultivators, extending credit to grant them greater access to capital and institutional development. It is also geared towards providing increased market access and human resource development.

In Nigeria, the existing land tenure system which was described as rigid and inimical to development necessitated the enactment of the Land Use Act 1978. It was geared towards the provision of greater access to land to citizens, in spite of their communal affiliation or social status and the eradication of bitter rivalries assailing communal land holding which often degenerated to communal strife and the consequential loss of lives and properties. It was also to facilitate government control and management of land with a view to enhancing national development.

The efficacy of the agrarian reforms envisaged by the Land Use Act remains shrouded in controversy.

2.0 OBJECTIVE

The objective of this unit is to examine agrarian reforms with a view to assessing its efficacy as a tool for encouraging national growth and development.

3.0 DEFINITION OF AGRARIAN

Agrarian reform involves the rectification of the agricultural system. It is embarked upon by government to redistribute land utilized mainly for agricultural purposes in the country.

It also refers to the changing of laws, regulation or customs relating to land ownership. It consists of a government initiated or government backed property redistribution generally of agricultural land with or without payment of compensation.

It relates to transfer of land from individual or peasant ownership to government owned collective farms.

Agrarian reform is often characterized by modification or replacement of existing institutional arrangements relating to usage and possession of land. It is further concerned about the relationship between the production sector and the distribution of land among the farmers. It includes industrial processing of raw materials produced by farmers.

4.0 OBJECTIVES OF AGRARIAN REFORMS

The objectives of agrarian reforms are not static but dependent on the issues confronting a particular country. It includes

- (i) Improvement of cooperation between the agricultural sector and the non agricultural sector.
- (ii) Enhancement of agricultural productivity
- (iii) Harmonization of regulations relating to land ownership
- (iv) Improvement of employment opportunities for rural inhabitants.
- (v) Enhancement of agricultural productivity

5.0 ELEMENTS OF AGRARIAN REFORM.

It encompasses reforms of the land tenure structure, supporting service structures and production structure.

It involves the formulation of a systematic plan of action to eliminate rural poverty, redistribution of land among the landless and ensuring that land reform is self reliant. It extends to the provision of support system like health care services, primary education services, water supply services and infrastructural support. Enhancement of technical capacity of projects, individuals and a viable socio – economic environment for rural inhabitants is also the focal point of agrarian reforms

6.0 PROTAGONIST OF AGRARIAN REFORMS.

The Protagonists of agrarian reforms have canvassed that its is a viable tool for ensuring rural development. This is due to socio economic benefit conferred by the formalization process. This includes eradication of rural poverty and the provision of greater food security it also increases the rural in habitants access to credit.

It is their contention that the installation of a comprehensive legislation controlling and regulating the usage and ownership of land eliminates the conflict in land regulations which often degenerates into conflict.

7.0 ANTAGONIST OF AGRARIAN REFORM.

Antagonist of agrarian reforms view the entire exercise with suspicion. This is premised on the difficulty of deciphering the motivating factors of the reform and the subjection of land owners to the whims and caprices of government officials.

There is distrust that most reforms including agrarian reforms are for the purpose of scoring cheap political points.

There is also anxiety that the touted socio economic benefits of agrarian reforms are unrealistic since their attainment is predicated on other factors including the creation of the enabling environment for such reforms to thrive.

It is anticipated that formalization engendered by agrarian reforms, could foist greater hardship on rural inhabitants due to the time and expense of the documentation process.

Similarly endemic corruption of government officials who have, the responsibility of either carrying out or overseeing the formalization process could unjustly divest rural inhabitants of their land.

8.0 AGRARIAN REFORMS IN NIGERIA

In 1978, Nigeria government embarked on comprehensive land reform policy which culminated in the enactment of the Land Use Act. Section 1 of the Act provides that:

subject to the provisions of this Act, all lands comprised in the territory of each state of the Federation is hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.

It overturned the existing system of land tenure which conferred absolute and perpetual ownership right with "rights of occupancy" which confers the holder with a leasehold interest for 99 years subject to renewal. See section 5, 6 of the Land Use Act.

In *Amodu Tijani v Secretary of Southern Nigeria* (1921) AC 399 Lord Haldane observed about the Customary System of Tenure:

the next fact which it is important to bear in mind in order to understand native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the

community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land but in every case the chief or headman of the village or community or head of the family has charge of the land and in loose mode of speech is sometimes called the "owner". He is to some extent in the position of a trustee and as such holds the land for the use of the community or family. He has control of it and any member who wants a piece of it to cultivate or build upon goes to him for it. But the land so given remains the property of the community or family.

The Land Use Act was enacted to principally reform the customary land tenure system which was considered a clog in the wheel of developmental efforts. The rural land policy under the Act empowered local governments to issue customary certificates of occupancy evidencing the grant of customary right of occupancy to persons interested in owning or utilizing land for agricultural, residential or other purposes where the land is located in a non urban area.

In spite of the touted benefits of the land reforms under the Land Use Act, the implementation of the Act has posed intractable problems including improper definition of terms utilized in the Act. This includes definition of "improvements" or "unexhausted improvements" referred to in section 29 of the Land Use Act, the methods for assessing compensation for buildings farm structures and crops, poses an uphill task. Similarly finding a replacement for acquired farm land poses a huge challenge as most lands in Nigeria have actual or potential owners.

The concentration of powers relating to the management and control of land in the hands of the Governors of States has made it

susceptible to abuse. Utilizing such powers to haunt perceived political enemies, dispossess them of their land and pay for only unexhausted improvements as stipulated by the Land Use Act.

Arising from land reforms, title to land has become precarious due to the provisions for revocation of title on grounds of public policy and the rate of conversion of prime agricultural land to non agricultural land and the corresponding frustration experienced by farmers.

The Land Use Act has also encouraged speculative acquisition of land. The unbridled acquisition of vast expanse of land by individuals and corporations has resulted in the concentration of land in few hands.

9.0 CONCLUSION.

To ensure more effective management and control of land for the purpose of attaining socio economic development, government often engages in reforms. In spite of the contention that the traditional tenure system constituted a major handicap to efficient agricultural production and physical development, the enactment of the Land Use Act which was touted as a panacea to the problems occasioned by the traditional system of land holding has created more controversies and diversified the challenges afflicting land ownership in Nigeria.

10.0 SUMMARY

- (1) Land is the most important agricultural resources. Agrarian reform is essentially concerned with land redistribution.
- (2) Agrarian reform refers to government initiated property redistribution which essentially relates to agricultural land.

- (3) The protagonist of agrarian reform are of the view that it is a viable tool for ensuring rural development. It also ameliorates the challenges of conflicting regulation affecting land.
- (4) The antagonist of the agrarian reforms are of the view that it is susceptible to abuse as the reason for the reforms may not be discernible. The corruptions of officials of the formalization process often compromise the interest of rural inhabitants.
- (5) The objectives of agrarian reform are not static but is dependent on or varies according to the needs of a particular country.
- (6) Effective agrarian reform increases income and the standard of living, improves agricultural productivity and provides employment. However the introduction of new technology could compromise employment opportunities.
- (7) The Land Use Act which was geared towards land reform instead of alleviating the problems of the traditional land tenure system in Nigeria is shrouded in controversy and has introduced new challenges to land ownership in Nigeria which has adversely affected the agricultural sector.

11.0 TUTOR MARKED ASSIGNMENT

- * Assess the benefits of Agrarian reforms in Nigeria.

SUGGESTED ANSWERS

- (i) Define agrarian reforms
- (ii) State the reason for agrarian reforms
- (iii) State the effect of agrarian reforms
- (iv) Explain the benefits as stated in the note above.
- (v) State the disadvantages
- (c) conclude that inspite of the fact that agrarian reforms in Nigeria was a necessity, due to the inherent defects in the

Land Use Act 1978 and the inefficiency in the implementation processed, it has created more problems than it has solved.

12.0 SUGGESTED FURTHER READING /REFERENCES

- * Elias T. O. Nigerian Land Law (London: Sweet & Maxwell 1971)
- * Cheshire and Burns Modern Law of Real Property (London: Butterworths 1982).

STATUTE

Land Use Act 1978

MODULE 3

FREEHOLD

- 1.0 INTRODUCTION.**
- 2.0 OBJECTIVE**
- 3.0 ELEMENTS OF A FREEHOLD INTEREST IN LAND**
- 3.1 ESTATES IN FEE SIMPLE**
- 3.2 ENTAILED ESTATE**
- 4.0 POSITION OF A TENANT IN FEE SIMPLE**
- 5.0 CONCLUSION**
- 6.0 SUMMARY**
- 7.0 TUTOR MARKED ASSIGNMENT**
- 8.0 SUGGESTED FURTHER READING / REFERENCES**

STATUTES

MODULE 3**RIGHTS AND INTEREST IN LAND****FREEHOLD****1.0 INTRODUCTION.**

The expression "Freehold" is defined as an estate in land held in fee simple, fee tail or for term of life or any real property interest that is or may become possessory "fee" means the estate will endure until the person entitled to it died intestate and left no heir. The word "simple" indicates that the fee was one which was capable of passing to heirs unrestricted. This is in contrast to a fee tail or an entailed interest which is a freehold which on the intestacy of the owner passes only to the particular class of lineal descendants specified in the instrument of creation. General inheritability is the hallmark of a fee simple. In recent times, the doctrine of heirship on intestacy has been abolished except in respect of entailed interest. Where an owner died intestate, the land is held by the administrator on trust for sale for distribution among the nearest relatives.

2.0 OBJECTIVE

The objective of this module is to acquaint students with various rights and interest in land with a view of appreciating their peculiarities.

3.0 ELEMENTS OF A FREEHOLD INTEREST IN LAND

Freehold estates are generally categorized as follows

- (i) Estates in fee simple.
- (ii) Estates in fee tail
- (iii) Estates for life.

3.1 ESTATES IN FEE SIMPLE

(a) The fee simple absolute in possession is the largest estate known to English law "fee" as earlier explained means the estate is

inheritable and will last until the death of a grantee or alienee intestate and without an heir. "Simple" means it is not restricted to a particular class of heir. Where there are no lineal heirs, collateral heirs are capable of inheriting. "Absolute" means the owner has unrestricted or absolute right to deal with the estate as he deems fit either *inter vivos* or by Will

The owner may however opt for a conditional fee simple which is dependent on the happening of a specified event. e.g. "To Osahon absolutely on his graduating from the National Open University".

The implication is that for Osahon to acquire absolute ownership of the land, he must first graduate from the National Open University.

(b) "absolute" is not defined in the law of Property Act 1925, but it evidently excludes an estate that is defeasible either by the breach of a condition or the possibility that on the happening of a specified event, it would pass to a new owner. The term "absolute" according to Preston on Estates vol. 1 p. 125,

the epithet is used to distinguish an estate extended to any given time without any condition to defeat, or collateral limitation to determine the estate in the mean time, from an estate subject to a condition or collateral limitation. The term absolute is of the same significance with the word pure or simple, a word which expresses that the estate is not determinable by any event besides the event marked by the clause of limitation

(c) "in possession" means the holder is entitled to the earnings from the estate. It is not necessary for him to be in actual physical possession.

However, a fee simple remains a fee simple in spite of the existence of the following:

- (a) where there exists in the land, third party rights such as charges leases, mortgages licences and *profits a prendre*
- (b) the law of nuisance which prohibit the owner from using his land or permitting it to be used in such a manner to constitute annoyance to others
- (c) statutory restriction on the user of land or exploitation authorized by statute.

The following expressions convey a fee simple estate e.g

“To Osahon in fee simple” , “To Osahon and his heirs” , “To Osahon for ever”

3.2 ENTAILED ESTATE

An entailed estate is an estate with specific restrictions. e.g

“To Osaro, her husband and daughter” if this family group should become extinct, the land reverts to the done.

The Estate could also be restricted as:

“to Osahon in tail male” or “to Oshon in tail female”.

4.0 LEGAL POSITION OF A TENANT IN FEE SIMPLE

A tenant in fee simple has extensive proprietary rights in the subject matter of his interest. According to *Lord Wilberforce in Commissioner for Railways v Valuer – General* (1974) AC 328 at 351

at most the maxim is used as a statement, imprecise enough of the extent of the rights when _ _ _ he said “prima fascie” the owner of the land has everything under the sky down to the centre of the earth.

This is however subject to statutory restrictions and common law boundaries.

In Nigeria, management and control of land is vested in the various states' Governors. With the advent of the land use Act right to deal in or transact in land is mandated to be within the confines of the provisions of the Land Use Act and the term of years granted to owners of land is 99 years subject to renewal and what is alienable is the unexpired term of years granted under the right of occupancy.

The issue of land ownership under the Land Use Act 1978 has been extensively dealt with in module 1 and reference should be made to it.

5.0 CONCLUSION.

In Nigeria with the advent of the Land Use Act 1978, all issues relating to land is subject to the provisions of the land Use Act which extinguished the traditional method of land holding as earlier discussed.

6.0 SUMMARY

- (1) Freehold denotes an estate that is held in fee simple, fee tail or a term life.
- (2) Fee simple absolute in possession is the largest estate known to English law.
- (3) An entailed estate is an estate which is subject to restrictions.
- (4) a tenant in fee simple has extensive proprietary rights in the subject matter of his interest subject to statutory restrictions and common law boundaries.
- (5) In Nigeria with the advent of the Land Use Act 1978 the concept of freehold interest or ownership of land in perpetuity has been replaced with the grant of a right of occupancy of land for a term of 99years subject to renewal.

(6) Right over land is subject to statutory regulation in Nigeria. Ownership of land can be revoked on grounds of public policy. The owner of such land is however is entitled to be paid compensation.

7.0 TUTOR MARKED ASSIGNMENT

Discuss the concept of freehold interest in Land.

SUGGESTED ANSWERS

- * Explain the concept of freehold by defining terms such as "fee", "Simple" "absolute in possession".
- * Explain the categories of freehold estate which include fee tail, fee simple and estates for life.

8.0 SUGGESTED FURTHER READING /REFERENCES

Cheshire and Burns Modern Law of Real Property (London: Butterworths 1982).

Elias Nigerian Land Law (London: Sweet & Maxwell, 1971)

STATUTE

Law of Property Act 1925

Land Use Act 1978

MODULE 4

CO – OWNERSHIP OF LAND FREEHOLD

- UNIT 1: JOINT TENANCY.**
- 1.0 INTRODUCTION.**
- 2.0 OBJECTIVE**
- 3.0 DEFINITION OF JOINT TENANCY**
- 4.0 ELEMENTS OF JOINT TENANCY**
- 5.0 MODE OF SEVERANCE OF JOINT TENANCY**
- 6.0 JOINT OWNERSHIP BETWEEN HUSBAND AND
WIFE**
- 7.0 CONCLUSION**
- 8.0 SUMMARY**
- 9.0 TUTOR MARKED ASSIGNMENT**
- 10.0 SUGGESTED ANSWERS**
- 11.0 SUGGESTED FURTHER READING /
REFERENCES**

MODULE 4**CO- OWNERSHIP OF LAND RIGHTS****UNIT 1 JOINT TENANCY****1.0 INTRODUCTION.**

Co- ownership of land refers to more than one person having an interest in a particular land. Joint ownership arises where property is transferred to more than one person to hold interest in and enjoy land concurrently. Joint tenancy may arise from a grant in a deed, devise in a will or by pooling resources together to acquire an interest in land.

2.0 OBJECTIVE

The objective of this unit is to expose students to words of severance or words of limitation used in tenancy arrangements and their connotations and rights and obligations accruing to specific tenancy arrangements.

3.0 DEFINITION OF JOINT TENANCY

Joint tenancy refers to ownership of land by two or more people without words of severance e.g. "To Osahon and Osagie"

4.0 ELEMENTS OF JOINT TENANCY

A joint tenancy is characterized by four essential elements which are often referred to as the "four unities" They are:

(a) Unity of possession: all joint tenants possess one and the same piece of land. None of them can point to any part of the land as his own independently.

(b) Unity of interest: each joint tenant has the same and identical interest in the land as a whole. No tenant has a separate and distinct interest in any part of the land.

(c) Unity of title: all tenants derive their title from one and the same source which is either a deed of conveyance or will.

(d) Unity of time: Ownership is concurrent joint tenants derive their title from the same point in time.

Joint tenancy is also subject to *jus accrescendi* i.e right of survivorship where one or more joint tenant-dies, the survivor or survivors are entitled to the whole interest to the exclusion of the family of the deceased joint owners.

5.0 MODE OF SEVERANCE OF JOINT TENANCY

A joint tenancy may be severed in any of the following ways:

(a) By partition: To ensure his heirs are not disadvantaged by the rule of *jus accrescendi*, a joint tenant may urge the other tenants to partition the land among them and execute a deed in evidence of it. Where there is disagreement as to partitioning, an application may be made to court for an order of partition.

(b) By sale by one or more of the joint owners in his life time.

In *Re Mayo* (1943) Ch. 302 Parliament empowered the court to make such order as it deemed fit where application was made to it by a joint owner desirous of selling his property.

Similarly, in *Basina v Weeks*, the court held that one of the joint tenants could validly sell his interest in the land.

(c) By one of the tenants alienating his interest to a stranger but not through a will.

In *Ipaye v Aribisala* (1930) 10 NLR 10 the Plaintiff and his brother were joint tenants under a deed of settlement. The deed was in his brother's custody. On his death, Plaintiff's action to recover the deed from the mortgagor from whom his brother borrowed money and used the deed as security failed.

(d) By one tenant acquiring a greater interest in the land than the other tenants.

(e) By mutual agreement to sever the joint tenancy

6.0 JOINT OWNERSHIP BETWEEN HUSBAND AND WIFE

Due to the law's desire to encourage matrimony, spousal arrangement which involves contributing to the ownership of property is deemed to be joint ownership. The law is protective of right of a husband and wife to jointly live together and obtain a matrimonial home. The husband and wife must however contribute substantially and directly towards the acquisition of the property. This must be established with direct and credible evidence.

As long there is a valid and subsisting marriage, a husband is obligated to provide shelter for his wife.

In *Old Gates Estate Ltd v Alexander* (1949) 2 ALLER 822, Due to a quarrel between husband wife, the husband left the matrimonial home to a rented apartment and gave notice to the landlord that he was surrendering the apartment. The court held that so long as the marriage was still valid and subsisting, his wife could not be rendered homeless.

In *Ogedegbe v Ogedegbe* where a husband demolished the house he was inhabiting with his wife for the purpose of rebuilding it, failed to give his wife an apartment after the reconstruction, the court ordered him to provide for his wife the four room he had deprive her of.

7.0 CONCLUSION.

The concept of joint tenancy envisage ownership where the interest of the tenants are uniform in all ramifications. Any alteration in the relationship converts the relationship to a tenancy in common.

8.0 SUMMARY

- (1) Joint ownership refers to ownership of property by two or more tenants where there is unity of interest, unity of title, unity of possession and unity of time.
- (2) Joint tenancy can be severed by partition, sale alienation or one of the owners acquiring a larger interest than the others in the property or by mutual agreement to sever.
- (3) Where one of the tenants in a joint tenancy dies, his interest in the property passes to the surviving joint tenants and not his heirs.
- (4) The relationship between a husband and wife to purchase a property is regarded in law as analogous to joint tenancy arrangement. Consequently a spouses are estopped from depriving each other of he shelter their matrimonial home.
- (5) Where there is dispute as to a tenant's right or desire to end a joint tenancy, the aggrieved tenant may apply to court for an order to extinguish the joint tenancy.

9.0 TUTOR MARKED ASSIGNMENT

- (a) Distinguish the estate created by the devise "To Osahon and Obehi" and state its characteristics.
- (b) What are the method of severing the identified relationship

10.0 SUGGESTED ANSWERS

- * Where there exists no words of severance, the relationship created is a joint ownership.
- * The characteristics are unity of title, unity of time, unity of possession and unity of interest
- * Joint tenancy can be terminated by sale, partition, alienation and acquisition of a larger share in the property by any of the joint owners

11.0 SUGGESTED FURTHER READING /REFERENCES

Emeka Chianu, Law of Landlord and Tenant cases and comments 2nd Edn (Benin City: Nigeria Printer Publication, 2006)

Elias T.O. Nigerian Land Law (London: Sweet & Maxwell, 1971)

Burns E. H. Modern Law of Real Property (London: Butterworths 1982)

MODULE 4

UNIT 2:	TENANCY IN COMMON.
1.0	INTRODUCTION.
2.0	OBJECTIVE
3.0	CREATION OF TENANCY IN COMMON
4.0	WORDS OF SEVERANCE DENOTING TENANCY IN COMMON
5.0	DISTINCTION BETWEEN JOINT TENANCY AND TENANCY IN COMMON
6.0	DETERMINATION OF TENANCY IN COMMON
7.0	CONCLUSION
8.0	SUMMARY
9.0	TUTOR MARKED ASSIGNMENT
10.0	SUGGESTED ANSWERS
11.0	SUGGESTED FURTHER READING

MODULE 4**UNIT 2: TENANCY IN COMMON****1.0 INTRODUCTION.**

Tenancy in common arises where more than one person is entitled to an estate. Where two or more persons are entitled to a property and words of severance are utilized, it translates to a tenancy in common e.g "To Osagie and Osayi share and share alike" or to "Nosa and Azuwa in equal shares".

Words of severance connote that donees are at liberty to take their separate shares in accordance with the intention of the donor

2.0 OBJECTIVE

The objective of this unit is to acquaint students with the circumstances in which tenancy in common is deemed to arise with a view to drawing their attention to the distinction between tenancy in common and joint tenancy.

3.0 CREATION OF JOINT TENANCY

A tenancy in common is held to be created where

(a) Land is limited to two or more persons with words of severance showing the slightest intention that the donees are to take separate shares e.g "I give Iyekogba estate to Osaze and Igiehon to be divided in equal shares".

(b) Where a joint tenant voluntarily disposes of his interest to a stranger or acquires an interest greater than that of his co – tenants

(c) Where equity reads what is at law a joint tenancy as a tenancy in common.

4.0 WORDS OF SEVERANCE DENOTING TENANCY IN COMMON

Words of severance sufficient to create a tenancy in common include the following

- (i) equally to be divided
- (ii) in equal shares
- (iii) equally
- (iv) amongst
- (v) share and share alike

5.0 DISTINCTION BETWEEN TENANCY IN COMMON AND JOINT TENANCY

There are fundamental distinctions between joint tenancy and tenancy in common. They include:

- (1) Unity: The close knit relationship that exists in joint tenancy does not necessarily exist in tenancy in common. The only point of convergence is that in both cases, there is unity of possession.
- (2) Survivorship: The principle of *jus accrescendi*, is inapplicable to tenancy in common. tenants in common can alienate their interest either by conveyance, *inter vivos* or will. Where a common tenant dies intestate his interest passes to the heirs of the deceased.

Where Osaze and Osunde are tenants in common and Osaze dies. Osunde does not become the sole owner. Osaze's share devolves on his heir.

- (3) Partition: A tenancy in common may be voluntarily partitioned at common law or compulsorily partitioned under the partition Act 1868

A tenancy in common has been described as though ownership of an undivided share, it is for all practical purposes a sole and several tenancy and each tenant in common stands towards his own undivided share in the same relation that if he were sole owner of the whole, he would bear towards the whole.

6.0 DETERMINATION OF TENANCY IN COMMON

A tenancy in common can be determined in any of the following manners

- (a) Partitioning it among the donees
- (b) sale
- (c) The acquisition by one tenant whether by grant or by operation of law of the shares vested in his co – tenant whether by grant or by operation of law of the shares vested in his co – tenants.

7.0 CONCLUSION.

Tenancy in common is preferable to Joint Tenancy because of the ease with which co – owners can sever the relationship. However in commercial relationships, joint tenancy is preferred because it enables the business to be a going concern as the property of the deceased owner simply passes on to the surviving owner.

8.0 SUMMARY

- (1) Tenancy in common is created when words of severance are utilized in the sharing of an estate between two or more persons
- (2) Tenancy is also created by selling, partitioning or by a partner in a joint tenancy arrangement acquiring a larger interest in the property.
- (3) Tenancy in common lacks the unity of title, time, interest and possession enjoyed by joint tenants.
- (4) Unlike Joint tenancy, where a tenant in common dies. The surviving tenant does not inherit his share of the estate but it devolves on his heir.
- (5) Tenancy in common can be severed by partition, sale, partition or acquisition of a larger share in the estate by one owner.

(6) A tenancy in common can be compulsorily terminated statutorily.

9.0 TUTOR MARKED ASSIGNMENT

Distinguish between a tenancy in common and joint tenancy.

10.0 SUGGESTED ANSWERS

- * The principle of survivorship is applicable to tenancy in common but inapplicable to joint tenancies.
- * There is no unity of time of possession.
- * There may be no unity of title in a tenancy in common unlike a joint tenancy where unity of title is mandatory.
- * A dislocated joint tenancy metamorphoses into a tenancy in common.

11.0 SUGGESTED FURTHER READING /REFERENCES

Elias T.O. Nigerian Land Law (London: Sweet & Maxwell, 1971)

Burns E. H. Modern Law of Real Property (London: Butterworths 1982)

MODULE 5

EASEMENT, PROFIT A PRENDRE AND RESTRICTIVE

UNIT 1:	EASEMENTS
1.0	INTRODUCTION.
2.0	OBJECTIVE
3.0	NATURE OF EASEMENT
4.0	CHARACTERISTICS OF EASEMENT
5.0	CATEGORIES OF EASEMENT
6.0	DISTINCTION BETWEEN EASEMENT AND OTHER RIGHTS
7.0	LEGAL AND EQUITABLE EASEMENTS
8.0	ACQUISITION OF EASEMENTS
9.0	EXTINGUISHMENT OF EASEMENT
10.0	CONCLUSION
11.0	SUMMARY
12.0	TUTOR MARKED ASSIGNMENT
13.0	SUGGESTED FURTHER READING

MODULE 5**UNIT I EASEMENT, PROFIT a PRENDRE AND RESTRICTIVE COVENANTS****1.0 INTRODUCTION.**

Easement is incapable of precise definition. It is a privilege without a profit. It is a right attached to a particular piece of land which allows the owner of that land known as dominant owner either to use the land of another person known as the subservient owner in a particular manner. This includes walking over or depositing rubbish on, in or to restrict its user by that other person to a particular extent but which does not allow him to take any part of its natural produce or its soil.

2.0 OBJECTIVE

The objective of this unit is to introduce the students to various relationships relating to land and nature of restrictive user of land.

3.0 NATURE OF EASEMENT

An easement may either be positive or negative. A positive easement consists of a right to do something on the land e.g to walk or to place erections like signboard on it. A negative easement on the other hand does not permit the execution of an act but imposes a restriction upon the use which another person may make of land e.g restricting a servient owner from erecting a building to obstruct the flow of light. An easement does not confer on the owner a proprietary or possessory right in the land affected. It is an imposition of a particular restriction upon the proprietary right of the owner of the servient land.

An easement should be distinguished from a right which entitles one person to the unrestricted use of the land of another. It could be a right to ownership or possession. Where Osaze acquires an

easement over a land, he becomes the owner of a legal interest on the land which is enforceable against anybody who comes to the land whether by purchase, lease, gift or as a squatter with or without notice of the easement.

A conveyance of land is deemed to include and its operation is subject to existing easements

4.0 CHARACTERISTICS OF EASEMENT

To constitute an easement an interest must possess the following characteristics

(a) there must be a dominant and subservient tenement . There must be in existence a tenement for the benefit of which the easement exist.

If Sele the owner of Ovia estate has acquired a right of way over Osama estate an adjoining property, his entitlement to the easement has arisen not because he is Sele but because he is the owner of Ovia estate. The easement exists because Ovia estate exists.

(b) an easement must not only be appurtenant to a dominant tenement but must be connected with the normal enjoyment of that tenement. There must also be in existence a direct nexus between the enjoyment of the right and the user of the dominant tenement

According to *Byles J in Bailey v Stephen (1862) 12 C.B (N.S)*

an easement must be connected with the enjoyment of the dominant tenement and must be for its benefit the incident sought to be annexed so that the assignee of the land may take advantage of it, must be beneficial to the land in respect of the ownership.

Whether a nexus exists depends greatly on the nature of the dominant tenement and the right of use alleged. Where the right is

connected with normal enjoyment of the property, it ranks as an easement. However the fact that the right enhances the value of the dominant tenement is a relevant but not decisive consideration.

In *Hill v Tupper* (1863) 2 HXC 121 A canal company leased an adjoining land to the canal to Hill. He was given "Sole and the exclusive right" to let out pleasure boats on the canal. Tupper disregarded this privilege by personally letting out boats for fishing purposes. Hill instituted an action against Tupper on the grounds that his easement to put boats on the canal had been disturbed. It was held that the right conferred upon Hill by the contract with the company was not an easement but a mere license personal to him since it was for the purpose of enjoying a business enterprise.

Similarly, the right to cut trees for fuel does not qualify as an easement as it is not necessarily related to ownership of land

In *Bailey v Stephens* (1862) 12 C. B (N.S) 91 A who was seised in fee of a piece of land called Bloody field claimed the right to enter on adjoining close, carrying away and converting to his own use the trees and wood growing on it. It was held that since the wood was not employed for the beneficial enjoyment of Bloody Field it was not connected with it and was not a valid profit

(c) The dominant and servient owners must be different persons where one person owns two adjoining properties, which may be separate any rights exercised over one or the other does not qualify as an easement. According to Fry L. J. in *Roe v Siddons* (1888) 12QBD 224,

of course strictly speaking the owner of two tenements can have no easement over one of them in respect of the others, where the owner of white acre and Blackacre passes over the former to Black acre, he is not exercising a right of way in respect of Blackacre, he is

merely making use of his own land to get from one part to another .

(d) a right over land cannot amount to an easement unless it is capable of forming the subject matter of a grant No right can have the status of an easement unless it has the following characteristics

(i) certainty of description: The nature and extent of the right must be capable of exact description. If it is vague or so indeterminate as to defy precise definition, it cannot rank as an easement

(ii) capable grantee: a claimant to an easement must be a person capable of receiving a grant. He must be a definite person or definite body or corporation. A claim of easement by a vague person such as the inhabitants of a village is unsustainable

(iii) capable grantor: a subservient owner should be lawfully entitled to grant the right claimed to be an easement. A claim against an incorporated organization will fail on proof that the grant was ultra vires.

5.0 CATEGORIES OF EASEMENTS

The categories of easement is not static but varies with modern societal requirement, trade and circumstances they include:

- (1) Right of way.
- (ii) Right of light that the light flowing over adjoining land to a window should not be unreasonably obstructed
- (iii) Right to water connection include a right to divert the course of a stream for irrigation purposes of a right to discharge water to the land of another.
- (iv) Right to fencing which includes right to have a fence maintained by an adjoining owner
- (v) A right to the support of buildings by adjoining lands or buildings

- (vi) miscellaneous easement includes:
- (a) right to hang dothes on a line passing over neighbouring soil
 - (b) right to run telephone lines over neighbouring land
 - (c) right to fix a signboard on the walls of another person's house
 - (d) right to lay stones on adjoining land to regulate soil erosion
 - (e) right to use an airfield.

6.0 DISTINCTION BETWEEN EASEMENT AND OTHER RIGHTS.

There is need to distinguish easement from other rights which have similar characterizes.

(i) Licences: A licence is permission granted to enter the land of another for an agreed purpose which otherwise would be a trespass. An easement is narrower than a licence. An easement must be created by actual, implied or presumed grant. A licence can be created informally. An easement is not a personal right but is as of necessity annexed to a dominant tenement and once established, there can never be any question of its unilateral revocation by the servient owner

(ii) Customary right: fluctuating number of person inhabiting of a village may be entitled to exercise over another's land rights which would properly be termed easement e.g. where the inhabitants of a village pass across another's land on their way to the farm or where fishing inhabitants dry their nets on certain property. Such rights are not easements. An easement lies in a grant and a vague and fluctuating body of persons such as fishing inhabitants is not a legal person and is incapable of taking under a grant.

(iii) Natural rights: Natural rights differ from easement because it is not dependent on some form of grant and cannot be extinguished by unity of seisin

(iv) Public rights: They are rights exercisable by members of the public e.g rights to pass along a public high way. They are legal rights not dependent on the general tenement.

7.0 LEGAL AND EQUITABLE EASEMENTS

An easement is either legal or equitable, the nature of a legal and equitable easement constituents will subsequently be discussed.

7.1 LEGAL EASEMENT: An easement is held to be legal or statutory when it complies with the law of property Act 1925 and the interest held is equitable to an estate in fee simple absolute in possession or a term of years absolute

7.2 EQUITABLE EASEMENT: An equitable easement is any easement liberty or privilege over or affecting land for the life of the grantee or created for value informally

8.0 ACQUISITION OF EASEMENTS

The basic principle is that every easement must have its origin in a grant. Such a grant can be statutory or equitable. At common law, to be legal an easement must be granted by a deed.

A grant of an easement made orally is an equitable easement and operates on the maxim that equity regards as done that which ought to be done.

In *Macmanus v Cooke*

Between adjoining properties belonging to X and Y there was a wide wall. It was mutually agreed by them that the wall should be pulled down by X and replaced with a lower and thinner wall at their joint expense. X complied but Y refused to comply and blocked X's access to sky light. In an action for injunction to restrain Y, X's contention

was upheld on the basis that though oral the agreement was enforceable as an easement

9.0 EXTINGUISHMENT OF EASEMENTS

The mode of extinguishing easement include:

- (1) By statute: Easement may be extinguished by statutory provisions. Where a right has been regulated by town and country planning laws or revoked on grounds of public policy, all private rights of way, rights of laying down, erecting, continuing to maintain any apparatus on, under or over the land is affected
- (2) By release: the extinguishment may be effected by express or implied release. A dominant owner is free to execute a deed of release relieving the servient tenement from the burden of any easement to which it is subject. Release can be implied by the non user of an easement together with the surrounding circumstances.

In *Swan v Sinclair (1925)* A C 227 the court held that although mere non user is insufficient to extinguish an easement of right of way, the surrounding circumstance sufficiently show an intention on the owners to abandon the project.

- (3) By Unity of Seisin : Easements are extinguished by unity of seisin. This occurs when both the dominant and the servient tenement become united in the same owner as the owner is at liberty to do what he likes with his property

10.0 CONCLUSION.

In conclusion, easements could be created legally or equitable. It confers on the owner no proprietary or possession rights but is simply an entitlement to the unrestricted use of the land of another.

11.0 SUMMARY

- (1) Easement is incapable of precise definition
- (2) Easement is a privilege without a profit.
- (3) There are two types of easement - legal easement and equitable easement.
- (4) A conveyance of land is deemed to be subject to existing easement.
- (5) For an easement to exist there must be in existence a dominant and subservient tenement which must be vested in different owners.
- (6) An easement is distinguishable from other rights which have similar attributes
- (7) Every easement must originate from a grant which could either be legal or equitable.
- (8) An easement can be extinguished either by statute, release and unity of seisin

12.0 TUTOR MARKED ASSIGNMENT

- * What is the meaning of easement and what are the characteristics of easement.
- * Discuss the methods of creating easement and distinguish from other rights relating to land.
- * Discuss the types of easement and the method of termination of easement.

13.0 SUGGESTED FURTHER READING / REFERENCES

Burns E. H. Modern Law of Real Property (London: Butterworths 1982)

Elias T.O. Nigerian Land Law (London: Sweet & Maxwell, 1971)

MODULE 5

UNIT 2:	PROFIT A PRENDRE
1.0	INTRODUCTION.
2.0	OBJECTIVE
3.0	NATURE OF PROFIT A PRENDRE
4.0	DISTINCTION BETWEEN EASEMENT AND PROFIT A PRENDRE
5.0	ACQUISITION OF PROFIT A PRENDRE
6.0	EXTINGUISHMENT OF PROFIT A PRENDRE
7.0	CONCLUSION
8.0	SUMMARY
9.0	TUTOR MARKED ASSIGNMENT
10.0	SUGGESTED ANSWERS
10.0	SUGGESTED FURTHER READING

MODULE 5**UNIT 2 PROFIT A PRENDRE****1.0 INTRODUCTION.**

A profit a prendre is a right to enter the land of another person and take something off the land. The right to participate in the produce of the soil or in the soil itself is what distinguished a profits a prendre from an easement profit a prendre includes the right to take fish from another persons pond, yams, grasscutter, and Plantain from another person's farm. To constitute profit a prendre the material taken must be capable of ownership

2.0 OBJECTIVE

The objective of this unit is to acquaint the students with the characteristics of profit a prendre with a view to highlighting the fundamental distinction between a profit a prendre and easement

3.0 NATURE OF PROFIT A PRENDRE

Profits are classified into those enjoyed by the owner to exclusion of others referred to "several profits a prendre " or those enjoyed by the owner of the owner in common with other persons including the owner of the subservient tenement referred to as profit a prendre in common or simply "commons".

A right of common may be said to exist where two or more take in common with each other from the soil of a third person, a part of the natural profit then produced. While every common is a profit a prendre, all profits a prendre are not necessarily common.

3.1 CLASSIFICATION OF PROFIT A PRENDRE

Right of profits are classified according to their subject matter into four kinds namely:

- (a) Commons of pastures: It is the most common pasture. It arises when the owner of cattle is in common with others entitled to graze cattle on the land of another.
- (b) Commons of piscary: The right to take fish from another's private pond or river.
- (c) Commons of turbary: The right to take turf or peat from another's land
- (d) Commons of estovers: The right to take materials for house – building or house hold purposes from another's land.

4.0 DISTINCTION BETWEEN EASEMENT AND PROFIT A PRENDRE

Profits and easement have similar trails but differs in certain respects as follows:

- (a) A profit involves the taking of something from the land of another whereas an easement does not
- (b) a profit may exist in gross. In other words one need not be an immediate neighbour or even a land owner in order to enjoy a profit whereas this is an essential condition for the enjoyment of an easement
- (c) a profit may be appended to land that is annexed at common law without the necessity for the grant of a deed.

5.0 ACQUISITION OF PROFIT A PRENDRE

The various methods of acquiring easement are applicable to the acquisition of profit a prendre with very few exceptions. They include:

- (i) statutorily acquisition.
- (ii) By express grant
- (iii) By implied grant
- (iv) By presumed grant or prescription.

6.0 EXTINGUISHMENT OF PROFIT A PRENDRE

A profit a prendre may be extinguished in any of the following methods:

(a) Unity of Seisin: If the owner of the profit or common also becomes owner of the land over which the right is exercisable, it extinguished the right provided there is unity of his estate in the right and in the land. In other words, when one person becomes seised of the dominant and subservient tenement, the profit a prendre lapses. Where however the owner of the profit takes a lease of the servient tenement, the result of the unity of possession which is distinguishable from unity of seisin is that the seisin is suspended and will revive on the expiration of the lease.

(b) Release: A release of a profit in favour of the servient owner extinguishes it as a man cannot have a profit or common on his own land

(c) alteration of dominant tenement: Non user of a profit a prendre does not extinguish the right but where the character of the dominant tenement is so altered as to make any further appurtenances impossible, it raises the presumption of extinguishment. If for example a land in which a common of pasture was granted is converted to a building, the common is destroyed. However where the conversion is revocable as where an orchard is planted, the profit is suspended but could be resumed on the restoration of the land to its original state.

(d) Approvement and inclosure of commons: Right of commons may be partially extinguished by approvement and wholly extinguished by inclosure

7.0 CONCLUSION.

A non user of a profit will not automatically extinguish it but must be inferred from the surrounding circumstances which informed the non user.

8.0 SUMMARY

- (1) Profit a prendre is a right to take something which forms a part of the land of another
- (2) Profit a prendre is classified into "several profits" which denotes profit enjoyed by the owner with no other persons. While Profit in common is the one enjoyed by the owner and other people
- (3) Profits a prendre is also classified according to their subject matter.
- (4) Profits a prendre is distinguishable from easement by its involvement in taking something from the land of another while an easement does not.
- (5) An easement is dependent on the proximity of the beneficiary to the land while no such requirement is necessary for profit a prendre.
- (6) A profit a prendre may be acquired by statutory acquisition, express grant, presumed grant or prescription
- (7) A profit a prendre is extinguished by unity in seisin, alteration of dominant tenement, release or approvement and inclosure.
- (8) Extinguishment could be inferred by non user of a profit a prendre and surrounding circumstances.

9.0 TUTOR MARKED ASSIGNMENT

- * Distinguish between a profit a prendre and an easement.
- * Analyse the various methods of extinguishing a profit a prendre.

10.0 SUGGESTED FURTHER READING /REFERENCES

NIKI TOBI cases and materials on Nigerian land law (Lagos:
Mabrochi books, 1997)

MODULE 6

LICENCES AND RESTRICTIVE CONVENANTS

LICENCES

- 1.0 INTRODUCTION.**
- 2.0 OBJECTIVE**
- 3.0 CLASSIFICATION OF LICENCES**
- 4.0 CONTRACTUAL LICENCES AND THIRD PARTIES**
- 5.0 LICENCE BY ESTOPPEL**
- 6.0 TRANSFER OF BENEFIT OF LICENCE**
- 7.0 CONCLUSION**
- 8.0 SUMMARY**
- 9.0 TUTOR MARKED ASSIGNMENT**
- 10.0 SUGGESTED FURTHER READING**

MODULE 6**LICENCES****1.0 INTRODUCTION.**

A licence is essentially a permission to enter upon the land of another for a specified purpose. It justifies a conduct which would otherwise have been a trespass. A licence is distinct from an easement, profit a prendre or local customary grant in that it is merely a personal liberty granted to a person to do something on the property of another.

2.0 OBJECTIVE

The objective of this unit is to examine licences and the implication of its grant to another person.

3.0 CLASSIFICATION OF LICENCES

At common law licences are categorized into three main groups

(1) Bare or gratuitous licence: This is a mere permission to the licensee to enter upon the licensor's land. Such license may be withdrawn or revoked by the licensor

(2) Licence coupled with a grant or interest: A licence is said to be coupled with a grant or interest when the licensee is granted definite proprietary interest in the land or in chattels lying on the land and permitted to enter the land to enjoy or exploit the resources on the land.

A licence coupled with a grant or interest may be irrevocable. It is distinct from a bare licence. They are two separate matters intertwined - the grant and the licence

As stated by Vaughan. J in *Thomas v Sorrel* (1673) Vaugh
330

but a licence to hunt in a man's park and to carry away the deer killed to his own use; to cut down a tree in a man's ground and to

carry it away the next day after to his own use, are licences as to the acts of hunting and cutting down the tree but as to the carrying away of the deer killed and the cut they are grants.

Equity may grant an injunction to the licensee to prevent the licensor from revoking the licence contrary to the terms of the grant. The licence is ineffective in common law since it is not evidenced by a deed in writing.

(3) Contractual licence: A contractual licence is a licence for which consideration has been furnished. Such a licence cannot be revoked arbitrarily.

In *Hurst v Picture Theatres Ltd* (1915) 1KB 1 A Plaintiff who had purchased a ticket for a seat at a cinema show was forcibly turned out of his seat on the instruction of the manager who thought the Plaintiff had not paid for his seat. In an action for assault and false imprisonment, the Plaintiff was held to be entitled to recover substantial damages

4.0 CONTRACTUAL LICENCES AND THIRD PARTIES

A contractual licensee is protected by the court. A bare licence is revocable by the licensor at any time but the licensee cannot be treated as a trespasser until a reasonable time after notice that the licence has been or will be withdrawn. Where however the licence is coupled with a grant or interest, it is irrevocable by the licensor. If the interest granted is legal, it binds all successors in title except a bonafide purchaser of the legal estate without notice from the licensor.

In *Binions v Evans* (1972) CH665 a contractual licence was enforced against a purchaser who took a conveyance of land expressly subject to a licence having in consequence paid a reduced price.

5.0 LICENCE BY ESTOPPEL

The general principle is that an estoppel arises where one party makes a representation or promise to another intending that he should act in reliance on it, he is estopped from acting inconsistent with his promise or representation.

In *Ramsden v Dyson* (1866) LR 1HL 129, it was held that if a man under a verbal agreement with a landlord for certain interest in land or not to do the same thing under an expectation created or encouraged by the landlord that he shall have a certain interest takes possession of such land with the consent of the landlord and upon the faith of such promise or expectation with the knowledge of the landlord and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such expectation.

See also **Willmott v Barber (1880) 15 Ch D 96.**

6.0 TRANSFER OF BENEFIT OF LICENCE.

Whether a licence is transferable or not depends on the nature and circumstances of the grant.

In *Inwards v Baker* (1965) 2 QB 19, where the son's licence was to remain in the bungalow for as long as he desired to use it as a home, it was held that the right was clearly personal and not transferable.

7.0 CONCLUSION.

In considering the effect of a licence, at common law, a distinction is drawn between a mere licence whether gratuitous or contractual and a licence coupled with a grant, while the former was revocable, the latter could be irrevocable. The effect of revocation of a licence is that the licensee becomes a trespasser.

8.0 SUMMARY

- (1) A licence is permission to enter another person's land for a specified purpose
- (2) A licence confers a personal benefit on the person to whom it is granted.
- (3) Licences are categorized into bare or gratuitous licence, licence coupled with a grant or interest, and contractual licence.
- (4) A contractual licence is enforceable against a subsequent purchaser.
- (5) A licensor is estopped from acting in a manner inconsistent with a representation made to a licensee who has altered his position in reliance on the representation.
- (6) Whether a licence is transferable or not depends on the nature and circumstance of the grant.

9.0 TUTOR MARKED ASSIGNMENT

1. Analyse the classification of licence.
2. Okafor paid N500. 00 for a ticket to watch alpha football match but was ordered to leave the arena by the coach of alpha football club. Discuss the nature of the licence granted if any.

10.0 SUGGESTED FURTHER READING /REFERENCES

Emeka Chianu Law of Landlord and Tenant, cases and comments (Benin City: Nigeria Printer Publication, 2006)

MODULE 7

LEASEHOLD INTERESTS

UNIT I	NATURE OF A LEASES
1.0	INTRODUCTION.
2.0	OBJECTIVE
3.0	TERM OF YEARS IN LEASES
3.1	PERPETUALLY RENEWABLE LEASES
4.0	ESSENTIALS OF A TERM OF LEASES
4.1	RIGHT OF EXCLUSIVE POSSESSION
4.2	DEFINITE PERIOD
5.0	CLASSIFICATION OF LEASES
6.0	CREATION OF LEASES
7.0	DOCTRINE OF WALSH V LONSDALE
7.1	EFFECT OF THE DOCTRINE OF WALSH V LONSDALE
7.2	TERMINATION OF TENANCIES
8.0	IMPACT OF LAND USE ACT 1978 ON LEASES
9.0	CONCLUSION
10.0	SUMMARY
11.0	TUTOR MARKED ASSIGNMENT
12.0	SUGGESTED FURTHER READING

MODULE 7**LEASEHOLD INTERESTS****UNIT I NATURE OF A LEASE****1.0 INTRODUCTION.**

A leasehold interest is an interest in land conveyed by a rightful possessor of real property for use and occupation of another in consideration for rent paid. The term granted could be for life, for a fixed period or a period to be determined at will. A leasehold is capable of subsisting as a legal estate but it must be created in a manner required by law or it is classified as an equitable interest.

2.0 OBJECTIVE

The objective of this unit is to review with the students some of the terminologies utilized in conveyance of interest in land which forms part of the general usage in relation to use and occupation of land with a view to inculcating a better appreciation the legal implications of the interest conveyed.

3.0 TERM OF YEARS IN LEASES

A term of years or a lease may be for a year, years , year to year or it could be perpetually renewable. It could also be for a life or lives. It is usually couched as:

“To Oziengbe during the life of Ehimemen and Otue”

or

“To Itohan for 99 years if Izobo shall so long live”

or

“To Nwayo for 30 years until Nwayo marries”

In *National Bank of Nigeria Ltd v Companies Frassinetti* (1948) 19 NLR 4, the court held that the words “the lessor agrees to let and the lessee agrees to take” are sufficient to create a lease once it indicates the intention to give possession for a determinable time.

A term of years arises and the relationship of landlord and tenant is created whenever one person called the landlord or lessor grants to another called the tenant or lessee, the right to the exclusive possession of a piece of land for a definite period.

A term of years absolute means a term that is to last for a certain fixed period even though it may be liable to come to an end before the expiration of that period by the service of a notice to quit. The re-entry of the landlord, operation or provision for lesser on redemption as in the case of a mortgage term. It includes a term for less than a year, a year, years or tenancy from year as is the common practice in agricultural leases.

A term of years absolute constitute a legal estate irrespective of the fact that it does not entitle the tenant to enter into immediate possession but is supposed to commence at a future date such a lease is referred to as a reversionary lease.

3.1 PERPETUALLY RENEWABLE LEASES

There is no time limit to the renewing of leases. However under the Land Use Act, the maximum period that may be granted is 99 years subject to renewal. It is the nearest approach to a perpetual lease.

4.0 ESSENTIALS OF A TERM OF LEASES

For a term of years to arise and for the relationship of landlord and tenant to be created, there must be in existence the relationship of landlord and tenant and possessory rights on a definite land for a period of time must be conferred on the tenant or lessee while the landlord retains the reversion.

4.1 RIGHT OF EXCLUSIVE POSSESSION

It is essential for the subsistence of a valid lease, that the lessee shall acquire the right of possession to the exclusion of the lessor.

The distinguishing factor in this regard between a licence and a lease lies in the fact that a lease imports the grant of exclusive possession while a licence does not.

In *Wilson v Taverer* (1875) L.R 10 P.C 402

a defendant agreed in writing to permit the plaintiff to erect a boarding on the forecourt of a cottage and to allow him the use of a gable end of another house for a bill posting and advertising station at a yearly rent payable quarterly. It was held that since the plaintiff had no exclusive occupation of any piece of land, it was not a tenancy from year to year but a licence which was revocable at will on the service of a reasonable notice

In *Mobil Oil (Nigeria) Ltd v Johnson* (1961) All NLR 83 A entered into an agreement with M & Co Limited that A should operate one of their petrol service station at a standard set by the company and on a remuneration based on rebate and commission. A was to employ staff subject to the company's approval but was to be responsible for their pay. It was further provided in the agreement that "the station will be given to you with the firm understanding that upon receipt of thirty days" notice. Following a disagreement between the parties the company took possession of the premises A instituted proceeding against the company for unlawful entry. The court held that A had no lease but only a licence since A had not been given any definite term of occupancy. The agreement merely provided for its termination upon notice. The court further held that A was not entitled to damages for trespass but since the notice he received was short of seven days, A was entitled to loss of earnings for those seven days.

In *Akpiri v West African Airways Corporations* (1955) 14 WACA 195 where the appellant was employed by the Respondent and given a house to live in on payment of a moderate rent. On the

determination of appointment he was asked to quit. He claimed he was a tenant and not a licensee. His claim was upheld.

However, in *Diocessan Synod of Lagos v Dedeke* (1958) N.R.N.L.R 77, it was held that a vicar had only a service occupancy and not a service tenancy of the vicarage and that he could therefore be ejected when his service was terminated.

4.2. DEFINITE PERIOD

To constitute a valid lease, there must be certainty of term granted in other words, the term granted must have a definite or certain beginning and a certain ending.

Where a lease is dependent on the happening of an uncertain event it is valid and becomes absolute and enforceable on the occurrence of the event specified e.g. A lease to begin " when the house becomes vacant "

5.0 CLASSIFICATION OF LEASES

Leases can be classified as follows:

- (i) Reversionary lease: A lease which is supposed to commence at a future date e.g where a lease was made in 1996 to commence in 2026.
- (ii) Lease of a reversion: Andrew grants a lease to Adesuwa from 2008 to 2012. The later is a lease of Adesuwa's reversion and constitutes a valid lease.
- (iii) Periodic tenancy: This is a tenancy from e.g. week to week, month to month or year to year. It is perpetually renewable until terminated by the issuance of a notice of determination of the tenancy.
- (iv) Tenancy at will: it arises when a person allows another on his land in the understanding that he may leave at

any time or be asked to leave at any time it also arise where a lessee of all land belonging to another authorizes a third party to occupy the land at his will or pleasure .

- (v) A tenancy at sufferance: It arises where a person continues in occupation of land after the expiration of his lease without his landlord's consent.

6.0 CREATION OF LEASES.

A lease may be made either by

- (a) an express grant or
- (b) an agreement for a lease

6.1 EXPRESS GRANT

In an express grant, the lessor or lessee must agree on all the terms of the transaction, there must be sufficient memorandum in writing or an act of part performance.

What constitutes sufficient part performance is dependent on the peculiar circumstance of each case.

In *Rawlinson v Ames* (1925) Ch 96 the Defendant and the Plaintiff orally agreed to take a lease of a flat. The Plaintiff requested that some alterations to be made to the flat and the Defendant made frequent visits to the flat while the alteration was being made and suggested additional alterations which were made by the Plaintiff. The Defendant subsequently repudiated the contract relying on the absence of a written memorandum. It was held that the alterations made constituted sufficient acts of part performance by the Plaintiff.

A lease for more than 3 years is at law unenforceable unless it is evidenced in writing but in equity such a lease could be treated as an agreement for a lease which is enforceable by an action for specific performance.

7.0 DOCTRINE OF WALSH V LONSDALE

Where a tenant takes possession of a land under an oral agreement for more than three years, acquires an enforceable right to call for the execution of a deed in favour of the tenant. As far as his rights and liabilities are concerned, he is held to in the same position as if he had a deed of lease.

In *Walsh v Lonsdale* (1882) 21 Ch.D 9 the Defendant agreed to grant the plaintiff a lease of a mill for 7 years at an agreed rent. The lease was also to contain such stipulation in an earlier lease at a fixed rent made payable yearly in advance. The plaintiff was let in to possession and paid rent quarterly not in advance, for two years and a half. The Defendant then demanded one year's rent in advance and put in a distress. The Plaintiff instituted proceedings for damages for illegal distress, injunction and specific performance. It was held that the Plaintiff's held an interest similar to the position of a grantee of a lease and under the terms of a lease, failure to pay a year's rent in advance on demand would have earned a distress.

7.1 EFFECT OF THE DOCTRINE OF WALSH V LONSDALE

The effect of the decision in *Walsh v Lonsdale* is that agreement for a lease is as good as a lease however a lease by deed is more advantageous than an agreement for a lease in the following respects.

- (a) The principle in *Walsh v Lonsdale* is inapplicable where equity will not grant specific performance of the agreement.
- (b) Whereas a lease is enforceable against the whole world, a mere agreement for a lease confers only an equitable interest which is unenforceable against a bonafide purchaser for value of the

legal estate. The doctrine of *Walsh v Lonsdale* is ineffective against third parties' rights

- (c) A deed of lease constitutes a conveyance while an agreement for a lease does not.

7.2 TERMINATION OF TENANCIES

A lease may be terminated in any of the following manner

- (1) By surrender of the lease to the landlord in the manner it was granted e.g. if the lease was granted by deed, it should be surrendered in like manner
- (2) By effluxion of time. On the extinguishment of the lease, the landlord is automatically entitled to the reversionary interest.
- (3) By the merger of the lease and reversionary interest in the same person which could be either the landlord or the tenant.
- (4) By service of a valid notice to quit on the tenant by the landlord

8.0 IMPACT OF LAND USE ACT ON LEASES

The land use act did not significantly impact on leases. It provided that all existing laws relating to interest in land or transfer of title in land shall have effect subject to such modifications as will bring the agreements into conformity with the provisions of the act. See section 48 of the Land Use Act.

The only provisions of the Land Use Act which affects leases is the provisions earlier discussed which mandates the consent of the Governor of the state in which the land is located to be first had and obtained before any transaction relating to land can be validly embarked on. This evidently includes leases.

9.0 CONCLUSION.

An agreement for a lease is not equal to a lease. Between the contracting parties, an agreement for a lease may be as good as a lease but an equitable right is not the same as a legal right.

10.0 SUMMARY

- (1) A leasehold interest is an interest in land conveyed by one person to another to use and enjoy his land for definite period.
- (2) A lease may be for a year, years or could be perpetually renewal.
- (3) To qualify as a lease the tenant must be granted exclusive possession of the land for a definite period.
- (4) Leases can be classified into reversionary lease, lease at will and periodic tenancy.
- (5) Leases are created by an agreement for a lease or express grant.
- (6) A written lease exceeding 3 years confers an equitable term pursuant to the doctrine of *Walsh v Lonsdale* provided it is evidenced by sufficient memorandum.
- (7) The effect of *Walsh v Lonsdale* is that agreement for a lease is as good as a lease.
- (8) Lease are determinable either by effluxion of time, surrender of the lease, merger of the lease and the reversionary interest in the same person or service of a valid notice to quit on the tenant or lessee

11.0 TUTOR MARKED ASSIGNMENT

1. The effect of the decision in *Walsh v Lonsdale* is that agreement for a lease is as good as a lease. Do you agree?
2. Discuss the various modes of terminating a lease

12.0 SUGGESTED FURTHER READING /REFERENCES

NIKI TOBI cases and materials on Nigerian Land Law (Lagos: Mabrochi book 2007)

Emeka Chianu Law of Landlord and Tenant, cases and comments 2nd Edn,(Benin City: Nigeria Printer Publication, 2006)

MODULE 7

UNIT 2	LANDLORDS AND TENANT
1.0	INTRODUCTION.
2.0	OBJECTIVE
3.0	EXPRESS COVENANTS
4.0	IMPLIED COVENANTS
5.0	ENFORCEMENT OF COVENANTS
6.0	RECOVERY OF PREMISES
7.0	MODE OF TERMINATION OF TENANCY
8.0	LENGTH OF NOTICE REQUIRED
9.0	EFFECT OF INVALID NOTICE
10.0	MESNE PROFIT
11.0	DETERMINATION OF SURRENDER
12.0	CONCLUSION
13.0	SUMMARY
14.0	TUTOR MARKED ASSIGNMENT
15.0	SUGGESTED FURTHER READING
	STATUTE

MODULE 7**LEASEHOLD INTERESTS****UNIT 2 LANDLORDS AND TENANT****1.0 INTRODUCTION.**

Rights and liabilities accruing to parties in a tenancy agreement is dependent on the tenor of the agreement. A tenancy contract is an embodiment of express and implied covenants which regulates the rights and obligations of the parties.

2.0 OBJECTIVE

The objective of this unit is to expose to the students to those issues a tenancy agreement may expressly as well as the rights and obligations of the parties which may not be expressly stated but is implied by the contract.

3.0 EXPRESS COVENANTS

Express covenants are terms of occupation of the land which are unequivocally stated in the tenancy agreement. Both the landlord and the tenant are both to comply with them.

The regular covenant the landlord is bound by include covenant to carry out repairs on the property and the covenant to confer on the tenant quiet enjoyment of the demised premises

The tenant is expected to enter the following covenants

- (1) To pay rent
- (2) To pay rates and taxes
- (3) To repair the demised property
- (4) Not to alter the demised premises without the landlord's consent
- (5) Not to assign or sublet the property without the knowledge or consent of the landlord.

(6) To insure the property against fire

In *Taylor v Webb* (1937) 2 KB 283 there was a covenant to keep premises "in good and tenantable state". Destruction or damage by fire and fair wear and tear were however excepted when the states of the roof of the house cracked and slipped from their position as a result of natural causes. It was held that the exception from the covenant of "fair, wear and tear" excluded liability under the covenant of repair.

In *Sogbesan v George* (1941) 16 NLR 10 it was held that a tenant may waive his right to enforce his landlord's covenants to repair and to make premises fit for human habitation

3.1 Where an absolute or unconditional prohibition is imposed upon the tenant a breach of it renders the tenant liable to pay damages to the landlord even where the assignment is not prejudicial to the landlord's interests. If qualified a conditional prohibition is imposed upon the tenant against an assignment without the landlord's consent. The lessee's liability will depend on whether or not he has asked for the lessor's consent before making the assignment.

Where no prior consent has been requested, the tenant is liable to pay damages and if a right of re - entry is inserted in the lease, he is liable to forfeit the lease.

In *Barrow v Isaac & Sons* (1891) 1QB 417 the lessee covenanted not to underlet the premises or part with its possession without the landlord's consent in writing which consent the lessor agreed would not be arbitrarily withheld in the case of a respectable or responsible person. The lessor reserved the right of re-entry in the event of a breach of the covenant. When the lessee underlet part of

the premises without the landlords consent, the court held that the lessor was entitled to recover possession of the premises.

4.0 IMPLIED COVENANTS

Where in a tenancy agreement, no express covenants have been inserted, the following covenants are usually imposed on landlords and tenants. They are binding and enforceable

4.1 THE LANDLORD IS OBLIGATED TO GRANT

(a) A covenant for quiet enjoyment. In *Markham v Paget* (1908) 1 CH 697, the principle was established that whether or not the word "demised" has been mentioned in the lease, the landlord is deemed to be under covenant that his tenant should enjoy his tenancy without any disturbance or interruption by either the landlord or his agent or anyone deriving title through the landlord.

(b) A warranty that the premises are reasonably fit for human habitation at the beginning of the tenancy. In *Smith v Marable* (1843) 11 M&W 5. a house infested with bugs was held not to be fit for human habitation.

In *Wilson v Finch – Hatton*, a defective drainage was held to render a house unfit for human habitation.

(c) A covenant not to derogate from his grant In *Aldin v Clark* (1894) CH 437 the landlord's new building on adjoining land which interrupted the free flow of air to the tenant's premises was held to be a derogation from his grant.

4.2 THE TENANTS COVENANT

The tenants covenant to

- (a) To pay rent
- (b) To pay rates and taxes
- (c) To repair

- (d) Not to sublet the property

This is however subject to the doctrine of waste.

4.3 WHAT IS WASTE?

Waste is any damage to premises or to land that tends to be permanent and lasting loss to the person entitled to the inheritance. Waste is usually classified into two (a) voluntary waste consisting of a positive act of destruction or damage to the inheritance e.g. pulling down or altering buildings opening mines, changing the course of husbandry or cutting timber (b) Permissive waste consists mainly in allowing the building to decay. The tenant is generally liable for waste he is under an implied covenant to deliver up the premises in a tenable state of repair, including keeping all fences on the land in a state of repair.

4.4 TENANT'S IMPLIED COVENANT

The tenant impliedly has the right to

- (a) The taking of estovers
- (b) the gathering of growing crops
- (c) removal at the end of the tenancy of certain fixtures (tenant's fixtures)

They include trade fixtures, ornamental and domestic fixtures and agricultural fixtures.

In *Ige & ors v La Compagnie General* the court held that a tenant is entitled in the absence of any agreement to the contrary to remove his trade appliances which do not amount to "fixture" on the determination of his lease. In the instant case, the shelves counters and electric light fittings were held to form removable fixtures which were removable by the tenants.

5.0 ENFORCEMENT OF COVENANTS

Apart from forfeiture, the usual remedy for breach of a covenant to repair is damages, injunction and specific performance where the covenant is breached by a tenant. This is because damages are considered an adequate remedy for the landlord. Where the landlord breached the covenant, damages or specific performance of the covenant or deduction of money expended for repairs could be ordered.

5.1 Where the breach relates to the covenant to pay rent, the covenant is considered separately from other covenants. The covenant is enforced by:

(a) the landlord may when the rent is in arrears exercise his right of distress, it is usually levied within thirty days of the date when the rent falls due, on the tenant's goods wherever they may be located. It confers the landlord with a right of re - entry. The law frowns on self help and mandates a bailiff to be given a warrant by the landlord who must have obtained an order from a court is the one authorized to distraint the tenant's goods. The impounded goods are liable to be sold if the tenant does not meet his obligations to the landlord.

In *Da Rocha v Shell Co* (1938)¹⁴ N.L.R.1. The court held that before the landlord can sue his tenant on grounds of forfeiture for non payment of rent, there must have been a formal demand for rent from the tenant by the landlord.

5.2 where other covenants are breached by the tenant, the landlord's remedy lies. In action for damages for the breach or an injunction to restrains a threatened breach

6.0 RECOVERY OF PREMISES.

The mode of recovery of a premises is dependent on the nature of the user. Where a premises is utilized as a guest house, or hotel, the usage is not considered to be for residential purpose. The occupants of such premises are not referred to as "tenants" but as "lodgers"

6.1 where premises are utilized for residential purposes, its use, occupation and recovery of possession is regulated by the Rent Control and Recovery of Residential premises law. Otherwise referred to as "Rent Control Law" the proviso to section 16 of the Rent Control Law (Lagos) provides that where a tenant is monthly tenant and his rents are in arrears for three months, the tenancy should be considered determined and on application to the court by the landlord, an order for payment of arrears of rent delivery up of possession of the premises occupied would be made.

To be applicable, the premises must be utilized for residential purposes and not as an office, shop warehouse or vacant land. S. 1 (1) of the Lagos Rent Control Law provides that that the law is applicable to residential accommodation only

7.0 MODE OF TERMINATION OF TENANCY

The most popular mode of termination of tenancy is by notice to quit. A notice to quit issued by a landlord on a tenant must be in writing.

7.1 ESSENTIALS OF A VALID NOTICE

A valid notice must contain:

1. The name of landlord or his authorized agent. The agent must stipulate that he is acting as the agent of the landlord.

In *Bashua v Odunsi* (1940) 15 NLR 107 a notice to quit was declared invalid when it was evident that the landlord's son issued it without reference to the landlord.

2. The name of the tenant.
3. The nature of the tenancy (whether monthly, quarterly, half yearly or tenancy at will) must be stipulated
4. A brief description of the premises must be provided e.g room,
flat or house
5. The effective date of the notice to quit and the time for delivery up of possession must be stated
6. A notice to quit should be clear and unequivocal and must not leave the tenant in doubt as to the true intention of the landlord

7.2 the motive for the issuance of a notice to quit by a landlord is irrelevant even when it is ill motivated, the landlord is still entitled to recover the premises

8.0 LENGTH OF NOTICE REQUIRED

Section 8 (1) of the residential premises law provides that for a tenancy at will or a weekly tenancy, a week's notice is required. In the case of a monthly tenant, a month's notice is required and half a year's notice for a yearly tenancy.

9.0 EFFECT OF INVALID NOTICE

A landlord's action to recover possession on an invalid notice to quit is a condition precedent to recovering of possession.

In *Eleja v Bangudu* (1994) 3 NWLR (PT 334) S26 the court of appeal held that where a notice to quit is defective the proper order to make is to strike out the landlord's claim.

10.0 MESNE PROFITS.

Mesne profit is the compensation paid to a landlord by a tenant for use and occupation of his premises. This is because at the end of the tenancy's a tenant is obliged to yield up possession. If he fails, he is considered a trespasser, his continued possession being a wrongful act. As a trespasser, he is liable to pay damages but instead of the expression "damages" the term mesne profit is utilized.

As stated in section 40 (1) of the Rent Control and Recovery of Residential Premises Law 1976 (Lagos) Provides

Mesne profit means the rents and profits which a tenant who holds over or a trespasser has or might have received during his occupation of the premises and which he is liable to pay as compensation to the person entitled to possession

11.0 DETERMINATION BY SURRENDER

In addition to notice of termination a tenancy may be determined by surrender. Surrender is a yielding up of an estate to the owner of the reversionary interest in the property. Surrender may be done expressly by deed or by operation of law. Abandonment arises where a tenant quits the demised premises without the knowledge or notification of the landlord. Mere non user is not sufficient to prove abandonment. The circumstances must exist from which it can be inferred

11.1 EFFECT OF SURRENDER

A surrender of a lease operates only to release the tenant from obligation taking effect after the date of the surrender leaving the tenant liable for past breaches. The rent which has accrued or become due at the date of surrender is recoverable. On the other hand, once the landlord accepts the surrender, the tenant is discharged from future obligations.

In *Walls v Atcheson* (1826) 130 ER 591 A tenant for a term of one year quit the premises in the middle of the term and the landlord let them to another tenant. The landlord subsequently sued the tenant for compensation for use and occupation of the unexpired residue of the year. It was held that by putting another tenant there, the landlord has accepted the surrender and the tenant could not be liable for any obligation that arose after the surrender

12.0 CONCLUSION

Under the Recovery of Premises Law, a periodic tenant is obligate to notify his landlord of his intention to terminate the tenancy and yield up possession. Where he fails to do so, he remains liable to pay the rent accruing to the premises in the same manner as if he was actually in possession.

13.0 SUMMARY

- (1) Rights and obligation accruing to the Landlord and Tenant in a tenancy agreement is dependent on the tenor of the agreement.
- (2) Tenancy agreements contain express covenants agreed on between the parties and covenants that are implied.
- (3) Apart from forfeiture, damages, injunction and specific performance are methods of enforcing compliance with covenants in a tenancy contract .

- (4) The usual method of recovery of premise is by the issuance of a notice to quit.
- (5) A valid notice must contain the names of the tenant, description of the premises, the nature of the tenancy and the date for delivery up of possession.
- (6) The motive for the issuance of a notice to quit is irrelevant.
- (7) On the expiration of a notice to quit, the tenant becomes a trespasser and he is liable to pay mesne profits.
- (8) A tenancy is also determinable by the tenant surrendering the premises.
- (9) The effects of a valid surrender is that the tenant is released from his obligations to the landlord.
- (10) Where a tenant fails to notify the landlord of the surrender of the premises, he is deemed to still be in possession of the property and liable to pay rent for the period. It is irrelevant that he is no longer in physical possession. He remains constructively in possession.
- (11) For the Rent Control and Recovery of Residential premises to be operative between landlord and tenant, the premises must be utilized for residential purposes only.

14.0 TUTOR MARKED ASSIGNMENT

- 1.(a) what are the essential of a valid notice to quit
(b) As agent to Dr. Sunny Ogon issue a Notice to Quit to Mark Osuji, a monthly tenant residing at 2, Ogbewe Avenue, Iganmu, Lagos whose rent has been outstanding for 3 months. The Landlord Sunny Ogon intends to take delivery of possession of the premises on December 31, 2012
2. In a tenancy arrangement, both the landlord and the tenant are bound by express and implied covenants. Do you agree?

15.0 SUGGESTED FURTHER READING /REFERENCES

Emeka Chianu Law of Landlord and Tenant (Abuja: Panaf Press, 2010)

STATUTE:

Rent Control and Recovery of Residential Premises Law (Lagos) 1976.

MODULE 8

MORTGAGES

- 1.0 INTRODUCTION.**
 - 2.0 OBJECTIVE**
 - 3.0 MODE OF CREATING MORTGAGES**
 - 4.0 IMPLIED COVENANTS**
 - 5.0 EQUITY OF REDEMPTION**
 - 6.0 CLOG ON THE EQUITY OF REDEMPTION**
 - 7.0 THE LEGAL MORTGAGEE'S REMEDIES**
 - 8.0 EQUITABLE MORTGAGES**
 - 9.0 MORTGAGEE'S POWER OF CONSOLIDATION**
 - 10.0 TERMINATION OF A MORTGAGE**
 - 11.0 RECONVEYANCE OF MORTGAGE**
 - 12.0 CONCLUSION**
 - 13.0 SUMMARY**
 - 14.0 TUTOR MARKED ASSIGNMENT**
 - 15.0 SUGGESTED FURTHER READING**
- STATUTES**

MODULE 8

MORTGAGES

1.0 INTRODUCTION.

The concept of mortgage is not easy to delineate neither is it easily comprehensible. However, it has been defined as a conveyance of land or assignment of chattels as security for the payment of a debt or the discharge of some other obligation for which it is given. Mortgage has been defined as the most important land of security. Its essential nature is that it is a conveyance of a legal or equitable interest in property with provision for redemption.

2.0 OBJECTIVE

The objective of this module is to acquaint the students with the concept of mortgages, types of mortgages, mortgage transactions in general and the implications of engaging in mortgage transactions.

3.0 MODE OF CREATING MORTGAGES

A mortgage involves the borrower known as the "mortgagor" and the lender known as the "mortgagee" and the consideration for the transaction is known as "Security"

3.1 LEGAL MORTGAGES

Legal mortgage is created in any of the following methods:

- (1) In the case of a fee simple, the mortgagor conveys the whole of his beneficial interest to the mortgagee and at the same time enters into a covenant for the repayment of the loan with a proviso that the mortgagor would on the repayment of the loan on the date stated, recover the fee simple from the mortgagee
- (2) In the case of the mortgage of a lease,

(a) the mortgagor conveys a sub-lease of his leasehold interest to the mortgagee for a period slightly less than his own term. This is so as to allow the mortgagor sufficient time to put things in order before yielding up the land to the superior landlord. The mortgagee is not obligated to account to the superior landlord in respect of covenants contained in the original lease unless such covenants are negative in nature so that they are enforceable.

(b) the mortgagor assigns the whole of his unexpired term to the mortgagee. It is a less satisfactory method of creating a mortgage as it is liable to all covenants that touch and concern the land.

4.0 THE LAND USE ACT AND MORTGAGE

The Land Use Act defines mortgage to include a second and subsequent mortgage and equitable mortgage.

4.1 section 21 of the Land Use Act states that it shall not be lawful for any customary right of occupancy or any part of it to be alienated by assignment, mortgages, transfer of possession sublease or otherwise howsoever -

(a) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriff's and Civil Process Law or

(b) in other cases without the approval of the appropriate local government.

4.2 It is further provided by section 22 of the Act that it shall be unlawful for the holder of a statutory right of occupancy granted by the military Governor to alienate his right of occupancy or any part of it by mortgage without the consent of the Governor.

4.3 However, the consent of the Governor shall not be required to the creation of a legal mortgage over statutory right of occupancy in

whose favour an equitable mortgage over a right of occupancy has already been created with the consent of the Governor.

4.4 The consent of the Governor is not presumed for the renewal of a sublease by reason only of his having consented to the grant of a sublease containing an option to renew it – section 22

4.5 The Governor when giving his consent to a mortgage may require the holder of a statutory right of occupancy to submit an instrument executed in that regard to the Governor .

5.0 EQUITY OF REDEMPTION

In a mortgage transaction relating to a fee simple, the mortgagee appears to become the absolute owner of the mortgaged land on the mortgagor's failure to repay a loan within six months. The common law would make the mortgagor forfeit his contractual right to redeem his land as soon as he fails to repay but equity permits the mortgagor to redeem after the stipulated periods of six months if he repays the loan, all interest due, and relevant costs. This is what is referred to as the mortgagor's equity of redemption. It is an equitable interest. The legal fee simple remains vested in the mortgagee until redeemed by the mortgagor.

6.0 CLOG ON THE EQUITY OF REDEMPTION

Redemption is the very essence of a legal mortgage. Any postponement or frustration of the right of a mortgagee to redeem renders the transaction void

In *Samuel v Jarrah Timber Corporation* (1904) AC 323 Lord Lindley held:

The doctrine once a mortgage always a mortgage means that no contract between a mortgagor and a mortgagee made at the time of the mortgage and as part of the mortgage transaction or in other words as

one of the terms of the loan, can be valid if it prevents the mortgagor from getting back his property on paying off what is due on his security. Any bargain which has that effect is invalid and is inconsistent with the transaction being a mortgage.

The mortgagor's equity of redemption must not be clogged in any way. There must be no collateral advantage reserved in the mortgage deed which could make it impossible for the mortgagor to redeem his land on payment of loan, interest and cost

In *Noakes & Co Ltd v Rice* (1909) CH 441 A licenced victualler to brewers mortgaged the leasehold of his public house. He covenanted with the mortgagee that himself and his successors and assigns should not during the continuance of the term use or sell in the public house any malt liquors except such as would be purchased from the mortgagee. It was held that the covenant constituted a clog on the equity of redemptions. The mortgagor was entitled to the reconveyance of the property on payment of what was due on the security.

Similarly in *Bradley v Carrit*, (1903) AC 253 the mortgagor was required to employ the mortgagee as his agent. After the mortgage had been paid off, the mortgagor company changed their broker and the mortgagee sought to enforce the covenant that he should be retained as broker the covenant was held to be unenforceable

7.0 THE LEGAL MORTGAGEE'S REMEDIES

Where there is a breach by the mortgagors to perform his obligations under the mortgage transaction, the mortgagee may resort to certain legal remedies.

7.1 RIGHT OF FORECLOSURE

Where a mortgagor defaults and a period of grace, fails to redeem the mortgage, a mortgagee may apply to court for an order to fore

closure the mortgagor's equity of redemption. The mortgagee is at liberty to dispose of the security to recover his money.

(a) Mortgagee selling mortgaged property is expected to act in good faith. In *Alhaji Maina v United Bank for Africa Ltd* (1985) H. C.N.L.R 828 the court held that the only obligation incumbent on a mortgagee selling under a power of sale in his mortgage is that he should act in good faith and take reasonable precaution to ensure that he obtains not the best price but a proper price.

(b) Right to enforce the mortgagor's personal covenant to repay the loan, interest on it and cost

(c) Right to enter and take possession of the mortgaged property until the debt owed is repaid

(d) a right to appoint a receiver for the rents and profits emanating from the land. He is deemed accountable to the mortgagor for rents collected.

(e) a right to sell the legal fee simple (to a purchaser) free from the mortgagor's equity of redemption. The mortgagee must after paying all expenses incidental to the sale, use the purchase money to pay himself the loan, interest and cost due under the mortgage. A mortgagee is not a trustee of the power of sale for the mortgagor.

8.0 EQUITABLE MORTGAGES

Equitable mortgage refers to

(a) a second or a subsequent mortgage created by the mortgagor in respect of the same fee simple over which he has granted a first mortgage.

(b) There is a written agreement by the mortgagor to create a legal mortgage in favour of the mortgagee. In appropriate cases, equity will compel him to do so by enforcing specific performance of the contract

- (c) Where the mortgagor deposits his title deeds with the mortgagee.
- (d) There is both a written agreement and a deposit of title deeds

9.0 MORTGAGEE'S POWER OF CONSOLIDATION

Where two or more different properties are conveyed to the same mortgagee, he reserves the right to refuse selective redemption of one of the properties unless he is also redeemed as to the others.

10.0 TERMINATION OF A MORTGAGE.

A mortgage is terminated by the repayment of the loan by the mortgagor. Where it is a leasehold interest that was mortgaged by assignment, the mortgagee is mandated to re-assign and release it to the mortgagor. In the case of a mortgage by sub lease the mortgagee must surrender and release the property to the mortgagor even if the sublease is a second or later mortgage.

In the case of an equitable mortgage there is no need for a reconveyance to the mortgagor. The debt on the property is discharged by the mortgagee's receipt for the mortgage money and interest.

11.0 RECONVEYANCE OF MORTGAGE

Where both the mortgagor and the mortgagee retain the same solicitor for the transaction, a deed endorsed on the mortgage instrument serves as a reconveyance. The reconveyance need not contain any recitals it is sufficient that the mortgagee as "mortgagee" conveys or surrenders to the mortgagor free from "all principal moneys and interests intended to be secured by the mentioned indenture's.

Under the statutes of limitation the mortgagee's legal estate is extinguished at the end of thirteen years from the date a mortgagee receives the mortgage money

12.0 CONCLUSION

Mortgages are transactions relating to land and the parties are expected to act in ultimate good faith. The contract is not expected to be couched in a such a manner as to frustrate the right of the mortgagor to claim his property on the repayment of the loan granted as this would render the mortgage transaction void.

13.0 SUMMARY

- (1) A mortgage is a conveyance of land or assignment of chattels as security for the repayment of a debt or the discharge of some other obligation for which it is given.
- (2) Provision for redemption is an essential element of a mortgage transaction.
- (3) In a mortgage transaction, the borrower is known as the "mortgagor" while the lender is known as the "mortgagee"
- (4) Where the mortgage relates to a fee simple interest, the mortgagor's entire beneficial interest resides in the mortgagee until the repayment of the loan.
- (5) Where the mortgage relates to a leasehold interest, what is conveyed to the mortgagee is the unexpired residue of the lease and the mortgagee is bound by the covenants touching and concerning the land.
- (6) In Nigeria, the Land Use Act 1978, prohibits the mortgage of a customary and statutory right of occupancy without the consent of the governor first had and obtained
- (7) Where a legal mortgage is sought to be created in favour of the holder of an equitable mortgage, the consent of the Governor is unnecessary.

(8) The mortgagor' has a right to collect his property back from the mortgagee once he has repayed the debt owed. His right to do so is referred to as the mortgagor's "equity of redemption"

(9) Any disturbance, postponement or termination of the mortgagor's right to redeem his property constitutes a clog on the mortgagor's equity of redemption and it is sufficient to invalidate a mortgage transaction.

(10) A mortgage transaction would either be legal or equitable.

(11) Where a mortgagor fails or neglects to meet with his obligation under a mortgage transaction, the mortgagee is entitled to obtain an order of foreclosure from the court. This terminates the right of the mortgagor to redeem the property and empowers the mortgagee to dispose of the property to recover the loan granted.

(12) In exercising his power of sale, the mortgagee is not expected to obtain the best price for the property but is expected to be reasonable and act in good faith.

(13) A mortgage transaction is terminated by the repayment of the loan granted or the acquisition of the security deposited by the non payment of the loan by the mortgagor

14.0 TUTOR MARKED ASSIGNMENT

1. Distinguish a legal mortgage from an equitable mortgage.
2. Examine the status of mortgage under the Land Use Act 1978
3. "Once a mortgage always a mortgage" Lord Lindley in *Samuel v Jarrah Timber Corporation* (1904) AC 323 What are the methods of creating mortgages?

15.0 SUGGESTED FURTHER READING /REFERENCES

ELIAS T.O. Nigerian Land Law (London: Sweet and Maxwell 1971)

NIKI TOBI Cases and Materials on Nigerian Land Law

LAW422

LAND LAW I

STATUTES:

Land Use Act 1978.