

# POWERPOINTS

*ON*

## PROPERTY LAW

NIGERIAN LAW SCHOOL

2020/2021

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(WEEK 3)

**GENERAL OVERVIEW AND APPLICABLE LAWS TO PROPERTY LAW  
PRACTICE  
MEANING AND SCOPE OF PROPERTY LAW**

**I. Meaning of Property**

The word property has a variety of meanings depending on the context in which it is used. Sometimes, it may mean ownership or title such as when it is said that property in the goods passes to the buyer immediately the contract of sale is concluded whether or not the goods have been physically transferred to him. It may mean the 'res' (thing) over which ownership may be exercised. It may also mean an interest in a thing less than ownership but nevertheless conferring certain rights such as when it is said that 'B' as pledgee has 'special property' in the subject matter of the security – ***Donald v. Suckling***.<sup>1</sup>

In whichever sense the word property is used, property law is designed to regulate the relation of persons to things thereby providing a secure foundation for the acquisition, enjoyment and disposal of things or wealth.

Property may also mean the right of a person to something tangible and physical, such as a parcel of land. It may also relate to something intangible such as a right in a work protected by copyright. This view finds support in **Section 2(1) of the Conveyancing Act 1881** which defines "property", to include real and personal property, any estate or interest in any property, real or personal, any debt, anything in action, any other right or interest. Land is depicted to include land of any tenure, tenements, hereditaments, corporeal or incorporeal and houses and other buildings, also an undivided share in land – **Section 2 of the CA**.

This course deals basically with property transactions (conveyance) and laws applicable to tangible or real property (land, anything attached to land or any interest in land).

**II. Meaning of Conveyance**

Conveyance is the application of the law of Real Property in practice. It is not often easy to differentiate between real property law and its practice, for while the former is static, the latter is dynamic. Real property law deals with the rights and liabilities of landowners, while its practice(conveyancing) deals with the art of creating and transferring rights in land. Yet, one cannot be a good conveyance without a good grasp of real property law. Conveyancing transactions may occur

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<sup>1</sup> (1866) LR 1QB, 585

in a number of situations such as sales of land, leases, and mortgages. Conveyances are described as including “assignment, appointment, lease, settlement and other assurance and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or any other dealing with or for any property”. However, a Will is an exception to a conveyance – **Section 2(1) of the PCL, 1959** because it is ambulatory (movable), which “...distinguishes a will from a conveyance...,” the latter being “*inter vivos*, which operates at once or at some fixed time.”

### III. Property Law Practice Jurisdictions and the States Covered By Each

1. **Property and Conveyancing Law 1959**: applicable to the old Western Nigeria - Edo, Delta, Oyo, Ogun, Osun, Ondo and Ekiti States.
2. **Conveyancing Act 1882**: applicable to the old Eastern (Rivers, Bayelsa, Cross-River, Akwa-Ibom, Ebonyi, Abia, Imo, Enugu, Anambra) and old Northern States (Kaduna, Sokoto, Zamfara, Kano, Borno, Adamawa, Katsina, etc.) and some parts of Lagos. Note that CA applies to some parts of Lagos, but when it comes to mortgages, in Lagos CA no longer applies. The applicable laws in Lagos for mortgages are: ***Mortgage and Property Law of Lagos (MPL)*** and ***RTL***.
3. **Registration of Titles Law of Lagos State 2003**: applicable to most parts of Lagos (Ikoyi, Lagos Island, Obalende, Victoria Island, Ebutte-Metta, some parts of Mushin, Yaba, Badagry, Apapa, Gbagada, Surulere, and Somolu). However, this law has been repealed by virtue of **Section 122 Land Registration Law Lagos State 2014**.

### APPLICABLE LAWS

#### I. Customary Law

This is a set of rules of conduct applying to persons and things in a particular locality, which exist at the relevant and material time and is recognised and adhered to by the inhabitants of the community as binding on them. Custom is usually a question of fact which is required to be pleaded and proved by witnesses in any legal proceeding – ***Olubodun v. Lawal***;<sup>2</sup> ***Odutola v. Sanya***.<sup>3</sup> These rules and customs vary from one society to another. The simple requirements of payment of the purchase price; the presence of witnesses; and allowing the buyer into possession, are sufficient elements for sale under native law and custom in Nigeria. Once these 3 elements exist, a valid sale could be said to have taken place – ***Adesanya v. Aderonmu***.<sup>4</sup> However, the provisions of

<sup>2</sup> (2008) All FWLR (Pt. 438) p. 1468

<sup>3</sup> (2008) All FWLR (Pt. 400) p. 780

<sup>4</sup> (2000) FWLR (Pt. 15) p. 2492

the CA and PCL do not regulate customary transactions of land – See ***Olubodun v. Lawal (supra)*** where the SC held that the trial court erred in admitting such a document (a letter written by their ancestors tendered by the plaintiff) in evidence. **II. Islamic Law**

Islamic law is one of the sources of law applied by the courts in Nigeria to regulate legal relationships especially by and among adherents of the Islamic faith or where the parties are not of Islamic faith, but consent to the application of Islamic law to regulate their relationship. See **Section 277(1) CFRN 1999**. Islamic law is founded on the provisions of the Koran and the Hadith (primary sources of Islamic law) which regulate the facets of life of Muslim.

Transactions relating to property such as succession, wills, gifts, rights, obligations and interest in land are regulated by Islamic law and applied by the courts in Nigeria. For instance, the distribution of the estate of a deceased Muslim is set by Islamic Law and compliance is mandatory. See ***Abdulsamad v Abdulahi***.<sup>5</sup>

### **III. Case Law**

These are decisions of the courts and opinions expressed by jurists in respect of disputes over real property that may be brought by contending parties before and decided by the courts. Some of these courts exercise original jurisdiction in respect of certain subject matters of land. The jurisdiction of the High Court also covers land matters that are the subject of customary right of occupancy or those in non-urban areas – ***Adisa v. Oyinwola***;<sup>6</sup> ***Odetola v. Bamidele***.<sup>7</sup> In some States, appeals over land matters decided by the Area or Customary Courts may be dealt with on appeal by the High Court. However, customary arbitrations are accepted by higher courts as binding on the parties to the arbitration but decisions at customary arbitration is not considered as a means of proving title to land in Nigeria, although it may aid in establishing the traditional history of root of title based on the custom of the people – ***Nruama v. Ebuzoeme***.<sup>8</sup>

Appeals may lie from the decision of a lower court to a higher court. As a result of the common law principle of *stare decisis*, the judgment and opinions expressed by a superior court binds a lower court and the latter must follow such decision so long as the facts of the cases are similar.

### **III. Received English Law**

This is the law received from England comprising of the principles of common law, doctrines of equity and statutes of general application. These principles

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<sup>5</sup> (2015) All FWLR (Pt. 789) 916

<sup>6</sup> (2000) 10 NWLR (Pt. 674) p. 1349

<sup>7</sup> (2007) All FWLR (Pt. 387) p. 841

<sup>8</sup> (2007) All FWLR p. 347 at 740

apply to regulate property practice in Nigeria, particularly over disputes that are tried before the High Courts and other superior courts. The statutes of general application are those enactments of the English parliament that were in existence in England as at 1<sup>st</sup> January, 1900, the day in which the protectorates of Northern and Southern Nigeria were proclaimed e.g. **Statute of Fraud 1677, Conveyancing Act of 1881, and the Wills Act of 1837**. The English law applies to property transactions in Nigeria where there is no comparable local legislation or customary law that applies to such a transaction – **Ude v. Nwara**.<sup>9</sup>

#### IV. Nigerian Legislation

The various laws that have direct impact on property transactions that are intended to be discussed in the module are:

**Constitution of the Federal Republic of Nigeria, 1999** – The constitution affects property as regards to **Section 43** which provides for the right of every citizen to acquire and own immovable property anywhere in Nigeria. **Section 44(1)** also went further to enact the Common

1. law principle that leans against the taking away of proprietary vested rights without specific legal authority and the provision of compensation. **Section 44(2) (c)** went further to state that the power of compulsory acquisition does not affect any general law relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts. **Section 44(2) (d)** relates to vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up. Finally, **Section 315(5) (d)** provides for the sanctity of the Land Use Act.

**Land Use Act 1978** – An Act to Vest all Land comprised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State, who would hold such Land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agriculture, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments. **Section 1** provides that the Governor of each state shall hold the land comprised in such State upon trust and administer same for the use and common benefit of all Nigerians – **Abioye v. Yakubu**.<sup>10</sup> What private individuals have on the land is a *right of occupancy* – **Kachalla v. Banki**.<sup>11</sup>

<sup>9</sup> (1993) 2 NWLR (Pt. 278) p. 647

<sup>10</sup> (1991) 5 NWLR (pt. 190) p. 130

<sup>11</sup> (2006) All FWLR (Pt. 309) p. 1420

2. This is the greatest and highest legal interest a holder can have – **Section 5(1); Ezennah v. Attah.**<sup>12</sup> **Section 4** preserves the application of the State Land Law except that they will continue to have effect with such modifications as would bring those Laws into conformity with the Act or its general intendment. **Section 49** precludes the courts from questioning the Governor's power to grant right of occupancy. **Section 26** renders void any alienation of interest in land without consent.
3. **Property and Conveyancing Law (PCL) 1959** – This is enacted by Western region of Nigeria commonly referred to as PCL. The most important features of this law is that no sale of land shall be enforced except there is a note of memorandum in writing containing the terms of the sale and signed by the person to be charged – **Section 67(1) of PCL**; all conveyances of land or interests in land for the purposes of creating any legal estate are void unless they are made by deed – **Section 77(1) and 78(1) of PCL**; where a person executes a deed, he shall either sign or place his mark on it and sealing alone is not sufficient – **Section 97(1) of PCL**; and the right to create leases are safeguarded so long as certain elements exist in it – **Section 79(2) of PCL**.

**Conveyancing Acts (1881, 1882)** – These are English Statute of General Application applicable to States of the old Eastern and Northern Nigeria and a part of Lagos. These statutes have been repealed and modernised in England and there is no justification for their being retained in our statute books in

4. Nigeria – **Ihekwoaba v. ACB and Ors.**<sup>13</sup> However, States are advised to stop applying these English Statutes of General Application. In the case of **Caribbean Trading Fidelity Corporation v. NNPC**,<sup>14</sup> Niki Tobi JCA (as he then was) held that “English is English, Nigeria is Nigeria... theirs are theirs, ours are ours... We cannot therefore continue to ‘enjoy this borrowing spree’ or merry frolic’ at the detriment of our legal system... After all, we are no more in slavery”.
5. **Stamp Duties Act/Law 2004** – There is a Stamp Duty Act for every State and FCT, which provides for the procedure for stamping of documents. Duty on land within the control of the State is paid to State Internal Revenue Service. Stamping of documents should be within 30 days of the execution of the document though it may be stamped out of time, which will attract penalty.

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<sup>12</sup> (2004) All FWLR (Pt. 202) p. 1858 at 1884

<sup>13</sup> (1998) 10 NWLR (Pt. 571) 590 at 626

<sup>14</sup> (2002) 14 NWLR (Pt. 786) p. 133

**Illiterate Protection Laws (IPL) 1994** – This is a law made to protect illiterate persons involved in transactions generally. “It is like a very wide umbrella and covers all forms of writing or document written at the request of an illiterate person” – ***Lawal v. G.B. Ollivant***.<sup>15</sup> Any person who shall write any letter or document, at the request on behalf or in the name of an illiterate person shall also write on such letter or other document in his own name as the writer and his address – **Section**

6. **2 of the IPL.** The importance of these protections is for the benefit of the illiterate person – ***Fatumbi v. Olanloye***.<sup>16</sup> Further, where the illiterate person is to sign or to make a mark, the document must be read over and explained to him. The object of this law is to protect an illiterate person from possible fraud.
7. **Land Instrument Preparation Laws** – These laws require that the preparation of instruments and documents on sale or transfer of land can only be done by a Legal Practitioner.
8. **Land Instrument Registration Laws** – this laws require that instruments used in land transactions should be registered. Any instrument that those not contain a proper description (plan) of the land affected will not be registered. However, the non-registration of such instruments will not render it inadmissible in court – ***Benjamin v. Kalio***.
9. **Land Registration Law, Lagos State 2014:** this law came into force on 21<sup>st</sup> January 2015. It consolidates the numerous laws on lands registration in Lagos State. It also repeals the following laws by virtue of it Section 122 – *the Registered Land Law of Lagos State 2003; the Registration of Titles Law 2003; the Registration of Titles (Appeals) Rules, 2003; the Land Instrument Registration Law 2003; and the Electronic Documents Management System Law, 2007*. The intention of the Lands Registration Law is to ensure that every document of interest or title to land in Lagos State is registered in accordance with the tenor of the law – **Section 2**. The law requires that transactions and documents evidencing the transactions should be registered (transfers, leases, mortgages and powers of attorney)
10. **Wills (Amendment) Act, 1852** – This has been replaced in most states by the Wills Laws.
11. **Wills Laws of States (Lagos, Oyo, Abia, Kaduna, Jigawa)** – The major aim of this law is that freedom to make Wills and dispose of estate by every person is guaranteed; the right of testation is sometimes restricted by imposing limitations on the maker of the Will in respect of the disposition of

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<sup>15</sup> (1972) 3 SC 124

<sup>16</sup> (2004) All FWLR (Pt. 225) p. 150



his estate; there are requirement for the validity of a Will; witnesses are required for making and revoking Wills; and there are provisions to ensure that a Will does not lapse as a result of the death of the beneficiaries.

12. **Administration of Estates Laws of States** - This law regulates the administration of the estate of a deceased person who dies intestate or testate. The law substitutes local provision on intestate succession with English law on intestate.
13. **Companies and Allied Matters Act (CAMA)** – The Act permits registered companies under the Act to mortgage their properties by the creation of debentures over the assets of the company. **Section 166 of the Act** states that a company may borrow money for the purpose of its business or objects and may mortgage or charge its undertaking, property and uncalled capital and issue debentures, debenture stocks and other securities for any debt, liability or obligation of the company. 'Property' in the section includes land or any interest in land which the company has.
14. **Other Laws:** other laws that apply to property transactions are - *Land Use Charges Law; Land Instrument (Remuneration for Legal Documentation and Other Land Document) Order 1991; Evidence Act 2011; Legal Practitioner's Act; Rules of Professional Conduct; Statute of Fraud 1664; Interpretation Act; Law Reform Contract Law; Capital Gains Tax Act; Personal Income Tax Act; Company Income Tax Act; Value Added Tax Act; Vendor and Purchaser Act 1872; Tenancy Law of Lagos State; and High Court (Civil Procedure) Rules of the various state.*

### **FACTORS DETERMINING THE APPLICABLE LAWS ON A PARTICULAR PROPERTY LAW**

1. The parties
2. The nature of the transaction
3. The location of the property/transaction
4. The means of effecting the transaction

### **TAXES IN PROPERTY LAW**

1. **Capital Gain Tax:** Capital gains tax is paid on the following transactions namely: Sale, Lease, Transfer, Assignment, and Compulsory acquisition - **Section 6(1) CGTA**. Ideally because it is the transferor that is benefiting, he should pay but because payment of the tax is a condition precedent to perfection of title, it is the transferee in practice that pays. Capital gains tax is not paid on mortgage transaction because there is no gain in mortgage. It is also, not paid in gift of land. It is not applicable to churches, mosques, schools as charitable institutions.

2. **Personal Income Tax:** Personal Income Tax is regulated by ***Personal Income Tax Act***. This tax is paid by individual, a group or business and not a limited liability company. An individual may be assessed on the pay as you earn scheme -PAYE and upon payment of tax, a tax clearance certificate is usually given. Relevant authority or state where the personal income tax can be paid to is determined by residence - where the person resides and not where he works.
3. **Value Added Tax:** The value added tax governed by the ***Value Added Tax Act*** is tax paid on goods and services. Professional services rendered by legal practitioners come into play here. First, a legal practitioner is expected to have an account with the authority in charge of value added tax. The value added tax is 5% of the legal practitioner's fees. The VAT is not retained by the legal practitioner but remitted to the relevant authority by Federal Inland Revenue Services. VATable person includes all professionals and legal practitioner is a professional. The Federal Inland Revenue Services is in charge of VAT.
4. **Company Income Tax:** Companies Income Tax is regulated by the ***Companies Income Tax Act***, and it is paid by companies to the Federal Inland Revenue Services.
5. **Consent Fees:** Consent fee is the payment made in obtaining the consent of the Governor of a state in furtherance of ***Section 22 Land Use Act***. Consent is obtained in lease, assignment, mortgage and other form of alienation of interest. The fee is paid to Governor through the Ministry of Land. In Lagos state, the rate payable is 8% of the assessed value of the property. Only the states of the federation can collect this fee.
6. **Estate Duty:** This is payable in respect of a deceased's real and personal property. The amount payable as estate duty is 10% in Lagos state and it is calculated based on the gross value of the estate.
7. **Registration Fees:** This is the fee paid for the registration of instrument at the Land's Registry. In Lagos state, it is calculated at 3% of the assessed value of the property. This is payable to the government of each state.
8. **Tenement Rate/Property Tax/Land Use Charge:** This is charged by virtue of the ***Tenement Rate Law*** of the various states. The tenement rate is payable annually on buildings situated within a particular local government area. It is also known as the property tax in some areas. In Lagos state, it forms part of land use charge under the ***Land Use Charge Law of Lagos***. The considerations for the land use charge are: The location of the property; the purpose for which the property will be used; and nature of the property. Land use charge is assessed annually.

## TRANSACTIONS IN PROPERTY LAW

### I. Modes of Acquiring Interest in Land in Nigeria

1. First settlement and deforestation of virgin land
2. Conquest during tribal war
3. Customary grant of land
4. Sale of land
5. Inheritance or devolution of land

### II. Types of Transactions in Land

1. **Pledge of Land** – This exists where a person referred to generally as the ‘Pledgor’ gives or deposits any land or interest in land to another party, referred to as the ‘Pledgee’ in which the person depositing the property binds himself to do or forbear from doing a particular thing. In this case, only possession is given as the title or the legal interest in the land is not transferred. In a pledge, land is usually put as a security to get something from the Pledgee. In an action to prove a pledge of land before a court, it is generally accepted that the person alleging pledge must establish (a)the pledge itself; (b)the parties to the pledge; (c)the witnesses, time and circumstances of the pledge; and (d)the consideration for the pledge – ***Anyaegbunam v. Osaka***.<sup>17</sup> The right of the Pledgor to recover possession of the land remains with him and is never extinguished hence the cliché: “once a pledge, always a pledge”. Finally, in a pledge, the land is redeemable however how long it might have been in possession of the Pledgee – ***Akuchie v. Nwamadi***.<sup>18</sup>

**Gift of Land** – This in property practice is the voluntary transfer or conveyance of any interest in land made gratuitously to a recipient and without any consideration paid by the recipient. The essential quality of a gift is that it lacks the element of bargain based on *quid pro quo* by which a sale is characterised – ***Dung v. Chollom***.<sup>19</sup> There are certain conditions which must exist to make a gift valid (a)intention of the donor to make the gift; (b)completed act of delivery to the recipient; and (c)acceptance of the gift by the beneficiary (recipient) – ***Achodo v. Akagha***.<sup>20</sup> Once a gift of land has been made and accepted, the grantor’s right over the land is destroyed and he cannot lay claim to it

2. thereafter – See ***Anyaegbum v. Osaka (supra)*** where the SC held that the donor has no right to revoke the gift once it has been accepted. In 1978, the appellant made a gift of land in Onitsha to the defendants for the land to be used to worship God. That appellant later ceased to be a member of the church, took the Ozo title and sought to revoke the gift. His action failed as

<sup>17</sup> (2000) FWLR (Pt. 27) p. 1942

<sup>18</sup> (1992) 8 NWLR (Pt. 258) p. 214 at 226

<sup>19</sup> (2003) FWLR (Pt. 220) p. 738 at 745

<sup>20</sup> (2003) FWLR (Pt. 186) p. 612

the gift was absolute upon acceptance. However, where it is subject to forfeiture, it amounts to a tenancy not a gift. The parties in a gift transaction are Donor and Donee.

3. **Sale of Land** – A contract of sale of land is an agreement whereby the vendor promises to sell and the purchaser to buy the land in question. It is a binding agreement that the courts will enforce if necessary. The most important significance of this agreement is that it allows the purchaser ample time to investigate the title of the vendor. The parties to the transaction are Vendor and Purchaser. The Vendor's solicitor is to prepare the Formal Contract of Sale of Land.
4. **Leases/Sub-Lease** – This is a written agreement under which a property owner(landlord) allows another (tenant) to use the property for a specified period of time and rent and known as a Landlord/Tenant relationship. A tenancy is a lease which is 3 years and below while a lease is one above 3 years. The parties are Lessor/Sub-Lessor and Lessee/Sub-Lessee. The lessor's or sub-lessor's solicitor is to prepare the Deed of Lease (Sub-Lease).
5. **Tenancy:** the parties are the Landlord and Tenant. The Landlord's solicitor is to prepare the Tenancy Agreement.
6. **License** - Permission to engage in a certain activity, granted by the appropriate authority.
7. **Mortgage and Charge of Land** – This is generally the conveyance of a legal or equitable interest in a property with a provision for redemption, that is, the conveyance shall become void or the interest shall be re-conveyed upon the repayment of the loan – **B.O.N Ltd v. Akintoye**.<sup>21</sup> The borrower is called the mortgagor or charger while the lender is the mortgagee or chargee. The Mortgagee's solicitor is to prepare the Deed of Mortgage. The lender may sell the security to realise the money advanced where the borrower fails to repay.
8. **Donation of Power** – This is an agency relationship by which a person gives power to another so that the agent acts on behalf of the principal in respect of specific transactions affecting land, such as to let out premises and collect rent, or to sell property and execute the document of sale. The parties are the Donor and Donee. The Donor's solicitor is to prepare the Power of Attorney.
9. **Assignment:** the parties are Assignor and Assignee. The assignor's solicitor is to prepare the Deed of Assignment.

**Will and Codicil:** the parties are the Testator/Testatrix, Executors/Executrixs and Beneficiaries. The testator's solicitor is to prepare the Will. There is a difference between a will and a codicil in spite of the fact that they are both

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<sup>21</sup> (1999) 12 NWLR (Pt. 392) p. 403

testamentary documents. For there to be a codicil, there must have been a will in existence. A codicil amends, revoke and add to the provision of a will. Also, it revives and republishes a will. In respect of a will, probate will be granted, and in respect of an

10. intestate estate, letters of administration will be granted. In respect of a testate estate where there is no executor, letter of administration can be granted.
11. **Assent:** the parties are the Executors and Beneficiaries. The Executors' solicitor is to prepare the Assent (which is not in a Deed form). Assent is issued by the personal representative to the beneficiary before the property can be vested in the beneficiary. A will must be in existence before an assent can be issued.

### III. Property Transactions, Parties, Documents Involved

12. intestate estate, letters of administration will be granted. In respect of a testate estate where there is no executor, letter of administration can be granted.
13. **Assent:** the parties are the Executors and Beneficiaries. The Executors' solicitor is to prepare the Assent (which is not in a Deed form). Assent is issued by the personal representative to the beneficiary before the property can be vested in the beneficiary. A will must be in existence before an assent can be issued.

### ETHICAL ISSUES

1. **Dealing with Client's Property - Rule 23(1) of the RPC** provides that a lawyer shall not do any act whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client. **Rule 23(2) of the RPC** provides that where a lawyer collects money for his client, he shall promptly report, and account for it, and shall not mix such money or property with, or use it as his own.
2. **Seal and Stamp – Rule 10(1) RPC** provides that a lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Governmental department or Ministry or any corporation, shall not sign or file a legal document unless there is affixed on such document a seal and stamp approved by the NBA. **Rule 10(2)** provides that for the purpose of this rule, "legal documents" shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents. **Rule 10(3)** provides that if, without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2), and in any of the capacities mentioned

in sub-rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed.

3. **Advice as to Applicable Laws:** A legal practitioner has to advise his client appropriately according to the applicable laws to a given situation. See ***NBA v Akintokun***<sup>22</sup>
4. **Prepare Document having regard to Applicable Law:** a legal practitioner has to prepare a document having regard to the applicable law to that document. See ***Olufintuyi v Barclays Bank***.<sup>23</sup>
5. **Observing and Applying the Relevant Law:** Throughout his representation of his client, a solicitor should observe and apply the relevant law to a particular situation.
6. **Careful Use of Precedents:** Carefully make use of precedents and not to wholly adopt their contents to the document under draft.

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<sup>22</sup> (2006) All FWLR [Pt. 133] 1720

<sup>23</sup> (1965) NMLR, 142

**(WEEK 4)**  
**DEEDS**

A Deed is a legal document signed, sealed and delivered. A legal document may either be executed under hand or under seal. A Deed is used to confer or extinguish legal rights in favour of a person.

**Every Deed**

1. Must be written on paper
2. Must be signed, sealed and delivered as the act and deed of the person executing it; and
3. there must be intention to be bound, that is create legal relationship.

**SIGNING – See section 83**

(4) Evidence Act, 2011 to the effect that an unsigned document is worthless. In the case of an illiterate, a mark or thumb print would suffice provided there is a jurat. S.3 Illiterate Protection Act.

**SEAL** – Red adhesive paper or wafer pasted at the bottom right of a deed opposite the intended place of signature. However, the strict requirement of sealing has been down played by both judicial and statutory authorities provided there is an intention by the parties to affix the seal.

See **First National Securities Ltd V Jones (1978) W.L.R 475. See also S.159 Evidence Act, former S.127** which provides that a Deed is presumed to have been sealed if there is signature and attestation. For companies **S.74 CAMA** provides that all companies must have a common seal, the use of which is regulated by its Articles of Association and S.163 (1) & (2) which provides that where a Deed of a company is duly sealed in the presence of and attested by an appropriate official, then there is a presumption of due execution.

**DELIVERY** – Not physical delivery. It is used in a technical sense, which is an intention to be bound. Exact time of delivery is a question of fact. Delivery could be absolute or conditional which is a delivery in escrow and it becomes binding when the condition is fulfilled.

Where the condition is performed, the effective date of delivery is the date the instrument was executed as escrow and not the date that the condition was performed. Examples of conditional delivery are balance of payment and fulfilment of Governors consent.

Parties remain bound even if it is conditional until the expiration of time agreed for the performance of the condition.

**ATTESTATION** –This is a 3<sup>rd</sup> party confirming/witnessing the execution of the instrument by the parties. It is necessary to prove due execution. **S.103 – 108 Evidence Act.** But where any of the parties, especially, the vendor is an

illiterate, it must be attested by either a Magistrate, Notary Public or Justice of Peace. **CONSENT OF GOVERNOR** - Where it relates to transfer of interest in land in the Urban areas, the Deed should be with the consent of the Governor which ought to be endorsed on the deed.

**WHERE A DEED IS REQUIRED UNDER LAND TRANSACTIONS : Section 77**

**(1) PCL** – All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed. This section does not apply to the following-

- a. Assents by a personal representative
- b. Surrenders by operation of law, including surrenders which may, by law, be effected without writing;
- c. Leases or tenancies or other assurance not required by law to be made in writing.
- d. Receipts not required by law to be under seal.
- e. Vesting orders of the court or other competent authority.
- f. Conveyances taking effect by operation of law.

**NOTE THE FOLLOWING:**

1. Absence of date in a deed does not invalidate it. See *Awojugbagbe Light Industries Ltd v. Chinukwe & Ors*; *Anuku v Standard Bank*.
2. Types of Recitals – Narrative Recital ( discloses history of property)  
Introductory Recital ( discloses intention of the parties to the current transaction)

**EFFECT OF RECITALS –**

- a. Create estoppel between the parties – *District Bank Ltd V Webb*
- b. Facts stated in recitals that are twenty years old as at the date of transaction are presumed correct
- c. Helps in the construction of ambiguous operative parts  
**Effect of Receipt Clause – S.93, 94, 95, PCL, S.54, 55, 56 C.A**

- a. Makes irrelevant the issuance of a fresh receipt
- b. Evidence of payment to a subsequent purchaser
- c. Evidence of authority of solicitor of Vendor to receive payment. **Effect of Beneficial Owner S.100 PCL, S.7 C.A**

- a. Good title b. Quiet possession c. No encumbrance d. Further assurances e. If it is a lease (i) That the lease is valid and subsisting (ii) Rents have been consistently paid, and other covenants in the lease observed.

Note the various forms of drafting the execution clause, where parties are natural persons; attorney; artificial persons e.t.c

Where a Vendor transfers a part of his land to a purchaser.

- a. The Vendor has the right to retain the original title documents



b. The Purchaser will be protected by a clause of acknowledgement of right to production and safe custody of the title documents

c. Endorsement on the Original Title of the fact that a part of the land is sold to the purchaser. **FORM AND CONTENT OF A DEED NOTE: THE FOUR PARTS OF A DEED. Under each part are contents.**

#### **INTRODUCTORY PART**

**Introductory part:** This consists of preliminary matters such as commencement, date, parties and recitals/background/This deed recites as follows/WHEREAS

#### **OPERATIVE PART**

This starts with the testatum and it provides for other important clauses such as the consideration, receipt clause, covenant for title, operative words, parcel clause, habendum This is the part that transfers the interest from the transferor to the transferee.

#### **MISCELLANEOUS PART**

This includes such clauses as the indemnity clause and acknowledgement for safe custody and production clause, etc.

#### **CONCLUDING PART**

This starts with the testimonium and provides for the schedule (if any) , the execution and attestation clauses.

#### **PLEASE NOTE**

Note how to draft the following clauses Testimonium Execution and attestation clauses where the parties are natural persons artificial persons a natural person and an artificial person, - - - where a party is an illiterate or a blind person, - where a party is executing through an attorney Where an agent executes on behalf of a party Members of a family

## (WEEK 5)

### POWER OF ATTORNEY (ONLINE VIRTUAL CLASS)

- A power of attorney (POA) is a document in writing giving one person (the agent or attorney or donee) the power to act for another person (the Principal or donor).

- see **UDE v. NWARA**.

### AUDIO 1

- A power of attorney may be for valuable consideration or coupled with interest.
- Usually made to be irrevocable either absolutely or for a fixed time (usually 12 months).
- The attorney acts and executes document in the name of the donor.
- He cannot sue in his own name but in the name of the principal.
- Generally, the attorney acts and executes document in the name of the donor.
- The donee of a Power of attorney cannot sue or execute a conveyance or lease (such as Deed of Assignment or Deed of Lease) in his own name but must sue/ execute in the name of the principal. - See **UDEH v. NWARA**; **NTIA v. JONES**.

### FEATURES OF A POWER OF ATTORNEY

- It is basically a document of delegation of authority only.
- It is not an instrument of conveyance or transfer of interest in land/property. - **AMADI v. NSIRIM**; see also **IBRAHIM v. OBAJE**
- It is usually but not necessarily irrevocable as it can be revocable depending on the purpose for which it is created 3-Aug-20 7
- It is usually but not necessarily by deed or under seal
- The person that appoints and confers power and authority is called the donor/ principal
- The person that is appointed and conferred with power and authority to perform certain acts on behalf of the donor/principal is called donee/attorney/ agent.

### HOW IS A P.O.A. CREATED?

- The purpose of a POA determines the mode of creating it.
- in writing;
- by Deed (under seal).
- *Nevertheless, it is important that a POA should be created in writing, at least.*

- If the authority conferred on the attorney empowers him/her to execute a deed, the POA must be by deed.
- A deed executed by a donee whose power is conferred verbally will not be enforced. -**A BINA v. FARHAT - POWELL v. LONDON PROVINCIAL BANK**

**VERY IMPORTANT, PLS :**

- POA, basically, is NOT an instrument that confers, transfers, alienates, limits or charges any title/interest in land to the attorney/donee, it is only an instrument of delegation.

**NOTE:**

- So long as the donee acts within the authority conferred on him by the donor, he incurs no personal liability. Any liability is that of the donor. - **UDE v. NWARA**; see also **SS. 46(1), 47(1) CA (1881); S.141 (1) PCL.**

**DIFFERENCES BTW A POA & CONTRACT OF SALE (COS)**

- POA necessarily need not be given for consideration \*\* COS requires consideration to be valid POA requires no exchange \*\* COS must be exchanged to bind the parties POA is a registrable instrument (ss.2&18 LRL) \*\* COS generally not registrable except under the PCL [s.2(1)] and any other laws that so requires (Eastern Nig. – OKOYE Vs. DUMEZ) POA does not transfer interest in land \*\* COS transfers equitable interest in land.

**DIFFERENCES BTW A POA & A CONVEYANCE**

- POA requires no Governor's consent unless irrevocable POA in Lagos \*\* CONV. requires Governor's consent under the LUA
- POA could be revocable \*\* CONV. is not revocable
- POA could be used in other instances not related to land \*\* CONV. is used only for transactions relating to interest in land
- POA only requires to be by deed in specific instances \*\* CONV. always requires to be by deed
- POA does not transfer interest in land \*\* CONV. Transfers interest in land
- POA is usually executed only by one party (the donor) \*\* CONV. is usually executed by two or more parties
- POA is an example of a deed poll \*\* CONV. is an example of an indenture

**CAPACITY**

- The donor and the donee must be persons in law Capable of suing and being sued (juristic persons)

**NOTE:**

- Infant, a bankrupt, insane person, unincorporated entity – lacks capacity to be donor.
- Partnership firm, insane person, infant, unincorporated entity, a bankrupt – lacks capacity to be appointed as attorney/donee.

**NOTE:**

- A power of attorney given by a minor who is a married woman is NOT void.  
- **S. 146 PCL –**  
- **ZOUCH ABBOT & HALLET v. PARSON.**
- A non-juristic person cannot sue nor be appointed a Donee. - **N.B.N. LTD. v. KORBAN BROS.**

**APPOINTMENT OF TWO ATTORNEYS BY ONE INSTRUMENT**

**NOTE:**

- A donor can appoint two or more attorneys by same instrument.  
- Also, one or more persons (donors) can jointly and severally appoint one or more persons as attorney(s).
- Granting of a POA to the donee does not stop the donor from exercising the same powers or deals with the subject matter of the power. see **EZEIGWE v. AWUDU; CHIME v. CHIME; UDE v. NWARA**

**NOTE however:** where the POA is given for valuable consideration or the donee/ attorney executed the power before the donor did.

**NOTE:**

- Where the donor sells the property outside (dehors) the power, the only issue that will arise is one of priority in the competing sales. - **AMADI v. NSIRIM - ONAYEMI v. IDOWU**
- POA is construed strictly with reference to the content of the general object of the power. - see **N.B.A. v. ITEOGU**
- The powers conferred by the POA must be adhered to strictly, otherwise the third party will be unable to claim against the donor. **IDOWU v. ABAYOMI.**

**NOTE:**

- The inclusion of the words: “ ***...AND my attorney may do all other things as I may lawfully do***” , will not add to the specific power(s) granted by the donor neither will it enlarge the power. - **ABINA v. FARHAT; JACOBS v. MORRIS.**

### WHEN A POA IS REQUIRED

1. Unavailability of the donor to personally or physically deal with the subject matter of the power being delegated. - **EZEIGWE v. AWUDU - UDE v. NWARA - CHIME v. CHIME.**
2. Difficulties to handle his (donor) affairs in respect of the properties due to ill health or physical disability
3. To secure interest of purchaser pending the perfection of title or performance of an obligation owed the donee
4. Expert skills of the donee is required in respect of the subject matter.

### NOTE PLS:

- Some legislations may also require certain procedure for the use of a POA in property transactions. - See **S. 56(1)-(6) LRL, Lagos.**
- Non compliance with the provision of such law may result to criminal violation. - See **S. 56(7) LRL.**

### NOTE:

- POA on its own without more CANNOT convey or alienate a conclusive interest in property (land). see **AMADI v. NSIRIM.** . See however **ACB v. IHEKWOABA; Ibrahim v. OBAJE** see also S. 57 LRL.
- For a conclusive interest in land to be conveyed or transferred, Deed of conveyance or transfer or assignment is the ideal instrument. - **EZEIGWE v. AWUDU.**

### NOTE HOWEVER:

- The recent decision of the **SC in IBRAHIM Vs. OBAJE** (2018).
- The peculiar decision of the apex court notwithstanding: - the age long principle that a POA without more, on its own cannot transfer interest in land still stands.  
- Power of attorney still remains an instrument of delegation, pronto.

### RECITAL IN A POA?

#### NOTE:

- It is rare for a power of attorney to have recitals
- However, it may be considered necessary where the donor(s) seek to show the consent of other principal members of the family to give the POA.

### SCOPE OF POWER

- The scope of power in POA can be: General or Specific see **CHIME v. CHIME; VULCAN GASES LTD. v. G.F.I.G**

### TYPES OF POA

- Revocable (generally it is)
- Irrevocable - See **S. 9(1) CA (1882) & S. 144(1) PCL** (given for valuable consideration or not for a fixed time)  
- LABABEDI VS. ODULANA

### ANY NEED FOR ATTESTATION?

- see **S. 150 Evidence Act (2011)**; see also **s. 85 of the Indian Evidence Act.** - If to be executed/used outside Nigeria (or in Nigeria) it advisable to be attested by a **NOTARY PUBLIC/a JUDGE/a MAGISTRATE.** **UTCHEON v. MANINGTON.** - **A YIWOH v. AKOREDE.** - **UZOECHI v. ALINNOR**

### NOTE PLS:

- Absence of presumption of due execution and authentication by a notary public/a Judge/a Magistrate, in terms of **S. 150 E.A.**, does not mean that the Power of attorney is invalid. - **M ELWANI v. FIVE STARS IND. LTD.** see also **s. 149 E.A.; GRAFITEK INT'L v. K.K. KAURA & ORS.**

### PERFECTION OF A POWER OF ATTORNEY

- **STAMPING**  
- POA attracts a fixed stamp duty
- **REGISTRATION**  
- depends on the LRL of each State and non registration renders it inadmissible in evidence like any other deed. - See **OJUGBELE v. OLASOJI.** - see also **S.56 (2) LRL, Lagos.**

### GOVERNOR'S CONSENT

- not generally required as a POA is not an instrument for transfer of interest in land. - see **ss. 21, 22 & 26 L.U.A.**
- **HOWEVER**, consent is required in Lagos State where the POA is meant to alienate interest in land (Irrevocable POA). - see **S.57 LRL., Lagos.**

### REVOCATION OF A POA

- **EXPRESS:** - **ADEGBOKUN v. ADESANYA**
- **IMPLIED** - see **CHIME v. CHIME**

- OPERATION OF LAW (death, insanity, bankruptcy or legal disability of the donor) See **S.8(1) CA 1882; S.143(1) PCL.**

### **EXCEPTIONS TO REVOCATION BY OPERATION OF LAW**

- POA given for valuable consideration or coupled with interest and stated to be irrevocable. see **s. 8 CA; S. 143 PCL.**

#### **NOTE:**

- Where the POA is stated to be irrevocable for a fixed time, usually 12 months (it remains irrevocable until the 12 months lapses); - see **s. 9 CA & S. 144 PCL.** The donor can neither revoke nor do anything that will affect the validity or continuance of the power delegated, without the consent of the donee. see **s. 141-146 PCL; SS. 56-57 LRL, Lagos.**

### **INFORMATION REQUIRED TO DRAFT**

- Name, address and occupation of the donor
- Name, address and occupation of the donee/attorney
- Purpose of the POA
- Whether there is a consideration or not
- Whether it will be expressed to be irrevocable or not.

### **PARTS OF A POWER OF ATTORNEY**

- Commencement
- Appointment clause
- Power clause
- Irrevocability clause (not always)
- Testimonium
- Execution/attestation

### **ASSIGNMENT**

#### **READ THE FOLLOWING CASES:**

- (i) Ibrahim Vs. Obaje (2018) All FWLR (pt. 937) 1682
- (ii) Ezeigwe v. Awudu (2008) 11 NWLR (pt. 1097) 158
- (iii) Chime v. Chime (1995) 6 NWLR (pt. 404) 734
- (iv) Ude v. Nwara (1993) 2 NWLR (pt. 278) 638
- (v) Abina v. Farhat (1938) 14 NLR 18
- (vi) ACB Ltd and Others v. Ihekwoaba and others (2004) FWLR (pt 194) 555

Nnamdi Ali is a retired Director of Procurement in the Ministry of Defence, Abuja. He is from Ogidi in Anambra State. He lives at Plot 86 Golf Club Road, Awka. Because of his family business background and the money, he made while in service, Ali became very rich and is now a successful entrepreneur. He has great investments in tourism, real estate and aviation. In 2015, he registered a company in Pretoria, South Africa with the main object in manufacturing, Oil and Gas. He has concluded plans to set up a huge mechanized farm at Ado Odo in Ogun State. Being mindful of his busy schedule and limited time to personally oversee and manage his businesses in Nigeria, he is at a loss as to what he can do with his wide investments without any set back.

He has granted term of years to different people with respect to some of his properties located at:

1. No. 12 Regina Road, Port Harcourt, Rivers State;
2. Plot X16 Jamjam Way, Abuja,
3. No. 104 Adam Road, Asaba, Delta State
4. Plot 96H North Bank Road, G.R.A., Enugu and
5. No. 45 Ebega Road, Lagos.

The terms of lease on most of the properties will lapse in the second quarter of 2020.

Ali is desirous of creating further term of years and/or transfer of his unexpired residue in some of the properties. Occasionally, he engages his cousin, Gafarlbekwe to act for him in respect to overseeing his business investments and dealings on his properties in Nigeria.

On April 1 2020, Ali agreed to grant a term of six years to Miss Dayoldoko of No. 45 Ebega Road, Lagos at an annual rent of N4m in respect of his property at 45 Ebega Road, Lagos. He has also concluded agreement to sell his property at Plot 96H North Bank Road, G.R.A., Enugu to Mrs. Mabel Ololade at a price of N60m. To raise more funds for the mechanized farm project, Ali has decided to use his property at Plot X16 Jamjam Way, Abuja to secure a loan of N40m from Royal Bank PLC.

### **Questions**

- (1) Identify all the Property Law transactions contemplated in the above scenario, the document/s to be executed for each transaction and the person that should prepare the documents.
- (2) Assuming Ali hurriedly relocated to South Africa after a kidnap attempt on him and he has decided to fully engage Gafarlbekwe to oversee his estate, advice Ali on steps to take to enable him to conclude the two pending transactions, the document to be executed and its features.
- (3)(i) List the information you will require to draft the said instrument(s) in (2) above, if any.



- (ii) List the various clauses to be included in the document.
- (iii) List the differences between the document mentioned in 2 above and any of the documents identified in 1 above.
- (4)(i) Assuming Ali appointed “Lindodo Biz Enterprises” as his attorney, comment on the validity or otherwise of the appointment. Would your answer be the same if he appointed “Chairman, Dodondawa Investments Ltd”? Explain briefly.
- (5) Draft the instrument(s) mentioned in (2) above, using the above scenario.
- (6) Comment on the effect of the death of Ali after executing the instrument in favour of Ibekwe
- (7) Assuming while on a short visit to Nigeria, comment on the validity or otherwise of the subsequent sale of the property in Enugu, by Ali to Ericco Telecommunications limited. Ibekwe has threatened to sue Ali for breach of contract. Advise the parties.
- (8) Assuming Ibekwe actually sold the property to Mrs Ololade, draft the introductory and concluding parts to be included in the final document the parties would execute.
- (9)** Assuming Ali had on June 30, 2018 executed an instrument of delegation authorizing Bolulkuku to manage his property at Plot X16 Jamjam Way, Abuja, the instrument was expressed to be irrevocable; Ali died nine (9) months after executing the instrument, Bolu collected rents from the tenants on April 25, 2019? Give reason(s) for your answer as it affects the estate of late Nnamdi Ali.

**(WEEK 6)**

**SALE OF LAND (PART 1)**

**by IJEOMA IKOKWU**

**SALE OF LAND**

- ❖ Meaning.
- ❖ Applicable laws.
- ❖ Problems facing conveyancers.
- ❖ Ways of acquiring ownership of land.
- ❖ Ways of proving title.
- ❖ Land restriction to sale of land.
- ❖ Stages in sale of land.

**MEANING**

Sale of land is a transfer of interest in Land. A distinguishing factor of sale of land is: when interest is passed it cannot be taken back, no reversionary interest.

**APPLICABLE LAWS**

- ❖ Land Registration Law of Lagos State 2015.
- ❖ Land Use Act.
- ❖ Evidence Act.
- ❖ Property and Conveyancing Law 1959.
- ❖ Conveyancing Act 1881.
- ❖ Illiterate Protection Law. (ADD YOURS)

**PROBLEMS FACING CONVEYANCERS**

- ❖ Multiplicity of Laws.
- ❖ Unnecessary Bureaucracy and Cumbersome procedures.
- ❖ Poor record keeping.
- ❖ Unfavorable government policies.
- ❖ Land Tenure System.
- ❖ Incompetence amongst lawyers.
- ❖ No full appreciation of value of contract before conveyance.

**MUPULIN**

**WAYS OF ACQUIRING OWNERSHIP OF LAND**

- ❖ Purchase.

- ❖ Inheritance.
- ❖ Gift.
- ❖ Grant from state authority/customary grant.
- ❖ First settlement on virgin land.
- ❖ Long possession.
- ❖ Allotment of family land.
- ❖ Conquest

**PIGGFLAC**

**PROOF OF TITLE**

- ❖ Traditional History.
- ❖ Production of title document duly executed and authenticated.
- ❖ Proof of ownership of adjacent land.
- ❖ Vesting order of the court.
- ❖ Certificate of purchase duly perfected.

**TPP-VC**

**GOOD ROOT OF TITLE**

- ❖ Court vesting order

**PROOF OF TITLE**

- ❖ Assent
- ❖ Deed of assignment duly perfected.
- ❖ A deed of gift.
- ❖ Deed of legal mortgage duly perfected.

**CADAD**

**BAD ROOT OF TITLE**

- ❖ Deed of assignment/mortgage not duly perfected.
- ❖ Equitable mortgage.

**PROOF OF TITLE**

- ❖ Lease/Tenancy agreement.
- ❖ A License
- ❖ Receipt of purchase.

**DEALAR**

**LAND RESTRICTION TO SOL**

- ❖ Contractual restriction.
- ❖ Lack uniform procedure for perfection.
- ❖ Incident of Customary Land tenure.

- ❖ Illiteracy.
- ❖ Town planning.

### **CLIT**

## **STAGES OF SOL**

- Pre-contract stage.
- Contract stage.
- Post-contract stage.
- Competition stage.
- Post completion or perfection stage

### **PRE-CONTRACT STAGE**

It involves primarily two things:

- Inquiries.
- Negotiations.

#### **IN**

#### **PRE-CONTRACT INQUIRIES:**

Done by the vendor or solicitor; it includes:

- Boundaries of property.
- Reversionary interest or title.
- Insurance provisions.

### **PRE-CONTRACT STAGE**

- Notices in respect of property.
- Guarantees in respect of property.
- Services supplied on the property.
- Any adverse rights/ restrictions.
- Method of sale of property.

## **BRING-SAM NEED FOR INQUIRY**

- Principle of caveat emptor
- Reveal easement and restrictive covenant.
- Eliminate constructive notice.

### **PRE-CONTRACT STAGE**

- Search will reveal encumbrances

#### **PRES**

- INSTANCES WHERE A SOLICITOR CAN ACT FOR BOTH PARTIES
- Parties consent.
- Low consideration.
- Unambiguous terms.

- No conflict of interest.
- Sound title.

### **PLUNS CONTRACT STAGE**

#### **TYPES OF CONTRACT OF SOL**

- Oral
- Open
- Formal.

#### **ORAL CONTRACT**

It is generally not enforceable due to failure to comply with S 4 of STATUTE OF FRAUDS 1677.

However, where parties have shown sufficient acts of part-performance, it becomes enforceable under the equitable jurisdiction of the court.

#### **INTERNATIONAL TEXTILES INDUSTRIES (NIG) LTD V. ADEREMI INSTANCES WHERE THE COURT CAN ENFORCE SPECIFIC PERFORMANCE.**

1. Oral evidence.
2. Plaintiff has full executed his part.

#### **INSTANCES WHERE CLAIM FOR SPECIFIC PERFORMANCE WILL NOT BE GRANTED**

1. Vendor sold land that is not his.
2. Vendor sold family property jointly inherited.

#### **FEATURES OF AN ORSOL**

- Presence of parties.
- Property ascertained/Identified.
- Payment of consideration.
- Presence of at least 2 credible witnesses.
- Valid but not enforceable. **4Ps-V**

#### **DEFECTS OF AN ORSOL**

- Generally unenforceable.
- Enforcement is subject to the discretion of the court.
- Deposit paid is unrecoverable where purchaser changes his mind.

#### **GED**

#### **OPEN CONTRACT**

It has to be in writing.

#### **FEATURES**

- Parties Property must be ascertained.
- Price

- Presence of credible witnesses.
- Valid and enforceable Writing **4Ps-VW**

**CAPACITY IN WHICH VENDOR CONVEYS INTEREST-**

Trustee, Family head, Administrator/PR, Mortgagee, Beneficial owner.

**COVENANTS IMPLIED BY LAW WHERE HE CONVEYS AS BENEFICIAL OWNER**

1. Right to convey
2. Quiet possession.
3. Freedom from encumbrances.
4. Further Assurances

**FORMAL CONTRACT**

It sets out rights and duties of the parties.

it includes the Particulars of sale and conditions of sale.

**FEATURES**

- Parties
- Property
- Payment of consideration/purchase price
- Signed by parties
- Writing
- Terms binding on parties

4Ps-SWT

**ADVANTAGES**

- Introduces assurances.
- Crystallises position of parties.
- Can circumvent implied covenants
- Death of either party does not void the contract
- Prevents last minute withdrawal. (add yours)

**TERMS TO BE AGREED UPON IN FSOL**

- Deposit
- Payment of balance
- Capacity of parties
- fixtures and fittings
- Insurance (Who, Risk, Application, Amount, Company)
- Possession before completion.
- Completion date.

## EXCHANGE OF CONTRACT

A contract takes effect when it is exchanged.

### PROCEDURE

1. Vendors solicitor prepares draft.
2. He sends drafts to the Purchaser's solicitor for vetting.
3. PS returns draft with comments, if any.
4. VS prepares contract and sends to purchaser for execution
5. PS sends contract to VS after execution.
6. A meeting will be held at VS office where the following will be done:
  - ❖ PS pays deposit.
  - ❖ Execution and attestation by witnesses.
  - ❖ VS gives PS/P the following:
    - i. Receipt of deposit.
    - ii. Copies of duly executed CSOL.
    - iii. Epitome and abstract of title

### CONSEQUENCES OF EXCHANGE OF CONTRACT

- ❖ Vendor becomes a qualified trustee.
- ❖ Vendor has right of lien. **ODUSOGA V. RICKETT**
- ❖ Contract becomes binding.
- ❖ Equitable interest passes to the purchaser.
- ❖ Vendor obliged to deduce good title.

NB- Governors' consent not necessary. Stamping is mandatory. Registration is dependent on whether it is a registrable instrument in the state of purported use:

- ❖ Lagos/Northern states- Not registrable
- ❖ Old Western Nigeria- Registrable
- ❖ Old Eastern Nigeria- LIRL is silent. In **OKOYO V. DUMEZ**, Ct held it is registrable

### ACTIVITY

- ❖ Read the case; **ODUSOGA V. RICKETTS, AJAMOGUN V. OSHIRINDE**. What are the roles of a solicitor when acting for both parties
- ❖ What are the features of a good root of title.
- ❖ Draft a Formal contract of sale of land.

### ASSIGNMENT

On 11 October 2019, Mrs Hope Eyo of No. 202 Giri Close, G.R.A, Kaduna, concluded negotiations with Dr Ade Williams of Plot 123 Ebony Homes,

Bwari, Abuja for the sale of his 5-bedroom duplex with a 2 room BQ at No.54 Sango G.R.A. Abeokuta at a consideration of N 50 Million Naira.

The following were the terms agreed on by the parties;

6. The purchaser will take possession upon exchange of the Contract.
7. The sum of N5 Million Naira is to be paid as deposit while the balance of the purchase price will be paid on or before the 14 of April 2020, which is the date of completion.
8. That in the event of failure to pay up the balance by the date of completion, the interest rate chargeable on the balance will be at the prevailing CBN rate.
9. That the deposit will be paid to Dr Williams' Solicitors- the firm of NSW Law Partners of Plot 456, Action Layout, Bwari, who Dr Williams' refers to as his agents.
4. That the insurance policy in respect of the property taken out by the vendor with Safehomes Insurance PLC, will be assigned to Mrs Eyo at Completion.
6. Mrs Eyo will in addition, purchase the 12.5KVA Topeco Generator in the property for N2 Million Naira, the 2 Industrial Refrigerators in the kitchen for N2.4 Million Naira and 6 oriental rugs for N1.Million Naira.
7. Dr Williams is conveying as a Beneficial Owner.

Using the above scenario, answer the following questions:

**Question 1**

- a) Draft the agreement embodying the above terms.
- b) Mrs Eyo is irked by your insistence on the drafting of the above agreement, because according to her "people buy and sell properties everyday without this whole hassle of entering into a contract. A receipt will serve the same purpose". Explain to her the different types of contract of sale of land in Nigeria, their implications and the advantages the formal contract enjoys over the other types.
- c) As a student of the NLS on Externship, explain to the Managing Partner of NSW Law Partners, the implication of Dr Williams' reference to the firm "as his agents" as it affects the deposit and advise the Managing Partner on what would be beneficial to all parties.
- d) List 10 laws that will apply to the transaction between Dr Williams and Mrs. Eyo
- e) Mention the stages and two matters involved in each stage to ensure that the transaction is concluded.

**Question 2**



- a) As solicitor to Mrs Eyo, list 5 pre contract enquiries you will make in respect of the property and explain to her the importance of these enquiries.
- b) Mrs Eyo is of the opinion that the agreed deposit is as good as a part payment for the sale of the property. As her solicitor (BFG Solicitors of No 21, Gidan Kwano Rd. Kaduna), write a letter to her, briefly detailing the difference between the two concepts and the legal implications (if any), as it affects the above agreement with Dr Williams.
- c) Assuming Mrs Eyo is desirous of buying the property in the name of her only son Essien, who is 19 years old (because, the money for the purchase of the property is from her late husband's life insurance), advise her on the validity or otherwise of the transaction and state 5 other circumstances that may restrain or fetter her liberty in dealing with landed properties in Nigeria.

### **Question 3**

Chief Odogu of Umuti Qtrs in Onowu autonomous community in Ihiala LGA of Imo State wants to sell the piece of land known as 'Afor' that he inherited from his late father Chief Eneri. The community gave the land to his late father about 40 years ago, to atone for wrongly ostracising him when he was a young man.

On 11 May, 2020, the day the sale was to take place, the buyer Hon. Ike of Nara Qtrs. in Onowu Autonomous Community came with N100, 000, fifty tubers of yam, two 20 Litres of palm oil, 5 litres of palm wine, a basket of kolanuts, alligator peppers and Anyara – garden eggs with a bowl of Nsoji as payment for the land. Chief Odogu and Hon. Ike met in Chief Odogu's house and Mrs Odogu and their 10 years old son were present.

On the way to Afor land after receiving the items, Hon Ike received a call, which necessitated his having to leave for Owerri. He then detailed his P.A to go along with Chief Odogu to Afor land.

### **Answer the following questions:**

- (vii) Comment on the validity of the transfer of the sale of Chief Odogu's land to Hon Ike.
- (viii) Assuming on the 14<sup>th</sup> February 2020, the parties agreed that the property be sold for =N=30 million naira. Hon Ike paid part-payment of =N=10 million naira to Chief Odogu on the same day. The agreement was that the balance would be paid on 14<sup>th</sup> of April 2020. Chief Odogu issued the following document to Hon Ike

*I acknowledge receipt of the sum of =N=10 million naira today 14 February 2020 from Hon Ike of Nara Qtrs. in Onowu Autonomous Community being part payment for the sale of my property known as 'Afor', Umuti Qtrs in Onowu Autonomous Community in Ihiala LGA of Imo State*

*The balance of ₦20 million naira to be paid on or before 14 April 2020.*

*Signed: Chief Odogu*

However, Hon Ike was unable to pay the balance to Chief Odogu despite several demands. His excuse was that the lock down as a result of the Covid 19 Pandemic has caused him loss of income. Chief Odogu sold to Hon Jare Jude of 24 Nile Road, Port Harcourt, Rivers State for ₦45 million naira on the 21 April 2020. Hon Ike is aggrieved and wants a refund of the money he paid.

Advise the parties.

**(WEEK 7)**  
**SALE OF LAND (PART 2)**  
**by IJEOMA IKOKWU**

**Contents**

- ❖ Post-Contract Stage
  - Deducing title
  - Investigation
  - Requisition of title
  - Search report
- ❖ Completion Stage
- ❖ Post-Completion stage
  - Governor's consent
  - Stamping
  - Registration

**Post-Contract Stage**

Involves basically 3 things- Deducing title, Investigation, Writing of search report.  
**DEDUCING TITLE:** Vendor proves that he has right to convey what he has agreed to convey, does this by providing the following;

- ❖ **Abstract of title**- historical summary of all recorded instruments & proceedings affecting the property.
- ❖ **Epitome of title**- chronological list of all documents which prove title to unregistered land; usually with photocopies of docs.  
Both Abstract & epitome must show good root of title. **CA**-at least **40yrs** before proposed sale; **PCL**- at least **30yrs S 70(1) PCL**; there is a Lacuna in the **Lagos LRLCA** applies. There is a presumption of correctness where title is recited in the conveyance for **20yrs- S 162 Ev Act**. Solicitor should make sure that the A&E of title satisfies the following:
  - ❖ Commences with a good root of title.
  - ❖ No subsisting encumbrances except those disclosed in the contract
  - ❖ Abstracted mortgages/charges discharged.
  - ❖ Docs are in order in respect of execution, consent requirement, stamping& registration. **Content of Abstract/Epitome of title: Date** of doc, nature of event, parties to transaction, Certified true copy/photocopy, num of docs, whether original doc will be handed over upon completion. **Importance of Abstract/Epitome of title**
  - ❖ Purchaser easily detects encumbrances.
  - ❖ Ascertain genuineness of the property

Read up Elements of a good root of title.

**INVESTIGATION:** After deducing title, investigation is to be made by Purchaser's solicitor.

### **Importance of investigation**

- ❖ To verify Abstract & Epitome of title.
- ❖ Detect defects
- ❖ To make sure the vendor has a good of title.
- ❖ Procedure for investigation
- ❖ Purchaser's solicitor collects A&E of title.
- ❖ Examination of A&E thoroughly
- ❖ Conduct search in the following places; Land registry, Court registry, CAC reg where a coy is involved, probate registry when property of deceased is involved.
- ❖ Physical inspection of the property.
- ❖ Investigation of family or traditional history/background.
- ❖ Raise requisition where necessary.
- ❖ Write search report.

**REQUISITION OF TITLE:** Questions from purchaser's solicitor to the vendor/his solicitor concerning doubts, ambiguities during investigation.

**SEARCH REPORT:** After conclusion of investigation; purchaser's solicitor is to draft a search report and send it to the purchaser; there are two modes of drafting it;

- ❖ Covering letter & SR attached to it.
- ❖ A letter containing the search report.

### **Completion Stage**

Here, the contract of sale of land is completed and legal interest passes to the purchaser.

#### **Procedure for completion**

- ❖ VS prepares completion statement and sends to then PS.
- ❖ PS prepares deed of assignment and sends it to the VS for vetting.
- ❖ VS vets Deed and sends back to PS.
- ❖ PS makes engrossed copies of deed. Meeting at the VS office for completion;

#### **During the meeting, the following will take place:**

- Payment of outstanding balance
- Execution of deed by both parties

- Assignor's solicitor hands over the ffng-file copies of executed deed, receipt for balance paid etc. Assignee's solicitor final check on the original title documents.

**COMPLETION STATEMENT:** a statement of financial commitment of parties.

**EFFECTS/MAJOR FEATURES OF COMPLETION STAGE**

- ❖ Transfer of legal interest to purchaser subject to perfecting it.
- ❖ Delivery of possession to purchaser.
- ❖ Payment of balance of purchase price.
- ❖ Preparation & execution of conveyance by parties.
- ❖ Transfer of all the original documents from the assignor to assignee.

**Post-Completion Stage**

- ❖ Governor's consent- **S 22 & 26 Land Use Act.**
- ❖ Stamping- **S 23 & 28 Stamp Duties Act.**
- ❖ Registration - **S 2 LRL**

**ACTIVITY**

- ❖ What are the contents of a Search report;
- ❖ Draft a search report with a covering letter.
- ❖ List the particulars of instruction needed to draft a deed if assignment.
- ❖ List the documents needed to apply for governor's consent.
- ❖ What are the effects of registration or non registration.
- ❖ List 10 ethical issues.

**(WEEK 8)**  
**PROPERTY LAW PRACTICE**  
**LAND REGISTRATION LAW**  
**(LAGOS), 2015**  
**LESSON OUTCOMES**

- Identify features of the LRL as they affect sale of land, leases, mortgages, power of attorney and other real property transactions.
- Differentiate between LRL, Lagos and Land Instrument Registration Law (LIRL) of the various states
- Appreciate the procedure & documents for electronic search under the LRL, 2015
- Draft an Electronic Search Report in Lagos.
- Identify documents for real property transactions in Lagos under the LRL
- Complete the forms under LRL, Lagos
- Appreciate all ethical issues arising under the operation of the LRL 2

**PURPOSE OF THE LAND REGISTRATION LAW, 2015**

- to harmonize the system of registration of titles and the system of registration of instruments, in Lagos State
- repealed the following enactments (s. 121 & 122):
- (1) Registration of Titles Law Cap R1, Laws of Lagos State, 2003;
- (2) Land Instrument Registration Law, Lagos, Cap L58, Laws of Lagos State, 2003,
- (3) Electronic Management Systems Law, 2007; and
- (4) Registration of Titles (Appeal) Rules Cap R4, Laws of Lagos State, 2003

**MEANING OF REGISTRATION UNDER THE LRL**

- Depends on the peculiar circumstances. Varies from transaction to transaction. Registration under LRL could mean any of the following:
  - a. Registration of Documents (see sections 1, 17 and 26, LRL)
  - b. Registration of Holder of Land
  - c. Registration of Title to Land (See the Long Title and section 4(1), LRL);
  - d. Registration of Dealings or Transactions in land (See section 3(4), LRL);
  - e. Registration of Land (see the Short title).

**DIFFERENCES BETWEEN LRL AND LIRL**

- a. LIRL is strictly about registration of documents, unlike LRL which is a mixture

- b. Under LIRL, registration does not make for indefeasibility, unlike under the LRL
- c. Under LIRL, there is difference in Registers or documents kept at the registry
- d. Under LIRL, reg need not be concluded within 24 hours, unlike under the LRL
- e. Under LIRL, unregistered registrable doc are admissible to prove transaction or payment of consideration but not to prove title. Under LRL, not admissible at all
- f. No issuance of Land Cert, unlike in LRL
- g. Absence of registrar's power to compel registration
- h. Sublease above 3 years may not be registered on property subject of mortgage without prior written consent of the mortgagee under the LRL. This restriction is absent under LIRL.
- i. Under the LRL, revocation of registered PoA must be registered; else, revocation not effective, unlike under the LIRL
- j. Immunity avails Land Registry Officials under the LRL (s.117), unlike under the LIRL

#### **MANDATORY DOCUMENTS TO BE MAINTAINED BY THE LAND REGISTRY, LAGOS**

- 1. Register of Transactions relating to transfer of interest in land;
- 2. Land Registry Map
- 3. Parcel File ;
- 4. The Day List
- 5. Mutation Record
- 6. Nominal Index
- 7. Register of Power of Attorney **Ss. 1,12, 13 & 15, LRL**

#### **THE LAND INFORMATION MANAGEMENT SYSTEM (LIMS)**

Reg under LIMS is electronic and mandatory.

The following Registers must be kept for the purpose of the LIMS:

- 1. Day List;
- 2. Register of Mortgages;
- 3. Register of Caution; and
- 4. Other Register as the Registrar may prescribe.
- 5.

#### **WHO MAY BE ACCREDITED TO CONDUCT A SEARCH UNDER LIMS (s.25)**

- 1. Law Firms;
- 2. Financial Institutions;

3. Corporate Institutions; and
4. Registered Estate surveyors & Valuers
5. Any other group or organisation so accredited by the Registrar

**NOTE:** Only duly accredited persons may conduct searches under LIMS

**PROCEDURE FOR CONDUCTING A SEARCH UNDER LIMS (ss. 22)**

1. Submit an application in the prescribed Form 3;
2. Application may be made online;
3. Consideration of application by the Registry;
4. Issuance of an official report of search in Form 4.

**REGISTRATION OF DOCUMENTS UNDER LRL (ss. 6,7,26, 27 & 101)**

- Time for registration - within 60 days from grant of Governor`s consent;
- No registration until after survey

**CASES REQUIRING REGISTRATION (ss. 31, 36, 49, 58, 60, 61, 63, 63, 64, 69)**

- (1) Power of Attorney, documents of grant and sub-lease above not below 3 years;
- (2) Any succession – whether intestate or testate;
- (3) Any revocation, acquisition, excision;
- (4) Any overriding interest or any trust, right or interest acquired by operation of law;
- (5) Any purchase of mortgage property after foreclosure or in exercise of the power of sale ;
- (6) Any mortgage

**CASES REQUIRING REGISTRATION (2)**

- (7) Any judgment or Writ of execution issued by court in respect of lease, mortgage;
- (8) Certificate of Purchase;
- (9) Any sale, sublease, mortgage by deed.
- (10) Any restrictions
- (11) Any variation in a subsisting registrable sublease; (see (see ss 42-48)
- (12) Caution/caveat

**NOTE:**

**Original holder need not register**

- TIPS RELATING TO REGISTRATION (ss. 29, 35, 36,113 & 118)
- REFUSAL OF REGISTRATION (ss. 7 & 9)



- EFFECTS OF REGISTRATION UNDER LRL, 2015 (ss. 6, 24, 28, 29, 30, 39, 40, 108 & 109)



#### **SUB-LEASE (ss. 42- 48)**

- 5 years and above must be registered, subject to Governor's consent.
- Creation of sublease in respect of land subject of mortgage must be with mortgagee's prior written consent.
- Surrender of a subsisting sublease on a land subject of a mortgage must be with the mortgagee's prior written consent.
- No sublease must be created to commence at a later date exceeding 21 years, otherwise the document is void.
- Variations in a sublease must be registered before the expiration of the subsisting term

#### **MORTGAGES (ss. 49, 50, 52, 55, 42-48)**

- Registration of mortgages/charges is mandatory;
- Successive mortgages, caution are permitted provided that mortgagees take priority according to date of creation;
- Consolidation is permitted where parties expressly provided for it - Consolidation takes effect only after registration of mortgages to be consolidated
- Discharged is by registration of a **Deed of Release**.

#### **POWER OF ATTORNEY (ss. 56, 57, 94)**

- Power of Attorney dealing with land must be registered + Gov.'s consent for Irrevocable PoA
- Revocation of registered PoA takes effect on notice revocation given to the Registrar; -actions taken in good faith by a person who had NO notice of revocation at the date of taking such actions are not affected. **Note:**
- implication of not registering an irrevocable PoA on a later document made pursuant to it.

#### **Encumbrances & Restrictions**

- (1) A registered holder is subject to: encumbrances, conditions and restrictions,
- (2) Prior liabilities;
- (3) Prior interests;
- (4) Bankruptcy laws; Overriding interest Restrictive covenants;
- (5) Prohibition relating to infants ss. 111, 66, 67, 68, 73, 93, 94, 95,

#### **18 FORM OF EXECUTION OF DOCS UNDER LRL (ss. 75, 76, 77)**

- Registrable doc must be executed by all parties to the transaction;
- When is Doc deemed executed?
  - Note when attestation or illiterate jurat is mandatory (**s. 76**)

### **REGISTRATION OF FAMILY REPS (SS. 89-92)**

- Not more than 10 members of the family; Grounds for amendment of family Register
  - (1) Death
  - (2) Inability to act as a result of mental /physical incapacity, absence or imprisonment;
  - (3) to add more reps to take the number to 10;
  - (4) pursuant to a court order; 20

### **MISCELLANEOUS**

- Rectification: SS 96 –100
- Acquisition by adverse possession: s.112
- Legal Representation: Any application required to be filed may be filed under the LRL through a legal Practitioner;
- Immunity of Land Registry Officials: s . 117
- Offences & Penalties: s. 199;
- Transmission, Trust & Bankruptcy : ss 80 to 93 21

### **FORMS & PRECEDENTS UNDER LRL:**

- (1) LRL Form 1: Application for Registration of Titled Land
- (2) LRL Form 2: Application for Registration of Land Covered by Deed or Certificate of Occupancy
- (3) LRL Form 3: Application for Searches
- (4) LRL Form 4: Electronic Search Report LRL
- (5) Form 5: Application for CTC
- (6) LRL Form 6: Application for Registration of Caution
- (7) LRL Form 7: Application for Withdrawal of Caution 22

### **ASSIGNMENT**

### **QUESTIONS**

Mr. Mark Girllands, an Engineer, of No. 10 Eyilawe Crescent, Gboko is the immediate past Commissioner for Water Resources for Benue State. His severance package was substantial, and he has decided to invest it in real property from where he hopes to earn some money to cushion the vicissitudes of income associated with consultancy business which he hopes to return to.

He has executed a contract of sale of land agreement with TelumoAndoase and TeeseAndoase both of No. 3 Tor Tiv Road, Gboko, who are the Executors of

the Estate of Chief TervarAndoase(deceased) to purchase a shopping mall located at No. 2 Swansea Road, Makurdi, Benue State for 10million and there has been an exchange of contract between the parties.

A photocopy of the Will of the deceased testator was part of the documents given by the vendor to the purchaser after the exchange of contract but on closer scrutiny, the purchaser noticed that there was no evidence of the grant of probate of the Will by the court.

The title of the deceased testator to the property which has now been conferred on the Executors by the Testator's Will is a Deed of Lease between the deceased testator and the owner of the reversion which is yet to lapse.

**Answer with the aid of authorities(where applicable) the following questions:**

5. Advise the parties on the next step to be taken after the exchange of contract, the party obliged to take it, the documents by which this next step may be actualized, the importance of these documents and the period back in time that the party whose duty it is to take this next step is required to satisfy the other party as it relates to the devolution for title from the first owner of interest in the property to the present transaction.
6. List the various ways by which investigation of title may be conducted, the party to conduct same and state at least one reason why the said party needs to conduct investigation on title.
7. What is your opinion on the way by which the necessary party may make enquiries about the absence of any evidence of grant of probate of the Will by the Court to the Executors?
8. Assuming you are Mr Jones Adoga, MrGirllands' legal practitioner of 24 Ajoche Road, Gboko, Benue State, write a letter to your client, advising him on your reservation on the suitability of the Deed of Lease upon which the title of the deceased testator is founded. Give reasons and give three examples of documents you would have preferred.
9. Advise Mr. Mark Girllands on why he should pay a visit to the property he intends to purchase during investigation.
10. What do you understand by a completion statement?
11. State the steps the parties would need to take during the completion process.
12. Explain the steps needed to perfect the title of the purchaser after completion, where each step would be undertaken and effect of failure to undertake any/all of the steps. Would your answer be different if one of the parties is Petlab Industries limited, a company registered under Part A of CAMA and whose registered office is at 45 Epe-Ofun Road, Markudi, Benue State.

13. a. Draft the introductory and concluding parts of the final instrument to be executed by the parties. (Mr Girllands and the Estate of Chief Tervar Andoase.
10. Mention in the correct order matters to be included in the operative part of the final instrument. Draft the operative part.
11. Mention the status of the parties under the Contract of Sale executed and the effect of the exchange of contract.

## ASSIGNMENT

### Scenario& Tasks

Mr. Mat Musabalives in Benin City. Mr Mat Musabais married to Adekemi and they have five children --- John, Jide, Jumai, Jolaade, and Jumoke. Mr. Mat Musabaowns the following properties, among others:

- (10) The 3-bedroom bungalow at 15, Ore Street, Benin City, (his residence) which he purchased from his business partner, Chief Damien of 45, Sapele Street, Benin City for N15 million in 2009;
- (11) The 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos, which Mr. Musaba bought from Madam Kareem in 2010. Mr. Musaba assigned his legal interest in the property by way of a sub-demise in June 2020 to Diamond Bank to secure a loan of N280 million he took from the bank. The legal due date is 12 July 2023. Mr. Musaba nowproposes to grant a term of ten years on the same property to Bo Nigeria Limited at N6 million per annum. The term to commence on 22 August 2020;
- (12) The 5-rooms bungalow at 4, Obalende Road, Ikoyi, Lagos, which Mr. Musaba inherited from his mother, Chief (Mrs.) Arinne who died intestate in 2015. On July 10, 2017, Mr. Musaba secured a loan of N200 million from First Bank Plc of 12, Marina, Lagos using the property as security for the legal mortgage. The duration of the mortgage is five years;

Mr. Musabaplans to undertake the following additional transactions:

- (a)To purchase a plot of land at 16, Bauchi Street, Ojota, Lagos for and in the name of his first son, John (17 years old). The property belongs to MrEbukaMankuand hiswife Anuli. They live at 88, El-Aminu Street, Kaduna; price is N120 million,
- (b)To execute an irrevocable Power of Attorney in favour of Mr. SanuMadiq, the Managing Partner of Mr. SanuMadiq& Co, a firm of Estate Managers and Consultants located at 12, Ore Close, Karu, Abuja, to enable

Mr. Sanu Madiq to undertake on Mr. Musaba's behalf the transactions involving the properties at Ikoyi, Lagos and the one at Ojota, Lagos. Mr. Musaba has approached you for advice on the proposed transactions, especially with respect to his properties located in Lagos.

### **Answer the following questions**

#### **Question One**

- a) State any five differences between registration of the proposed sale involving the property at Bauchi Street, Ojota, Lagos (under the Land Registration Law, Lagos) and registration of the sale involving the property in Benin (under the Land Instruments Registration Law (LIRL) of Edo State.
- b) Mention the mandatory records that must be maintained in the Land Registry, Lagos for the purpose of real property registration under the LRL, 2015. How do these differ from the document(s)/record(s) that must be maintained for purposes of operation of the land Information Management System (LIMS) in Lagos;
- c) For purposes of the various applications Mr. Musaba may have or choose to make under the LRL, 2015, state the prescribed Form under the LRL, 2015 that would be relevant for each of the following applications and processes:
  - (ix) Application for CTC,
  - (x) Application for search under LIMS,
  - (xi) Registration of interests covered by Certificate of Occupancy,
  - (xii) Application for registration of titles to land,
  - (xiii) Registration of caution, and
  - (xiv) Withdrawal of caution.
- d) In respect of the purchase of the property at 16, Bauchi Street, Ojota, Lagos,
  - i. identify the person or persons who are authorized to conduct searches in Lagos State Lands Registry.
  - ii. Outline the procedure required to be followed to conduct a search under the LIMS in respect of the property at 16, Bauchi Street, Ojota, Lagos;

#### **e) Advise Mr. Musaba on the following:**

- i. The real property interests, property transactions, and land documents or holders that are registrable in Lagos.
  - ii. State the consequences of failure by the person obliged to apply for registration of a registrable interest in Lagos State.
  - iii. Are there any instance or instances in which registration is not mandatory? Identify that/them.
  - iv. On what grounds (if any) may the Registrar decline registration under the LRL, 2015?
- f) Set out the various obligations, roles, powers and responsibilities of the Registrar in respect of registration of interests, lands, holders and transactions under the LRL, 2015.
- g) Comment briefly on the various features of registration under the LRL, 2015
- h) List all special precautionary measures that must be taken at the Lagos land registry in respect of the irrevocable Power of Attorney executed in favour of Mr. SanuMadiq to ensure he would be able to validly carry out the proposed transactions on behalf Mr. Musaba and to ensure that the various instruments of transfer to be executed in respect of the transactions over the properties in Ikoyi and Ojota are accepted for registration.
- i) List out the various interests or rights that may constitute a form of encumbrance on the rights of Mr. Musaba as a holder of landed properties in Lagos;
- j) To ensure their acceptance for registration in Lagos State, highlight the proper form of execution and attestation of Deeds under the LRL, 2015;
- k) Advise MrMusaba on the validity of the proposed transaction with Bo Nigeria Limited.
- l) Assuming the property at Ore Street was in Lagos State and now, Mr. Musabaproposes to sell the property to the Aduba family of Ikorodu, describe the procedure the family would adopt to ensure due registration of its representatives for purposes of effecting this and similar real property transaction on behalf of the family. On what grounds may such registration be rectified?

### **Pre-Class Activity**

Each student must read chapter seven (7) of the Property Law Practice Handbook, and the topic, Land Registration Law (Lagos), in textbooks

**(WEEK 9)**

**PROPERTY LAW PRACTICE LEASES 1.**

**Learning Outcomes**

At the end of this lesson, students will be able to:

1. Define a lease.
2. Identify parties to a lease.
3. List and explain the different types of leases.
4. State the difference between a lease and an assignment and a licence.
5. State the essentials of a valid lease.
6. Apply principles of a lease to a given case.
7. Mention types of rents and the factors to consider when fixing rent.
8. State the relevance of a rent review clause.
9. Draft a rent review clause

**DEFINITION**

**Note the definition of Leases**

**A LEASE refers to:**

- the Term of Years created, and
- the Document creating the term of years

**PARTIES**

- LESSOR / LESSEE
- LANDLORD / TENANT
- A, gives Plot 12 Abi Close, Apo, Abuja to B, for 3½ years at a rent of N1, 000,000 per annum, and
- A, gives Plot 13 Abi Close, Apo, Abuja to C, for 3 years at a rent of N1, 000,000 per annum
- Are the legal relationships between A vis B & C the same?

**Creation of leases**

- **Written Lease:** a term not exceeding 3 years **S. 4 Statute of Frauds (1677); S. 5 Law Reform (Contracts) Act & Law of Lagos State** simple tenancy agreement may be periodic or for a fixed period
- **A.P. Ltd. v Owodunni (1991) 8 NWLR (Pt. 210) 391.**
- **Parole/Oral Lease :** a term not more than 3 years best rent reserved lessee in possession **S. 3 Statute of Frauds; S. 79 (2) PCL; Foster v Reeves (1892) 2 Q.B. 255,**
- **257 LEASE BY DEED:** formal lease under seal term above 3 years

## ESSENTIALS OF A VALID LEASE

- Certainty of term
  - Duration i.e. (Commencement and ending dates) **UBA v Tejumola (1988) 5 SCNJ 173**; **Lace v Chantler (1944) 1 KB 363**; **Aminu v Nzeribe**
  - Lease cannot be in perpetuity
- Proper Mode of Creation S.4 Statute of Frauds, **S. 67 (1) PCL**, **S.5 Law Reform (Contracts) Act & Law of Lagos State.**
- Exclusive Possession **Umezurike v George (1973) 3 CCHCJ 63**
- Certainty of parties
- Certainty of property
- Differences Between a Lease and an Assignment
- Distinguishing factor(s) between a Lease and a Licence **Ishola Williams v Hammond Projects Ltd (1988) 1 NWLR (Pt. 71) 481**

### • RENT

- What is Rent?
- a mandatory requirement? **S. 2 of the PCL**; **Osho v Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157 at 168**

### Types of Rent

- ✓ Ground Rent
- ✓ Rack Rent

### Premium

- Factors to consider in charging rent
- Charging of many years rent in advance
  - implications
  - remedy/solution: rent review clause
- **Rent Clause**
  - content
- Rent Review Clause
  - must be expressly provided
  - content of the Rent Review Clause
  - importance **Olaniyan v Shokunbi (1997) 6 NWLR (Pt. 509) 447**



## ASSIGNMENT

Ayaba Kudus of No. 23 Isaleko St. Yaba, Lagos State is the owner of a block of 1 three-bedroom, 3 two-bedroom, 2 one-bedroom and 2 self-contained flats at No. 8 Dopemu Estate, Mushin, Lagos State.

On January 31 2020, she gave the three-bedroom flat to Mallam Moha Moha for 6 years at N500, 000 per annum. One of the terms agreed on by the parties was that Mallam Moha Moha would pay the entire 6 years rent before any agreement was signed between them.

On 1 February 2020, Ms Fynecountry Miene took possession of one of the two-bedroom flats for two years and a half, on the consideration of her professional fees for undertaking the perfection of Ayaba Kudus' title in respect of a parcel of land at Kuje Extension, Kuje, Abuja.

Ayaba Kudus on April 2 2020 at the quarterly rent of N75, 000, gave one of the one-bedroom flats to Dr Bitrus, a Gambian who was unable to leave Nigeria after the Covid-19 pandemic broke out, for as long as the pandemic would last.

She gave one of the self-contained flats to Bonaby Akpan, her best friend's son admitted into the 2020/2021 Session of the Nigerian Law School and posted to the Lagos Campus to stay for the Session at no cost.

Answer the following questions using the above scenario:

### Question1

- i. Identify the transactions in the above scenario.
- ii. State the requirements (if any) for the validity of each of the transactions identified.
- iii. Comment on the validity of each of the transactions using the "stated requirements" as a yardstick.
- iv. State 5 laws that are applicable to the transactions between Ayaba Kudus and Ms Fynecountry Miene and identify any other transaction in the above scenario that these laws also apply to.

### Question 2

- i. Ayaba Kudus is really happy over Mallam Moha Moha's agreement to pay the entire 6 years rent. As her solicitor, explain to her the possible implications of her action.
- ii. Assuming Ayaba Kudus' block of flats is in Apapa, Lagos, will your answer in (i.) be different?
- iii. As Ayaba Kudus' solicitor, proffer a more advantageous solution that will enable her achieve her aim for demanding the entire rent in advance and do a draft of your proffered solution.
- iv. Draft the clause evidencing the consideration paid by Mallam Moha Moha.

- v. State the type of rent that Ayaba Kudus is most likely to demand for her block of flats and factors that will influence her in arriving at the rents payable.
- vi. As solicitor acting for any of the parties to the above transactions, state 5 duties you owe them.

**NOTE**

- 1. Students should read recommended text together with the materials sent out,
- 2. Students should attempt these questions before the class on Friday, 5<sup>th</sup> June 2020.
- 3. Questions (if any) should be sent to [plp.lec@nigerianlawschool.edu.ng](mailto:plp.lec@nigerianlawschool.edu.ng)

**(WEEK10)**

**LEASES AND TENANCIES  
PART 2.**

**LESSON OUTCOMES**

**At the end of Today's Class, Students should be able to:**

1. Explain the various covenants in Leases
2. Enumerate the modes of determination of a Lease
3. Outline the Information required to prepare a Lease
4. Draft a Lease
5. Comment on the ethical Issues involved in a leasehold transaction.

**CATEGORIES OF COVENANTS IN A LEASE**

1. Express Covenants;
2. Implied Covenants;
3. Usual covenants.

**EXAMPLES OF EXPRESS COVENANTS**

1. Covenant to pay rates and taxes;
2. Covenant to insure;
3. Covenant against Assignment;
4. Covenant to repair;
5. Covenant against alteration;
6. User covenant
7. Option to renew Note the differences between Lagos and Abuja.

**COVENANTS TO PAY RATES AND TAXES**

- Also known as covenant to pay all outgoings.
- Occupier liable to pay in the absence of an express agreement or statutory provisions.
- Mode of draft determines who to pay and the extent of such payment.

**DRAFTS OF COVENANTS TO PAY RATES AND TAXES**

1. To pay all existing rates, taxes and other outgoings in respect of the demised premises. Why is this inappropriate?

**CONTINUATION**

2. To pay all existing rates, taxes and other outgoings in respect of the demised premises payable now or as may be imposed subsequently whether payable by the owner or occupier.  
Comment on the appropriateness of this draft.

## **COVENANT TO INSURE**

### **CONTENTS OF A STANDARD COVENANT TO INSURE**

1. Who to insure;
2. Risk to insure against;
3. Amount of cover- S. 50 Insurance Act;
4. Name of insurance company;
5. Application of insurance money/proceeds. **Upjohn V Hitchins ( 1918)**  
**2KB 48 S. 67(1) Insurance Act CAP I 17** Laws of the Federation 2010

### **FACTORS TO CONSIDER IN DETERMINING WHO TO INSURE**

1. Nature of Premises;
2. Existing Obligations;
3. Nature of User;
4. Other provisions of the lease

### **DRAFT OF A COVENANT TO INSURE**

The Lessee covenants to immediately insure the premises at all times during the term against loss and fire in the sum of ..... . In the ..... insurance office in the name of the lessor and that in case the premises is or any part of it is damaged or destroyed, all monies received in respect of the insurance shall be used to reinstate the property.

### **COVENANT AGAINST ASSIGNMENT**

- Absolute Bar
- Qualified Bar
- When it is not included in the lease.

### **NOTE THE EXCEPTIONS NOTE THE POSITION IN LAGOS**

#### **FACTORS THE LESSOR MAY CONSIDER TO DECIDE WHETHER OR NOT TO GRANT CONSENT TO AN ASSIGNMENT**

1. Personality of the prospective sub-lessee or under-lessee.
2. Use of the premises by the prospective sub-lessee or under-lessee.  
**Alakija V John Holt Ltd (1973) 7 CCHCJ P. 31 Cohen V Popular Restaurants Ltd (1917) 1KB 490**

### **COVENANT TO REPAIR**

- Protects the value of the property. See **Lurcott v Wakely & Wheeler (1911) 1 KB 905.**
- Note the position under Common Law.

- Whose responsibility is it to insure the following places in the absence of an express covenant?
  1. Structural Parts
  2. Internal Fittings
  3. Common Parts

### **DRAFT OF A COVENANT TO REPAIR**

- The Lessee covenants to keep and maintain the demised premises in a good state of repair fair wear and tear excepted and to permit the lessor to enter at all reasonable time to view the state of repair of the demised premises.

### **REMEDIES FOR BREACH OF COVENANT TO REPAIR**

1. Notice to repair
  2. Specific Performance
  3. Damages
- State other two remedies.

### **USER COVENANT**

- Defines the use to which the demised premises is to be put.
- Remedies for breach are:
  1. Damages;
  2. Specific Performance;
  3. Injunctions;

State the other two remedies. What is the position of the law if this covenant is not expressly provided for?

### **DRAFT OF THE USER COVENANT**

1. The Lessee covenants to use the demised premises for lawful commercial purposes only.
2. The Lessee covenants to use the demised premises for lawful residential purposes only. Note the examples of other ways of drafting a user covenant.

### **OPTION TO RENEW**

Secures lessee's potential interest in renewing the premises at the end of the current term. Contents of an option to Renew.

1. Period in which the option may be exercised.
2. Means of exercise of the option.
3. Condition precedent to the exercise of the option
4. The term of the new lease if granted
5. Restrictions on the option.

### **CONTINUATION**

- Where an option to renew is not included there is a risk of a perpetually renewable lease created.

### **DRAFT OF AN OPTION TO RENEW**

- The Lessee covenants with the lessor that upon the lessee paying the rent and observing all the terms and covenants in the lease and upon giving .....notice before the date of expiration of the present lease, the lessor shall grant him a further term of ..at a rent and subject to the covenant and terms to be agreed upon by the lessor.

### **IMPLIED COVENANTS**

- Deals with the obligation the law imposes on the parties to a lease which is not dependent on the agreement of the parties. Lessors implied covenants include:
  1. Quiet enjoyment;
  2. Fitness for habitation
  3. Landlord bound by the law in recovery issues
  4. Not to derogate from grant.

### **LESSEE'S IMPLIED COVENANTS**

1. Covenant to pay rent
2. Covenant to pay rates and taxes
3. Covenant not to commit waste
4. To deliver the premises in a tenantable manner

### **EXAMPLES OF USUAL COVENANTS**

1. Quiet enjoyment.
2. Payment of rent.
3. Covenant to pay rates and taxes.
4. Covenant to repair.

### **DETERMINATION OF A LEASE**

The following are the means of determining a lease.

1. Surrender.
2. Effluxion of time.
3. Notice to quit.
4. Frustration.
5. Merger.

6. Forfeiture.

**REMEDIES IN A LEASE**

1. Damages
2. Specific Performance
3. Notice to quit
4. Forfeiture
5. Injunction
6. Declaration
7. Notice to repair.

**FORM AND CONTENT OF A LEASE**

- Note the difference between a deed of lease and a deed of sub-lease and under lease.
- Note the difference in the operative part of a deed of lease and that of a deed of assignment.
- Note the various segments of a deed of lease as well as the parts. Note a tripartite deed of lease and when necessary.

**PARTICULARS OF INSTRUCTIONS REQUIRED TO PREPARE A LEASE.**

1. Name, addresses and status of parties.
2. Particulars of the demised premises.
3. Amount of rent.
4. Method of payment of rent.
5. Use of the property.
6. Capacity in which the lessor conveys.
7. Duration of the lease.

**EVALUATION**

**ASSIGNMENT**

**TASKS FOR LEASES 2**

MrsAfolake Bamikole is a business woman who deals in exportation of Palm Kernels to West African Countries. She lives at 23 Anike Street, Yaba Lagos. She owns two plots of land at Zoe Lane, Ikeja Lagos covered by a Certificate of Occupancy No 235198 and registered as 12/19/2008C in the Lands Registry, Ikeja, Lagos. She purchased the property in 2008. In 2009, she erected a block of ten twin duplex on the property.

In a bid to delve into real estate as advised by her Son who just got called to the Bar last year, MrsAfolakeBamikole purchased the following properties.

1. An acre of land at no. 15. Ibrahim Taiwo Road Ilorin, Kwara State. She intends to grant of a term of 3 years in respect of this property to AlheriGodiya of 12 Amilegbe, Ilorin, Kwara State.
2. A hotel having 150 rooms at 23 Church Gate Street, Agbani, Enugu State. She decided to grant of a term of 7 years in respect of this property in favour of Gold Ventures owned by Mrs Goldie Onyesopu of 33 Omalicha Street Enugu at the rate of 15 Million per annum.
3. A bungalow at Sapele, Delta State.
4. An office complex housing 30 offices at 16 Ikoyi Road, Obalende, Lagos State.

**ANSWER THE FOLLOWING QUESTIONS**

1. Mention the final document the parties to the transaction affecting the property in Enugu would need to execute in order to complete the transaction.
2. Would your answer in 1 above be the same in respect of the transaction affecting the property in Ilorin?
3. Enumerate at least 10 information you would obtain from the parties to enable you draft the document mentioned in question 1 above.
4. Draft the document mentioned in question 1 above assuming MrsBamikole understands only Igbona language (spoken among the people of Oke-Ero LGA of Kwara State).
  - i. Explain to Mrs Bamikole why you would need to include the following in the document identified in 1 above and the effect of failure to include such.
    - a. Covenant against Assignment;
    - b. Covenant as to User;
    - c. Covenant to pay rates and taxes;
    - d. Option to renew
    - e. Rent review clause
    - f. Covenant to repair.
  - ii. Explain to Mrs Bamikole the implication/s if any, of not including the above covenants in the transaction with Gold Ventures. Would your answer be different assuming the property was in Ikeja, Lagos?
5. How would you ensure that you balance the interests of both parties to a lease with respect to assignment of the demised premises? Demonstrate this in a draft.



6. Mention the contents of a standard insurance covenant in a lease and list out four factors that should be considered in deciding the party that should bear the burden of insurance in a lease.
7. Outline the various remedies available to each party in a lease, where the other party has committed a breach.
8. Explain to MrsBamikole what she needs to do to enable her take advantage of capital appreciation on her property at Agbani, Enugu State. Would your answer be the same assuming she wants to grant a further term to Gold Ventures?
9. Identify the following clauses and comment on the adequacy or otherwise of the following clauses as a solicitor and offer a redraft if necessary.
  - a. To pay all existing rates, taxes and other outgoings in respect of the demised premises.
  - b. The lessor covenants to keep the demised premises in a good state of repair.
  - c. The lessor shall on the written request of the lessee made at least three months before the expiration of the current term, grant to the lessee the lease of the demised premises for another term of five years from the expiration of the current term.
  - d. Not to assign, sublet, charge or otherwise part with possession of the demised premises or any part of it without the prior consent of the lessor.
  - e. This Deed of Lease is Made this .....Day of .....20....  
Between  
MrsMorenikejiOlomomeji (Sub Lessee) of the one part  
AND  
MrIkechukwu of the 2<sup>nd</sup> Part.

**NOTE:**

1. Students should endeavor to read recommended text on Leases as well as the materials sent.
2. Students should answer the above questions before the Property Law Practice class on Friday 19 June 2020.
3. Questions seeking clarification should be sent to [plp@nigerianlawschool.edu.ng](mailto:plp@nigerianlawschool.edu.ng).

**(WEEK 11)**

**Mortgages 1**

**LEARNING OUTCOMES**

**At the end of the lesson, students should be able to:**

- 1 Explain the meaning of mortgage
2. List mortgage institutions in Nigeria
3. Distinguish a mortgage from other similar security transactions
4. List parties in a mortgage transaction
5. Explain the various ways of creating equitable mortgage Outcomes cont.
6. Explain the various ways of creating legal mortgage; Search report, and Documents to process Governor's consent.
7. Draft a search report and a covering letter.
8. Explain the ethical issues involved in the lesson plan.

**Definition**

- A legal relationship or security transaction by which rights in land are transferred to secure payment of money or the discharge of some other obligations, subject to redemption upon repayment of the loan or discharge of the obligation.
- **Olowu v. Miller Bros Ltd (1922) 13 NLR 110 “security created by contract for the payment of debt already due or to become due”**

**PARTIES IN A MORTGAGE**

**transaction**

Generally two parties to a mortgage transaction

- The mortgagor (Borrower) THOSE WITH INTEREST
- The mortgagee (Lender) DERIVING INTEREST
- Three parties and a tripartite Deed of Mortgage.

**SIMILAR TRANSACTIONS**

- **PLEDGES:** transfer of possession as security
- **LIEN** : detention of property until liquidation of debt without the property being used initially as security
- **CHARGES:** appropriation of property without transfer of interest therein to satisfy a debt
- **CONDITIONAL SALE:** reservation of right in a vendor to repurchase the property upon occurrence of certain stated conditions

**ROLES OF SOLICITORS IN MORTGAGE TRANSACTIONS IN NIGERIA**

- Advising on law, sources and negotiating for the loan.

- Investigating the title of the property sought to be mortgaged
- Advising on the modes and drafting of the mortgage instrument
- Perfecting the mortgage instrument and obtaining relevant consent.
- Discharge of the mortgage and drafting the discharge instrument.

### **APPLICABLE LAWS TO MORTGAGE**

- CFRN
- Land Use Act
- Mortgage Institutions Act
- Legal Practitioners Act
- Rules of Professional Conduct for Legal Practitioners
- Stamp Duties Act
- CAMA Land Instrument Registration Law
- Land Instrument Preparation Law
- Illiterate Protection Act
- CA/PCL/LRL/
- MPL, 2010

### **MORTGAGE INSTITUTIONS IN NIGERIA**

- Federal Mortgage Bank
- Housing Corporations e.g FHA, LSPDC KLS
- Private Property Developers
- Commercial Banks
- Life Endowment Policy (Insurance)
- Employer's Housing Schemes

### **INVESTIGATION OF TITLE AND WRITING OF SEARCH REPORT**

- **REASONS FOR INVESTIGATION of the mortgagor's title:**

1. To ascertain that the mortgagor is the owner of the property,
2. To know whether the property is encumbered or not

### **PLACES TO VISIT FOR INVESTIGATION**

1. Land itself
2. Lands Registry
3. Probate Registry
4. Corporate Affairs Registry
5. Court Registry

### **CONTENTS OF A SEARCH REPORT**

- **A good Search Report should contain the following:**

1. Date of Search:
2. Place of Search:
3. Name of Borrower:
4. Owner of the property, if different from the borrower:
5. Description of the property:
6. Nature of the interest: Statutory Right of Occupancy with a C of O, etc.
7. Whether there is any encumbrance, and if any, the nature thereof:
8. Conclusion: i.e. the solicitor's advice (whether the security is viable or not)
9. Name of the solicitor who conducted the search
10. Signature of the solicitor

**Where the mortgagor is a company**

- Date of search
- Name of company
- Date of incorporation & RC No.
- Names & addresses of shareholders
- Names & addresses of directors
- Borrowing powers (limit & procedure)
- Any registered charge against the company's assets
- Last annual report filed Conclusion, name & signature of the solicitor.

**Capacity & Mortgage Transactions**

1. Infant
2. Company in liquidation
3. Unsound mind
4. Undischarged bankrupt

**TYPES OF MORTGAGE: LEGAL mortgage**

1. **LEGAL MORTGAGE:** This is the transfer of a legal title in land from the mortgagor to the mortgagee, subject to the mortgagor's right of redemption in proper form.
  - **DEED/CONSENT/STAMPING/ REGISTRATION/FILING AT CAC & Board for Lagos. ss. 22/23 STA/ s. 53 MPL, ss. 197 & 205 CAMA Savannah Bank v Ajilo (1989) 1 NWLR (Pt. 97) 305**
  - Effect of unregistered Legal mortgage under CAMA

### **EQUITABLE MORTGAGE**

- This is the transfer of an equitable interest in land from the mortgagor to the mortgagee; or an agreement to enter into a legal mortgage.
- Use of equitable interest -nemo dat quo non habet Usually without deed and perfection

### **EQUITABLE MORTGAGE ADVANTAGES OF EQUITABLE MORTGAGE**

- Equitable mortgage is better than legal mortgage, where:
  1. The amount of the loan is small;
  2. The repayment period is short;
  3. the mortgagor needs the money urgently.

### **EQUITABLE MORTGAGE**

- **USE OF EQUITABLE INTEREST. S. 18(2) MPL**
- Agreement to Create a Legal Mortgage **Ogundaini v Araba (1978) ILRN 280**
- Deposit of Title Documents
  - **NB: INTENTION TO CREATE EQUITABLE MORTGAGE. A kintoye v BON (1999) 12 NWLR (Pt. 392) 403. s. 18 MPL**
- **Memorandum of Deposit Made by Deed and Confers Right of Safe Charge**

### **ADVANTAGES OF A LEGAL MORTGAGE**

1. Easier to enforce than equitable mortgage;
2. A subsequent legal mortgage or purchaser for value without notice of equitable mortgage takes priority over the equitable mortgage;
3. It is more difficult to commit fraud in the case of legal mortgage than in a equitable mortgage

### **MODES OF CREATING A LEGAL MORTGAGE**

1. By an assignment (or conveyance of a deemed grant, as the case may be);
2. By a sub-demise;
3. By a legal or statutory charge or charge by deed expressed to be by way of legal mortgage; and
4. By a charge of registered title The application of any of these modes depends on the location of the land/nature of interest/quantum/applicable law. CA/PCL/MPL

## **CREATION OF LEGAL MORTGAGE IN THE CONVEYANCING ACT: 19 Northern/ Eastern STATES**

### **1: BY ASSIGNMENT OR CONVEYANCE (LUA):**

- This entails the assignment of the entire interest of the mortgagor i.e. the unexpired residue of his leasehold interest under the Land Use Act, subject to a provision for cesser upon redemption. .

### **2. BY A SUB-DEMISE/SUB-LEASE**

- Here the grantee or holder of a Statutory Right of Occupancy mortgages part of his leasehold interest under the LUA with a proviso for redemption when the loan is repaid, subject to the Governor's consent or LG approval.
- It is like sub-letting part of his interest. Even if it is a day shorter than the term of the original lease.

### **The difference between assignment and sub-demise**

- The difference between assignment and sub-demise is that in assignment there is no reversionary interest in the mortgagor whereas in a sub-demise the mortgagor has a reversionary interest.

### **3. STATUTORY MORTGAGE**

- Mortgage by Deed expressed to be by way of Statutory Mortgage – **s. 26(1) CA**
- A leasehold holder may create a legal mortgage by deed expressed to be made by way of statutory mortgage.
- Adopting the form in Part 1, 3rd Schedule of the Act.
- The form may be modified

## **CREATION OF LEGAL MORTGAGE IN THE PCL STATES: OOOOEED**

### **1. BY A SUB-DEMISE (SOME AUTHORS CALLED IT SUB LEASE):**

- The grantee or holder of a Statutory Right of Occupancy mortgages his leasehold interest under the Land Use Act for a term of years absolute, less at least one day than the term vested in the mortgagor, subject to a proviso for cesser upon redemption- s.109 PCL

### **3. LEGAL CHARGE:**

This is a charge by deed (not mere writing) expressed to be by way of a legal mortgage.

The chargee is not vested with the interest in the property, but he enjoys all the rights/ power of a legal mortgagee like the right to sell the property to realise the security – **s. 110 PCL**.

- Must be by deed and states that it is a mortgage
- Chargor/chargee

### **EXTRA**

4. Mortgage by Deed expressed to be made by way of Statutory Mortgage in Form 1 - **s. 137(1) PCL**.

- See 4<sup>th</sup> Schedule to PCL, with such variations and addition, if any as circumstance may require

### **Mortgages under mPL - See Sections 15, 16, 18, 49 & 53**

- **MPL Repealed the CA - section 68 MPL**
- It depends on the nature of interest
  - Right of Occupancy, or
  - Leasehold, or
  - Equitable Interest.
- Use of Equitable Interest is under s. 18(2) MPL

#### **RIGHT OF OCCUPANCY- S. 15 MPL**

- ✓ Demise for a term of years absolute
- ✓ Charge by deed expressed to be by way of legal mortgage
- ✓ Charge by deed expressed to be by way of statutory mortgage.
- ✓ Use of Form 1 in 2 ND Schedule. **s. 4 MPL**

#### **LEASEHOLD - s.16 MPL**

- ✓ Sub-demise for a term of years absolute less by at least one day
- ✓ Charge by deed expressed to be by way of legal mortgage
- ✓ Charge by deed expressed to be by way of statutory mortgage.
- ✓ Use of Form 1 in 2 ND Schedule. **s. 4 MPL**

### **DOCUMENTS REQUIRED TO OBTAIN GOVERNOR'S CONSENT**

- Application for consent in the prescribed form
- Covering letter of application for consent
- Tax clearance certificate (mortgagor) for preceding three years
- Receipts of payment of all rates & taxes in respect of the property
  - E.g. tenement rates (for developed property), ground rent, development levy where applicable, etc.
- Title deeds of the land

- A duly executed Deed of Mortgage
- Building plan approval (for developed property)
- Evidence of payment of inspection, charting and consent fees

### **SUMMARY**

1. Outcomes
2. Introduction and meaning of mortgage
3. Parties to mortgage
4. Mortgage institutions in Nigeria
5. Roles of Solicitor in mortgage transactions
6. Investigating title and writing search report
7. Types of mortgages and advantages
8. Options in creating legal mortgage
9. Options in creating equitable mortgage
10. Perfecting legal mortgage and items needed to procure the consent of the Governor.

### **ASSIGNMENT**

#### **QUESTION ON MORTGAGE 1**

Chief Adebayo intends to raise more money for his campaign for 2023 election into the Senate. On 10th June, 2020 he used his property at 25, Bodija, Ibadan, Oyo State in which he has a Statutory Right of Occupancy for a term of 89 years with the agreement to let Zenith Bank Plc hold it for 50 years. He was to redeem it within five months. The loan was for N15m. He also deposited the title documents of the properties at 10, Blantyre Street, Lagos Island, Lagos State, and 5, Jos Street, Kaduna, Kaduna State with Access Bank Plc for the loan of N10m along with a memorandum of deposit made by deed. He later obtained additional N5m from Zenith Bank Plc with the same property at Ibadan, Oyo State but the bank merely stamped the 2nd instrument without obtaining the consent of the governor.

1. Identify the various ways of creating mortgage with the property known as 25, Bodija, Ibadan, Oyo State.
2. Identity the various types of mortgages created in this scenario with reasons.
3. Enumerate the roles of a solicitor in the transactions above
4. Mention the parties to the above mortgage transactions and briefly comment on capacity
5. Outline the procedure for Investigation of title and write the search report.



6. Advise the parties on the options of creating mortgage with the property known as 10, Blantyre Street, Lagos Island, Lagos State.
7. Assuming Chief Adebayo intends to create equitable mortgage using his property at 25, Bodija, Ibadan, Oyo State, identify the options available.
8. Comment on the need for the consent of the Governor in the above transaction and List the items needed to procure the consent of the Governor.

## Scenario & Tasks

Mr. Mat Musaba lives in Benin City. Mr Mat Musaba is married to Adekemi and they have five children --- John, Jide, Jumai, Jolaade, and Jumoke. Mr. Mat Musaba owns the following personal and real properties, among others:

- (1) A 3-bedroom bungalow at 15, Ore Street, Benin City, (his residence) which he purchased from his business partner, Chief Damien of 45, Sapele Street, Benin City for N15 million in 2009;
- (2) A 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos, which Mr. Musaba bought from Madam Kareem in 2010;
- (3) A 5-rooms bungalow at, Obalende Road, Ikoyi, Lagos, which Mr. Musaba inherited from his mother, Chief (Mrs.) Arinne who died intestate in 2015;
- (4) A Toyota Prado jeep;
- (5) The sum of Two Million Naira in his account domiciled at Jaiz Bank Plc.

Mr. Musaba has been diagnosed with a prostate cancer and he has been told he has few months to live. He instructed Aboki Audu Esq. to write his will. The will was executed on 1<sup>st</sup> December, 2019 with the following clauses:

1. I give my 3-bedroom bungalow at 15, Ore Street, Benin City to my son John.
2. I give N 2million from my account No. 34342424 domiciled at Jaiz Bank to my daughter Jumoke.
3. I give my 5-rooms bungalow at Obalende Road, Ikoyi, Lagos to my son Jide.
4. I give my Toyota Prado Jeep to my son Jolade.
5. I give my 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos to my daughter Jumai.
6. The remainder to all my children to be shared equally.

### Answer the following questions:

- a) Identify the type of gifts in clauses 1, 2, 3, 4 and 5.
- b) Are there any implication(s) on the gifts in clauses 4 and 5?

- c) Assuming clause 6 is not inserted in the will, what are the likely consequences.
- d) What properties will add up to the gift in clause 6?
- e) Two days after the testator's death, it was discovered that the Lagos State Government had acquired the 5-rooms bungalow at Obalende Road, Ikoyi, which had been bequeathed to his son Jide on ground of public interest to be used as COVID 19 isolation center. Comment on the legal implication of the gift to his son Jide.
- 7. It was also discovered that the testator had mortgaged his 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos to secure a loan to contest for a Senatorial seat which he lost and had not redeemed before his death. Comment on the effect of the mortgage on the gift to his daughter Jumai.
- f) Assuming John died one hour before the testator's death, state legal implications on the gift to him?
- g) Would your answer in (f) above be different if John is survived by a 5 years old son?
- h) List other exceptions to the effect on a gift to a beneficiary who predeceased the testator?
- i) Assuming after the Will had been executed and the testator decided to change his mind about the bequest to his daughter Jumoke and he cancelled it and in its place name his Son Jide who graduated with a first class from the Nigerian Law School.
- j) Comment on the implication of such alteration.
- k) Assuming after the alteration the bequest to Jumoke is still visible on the face of the will. Comment on the legal implication.
- l) By what other means the testator could have achieved the same result in (j) above?
- m) Assuming before the testator's death he had asked for your advice on how he could revoke his Will. Advise him.

**(WEEK 12)**  
**MORTGAGES & CHARGES 2**  
**OUTCOMES**

1. Explain the various covenants in a mortgage and the importance of the covenants
2. Explain the rights and Remedies of mortgagor and mortgagee in a mortgage
3. Identify ethical issues involved.

**COVENANTS IN A MORTGAGE**

- Covenant to repay the mortgage sum and interest on a fixed day.
- Why is agreement on interest and date of repayment important?
- Covenant to Insure - **S.123 (1) PCL; S. 19 (1) CA.**

**COVENANT TO INSURE CTD**

- Where mortgagee insures in his name.
- When does mortgagee have no power to insure? S. 130 (2) pcl
- Effect of S. 67 insurance Act
- Content of Insurance Clause
- Factors to consider in determining who to insure
- Covenant to repair
- Covenant on leasing – **Ss.18(1) CA a 121 (1) PCL**

**Is mortgagee bound by a lease on mortgage property?**

- Covenant to consolidate different mortgages.
- To observe covenants in head lease.
- Covenant not to redeem for a term

**MORTGAGEE'S RIGHTS & REMEDIES**

**Mortgagee's right to possession**

- Legal Mortgagee v equitable mortgagee. **Lewis v Telford (1876) AC 414, 426; Four Maid Ltd v Dudly Marshall Properties Ltd; Quennel v Maltby(1979) 1 WLR 318.**
- Mortgagee's power to appoint receiver. (Legal Mortgagee v Equitable Mortgagee.) **S. 19 (1) CA & S. 123 PCL; Awojugbagbe Light Industries Ltd. Vs Chinukwe & Anor (1995) 4 SCNJ, 162;**
- Conditions for appointment of a receiver
- Powers of a receiver
- **S. 24 (3, 6 & 7) CA, S.131 (6 & 7) PCL**

- A Company - **S. 393 CAMA**

### **MORTGAGEE'S POWER OF SALE FOR POWER OF SALE TO ARISE**

Mortgage must be by deed. **S.19 CA; 123(1) PCL**

b. Legal due date must have passed.

c. No contrary agreement or intention against selling in the deed of mortgage - **S. 20 CA; S. 123 PCL.**

**NOTE:** The three conditions must exist

- Conditions for power of sale to be exercisable
- Instances when a sale may be set aside
- Application of proceeds of sale
- Mortgagee's right to apply for foreclosure.
- First granted Nisi and then absolute. **S 111(2) &112(2) PCL**
- Effect Of Foreclosure.
- Right to sue for principal and interest
- Statutory limitation: Principal - ( **12 years**) and interest (6 years) – **Ss. 29, 26, 30 & 31(1) Limitation Laws Lagos; Sutton v Sutton (1882) 22 Ch 511**

### **MORTGAGOR'S RIGHTS**

- Mortgagor' Equitable Right to Redeem
- Mortgagor's Equity of Redemption-**Krelinger v New Patagonia Meat & Cold Storage Co Ltd (1914) AC 25,48**
- Remedies where mortgagor refuses to sign Apply for specific performance, Sue for principal and interest. Steps to realize loan must be within 12 years

### **ETHICAL ISSUES**

Duty to observe the rule of law and act within the bounds of the **Rules 1&5.**

Duty to be competent - **Rule 16**

To avoid conflict of interest-**Rule 17**

**Duty of Confidentiality-Rule 19**

Not receive instructions at client's house-**Rule 22.**

Duty to show utmost good faith and not misappropriate client's funds or property - **Rule 23**

**THE END THANK YOU**

**(WEEK 13)**

**MORTGAGES AND CHARGES 3  
LEARNING OUTCOMES**

**At the end of the lesson, students should be able to:**

- Draft a Deed of Legal Mortgage
- Explain the concept of up-stamping and state when a deed of mortgage need to be up-stamped.
- Distinguish between up-stamping and successive legal mortgage State how a mortgage can be discharged.
- Explain the ethical issues arising

**DRAFTING A DEED OF LEGAL MORTGAGE**

- **Taking instructions:** The first thing to do before setting out to draft a deed of legal mortgage or any instrument for that matter is taking instructions
- Instructions should be taken on the following

**FOR THE PURPOSE OF DRAFTING:**

1. Particulars of parties i.e. the mortgagor and the mortgagee and where it is a tripartite legal mortgage, the particulars of the guarantor.
2. Description of the property to be mortgaged.
3. Nature of interest of the mortgagor in the property.
4. Amount of the principal sum (loan sum).
5. Interest rate charged.
6. Legal due date.
7. Covenants

**FORMAL PARTS OF A DEED OF LEGAL MORTGAGE**

- The commencement: THIS MORTGAGE OR THIS DEED OF MORTGAGE
- Date: that is the date the deed is made and executed not necessarily the date of delivery; is MADE ....day of ....., 2020 (for example)
- Parties: particulars of parties e.g. BETWEEN Chief Eze Suleman of .....(the Mortgagor) AND Ziba Bank Plc, with its registered address at ..... (the Mortgagee)
- (include particulars of third party, if any) •
- Recital: Use the word RECITAL/ BACKGROUND or the THIS DEED/ AGREEMENT RECITES AS FOLLOWS to commence the recital
- Testatum: the operative part commences with the testatum, that is; NOW THIS DEED WITNESSES as follows

- The following clauses comprise the testatum: -
  - i Undertaking to pay the principal (the consideration in this case) and interest on or before the legal due date. NB the interest rate should not be couched in a punitive way.
  - ii The covenant for title which states the capacity under which the mortgagor is conveying e.g. BENEFICIAL OWNER.
  - iii Provision for redemption (or PROVISIO).
  - iv It is under the operative part that we have the words of grant. This depends on how the mortgage is created, it could be charge, assignment, demise etc.
  - v The parcels clause is also there which describes the mortgaged property
- Covenants: The covenants of the parties.
- Testimonium:
- Schedule, if any.
- Execution clause: whether as a natural or artificial person.
- Attestation: this also differs depending on whether it is an natural or artificial person

#### **DOCUMENTS REQUIRED FOR PERFECTING LEGAL MORTGAGE**

- The title documents
- Tax clearance of the mortgagor for 3 years preceding the year of assessment and that of the mortgagor, if any.
- Application form duly completed for Governor's consent or written application
- Receipt of payment of ground rent on the property
- Receipt of payment of any tenement rate, where this is required Valuation report
- Approved building plan of the property, where developed
- Insurance policy of the property The mortgage document/deed itself Application made for payment of stamp duties and for registration of •
- NOTE: If a company is the mortgagor \*
- Copies of Memorandum and Articles of Association of the company
- \*Copy of resolution of the BODs authorising creation of mortgage on the company's property

#### **GOVERNOR'S CONSENT**

- Effect of Governor's consent on mortgage. See **s. 22 LUA** (nullity of the transaction/responsibility on mortgagor) Delegation of Governor's authority and effect thereof. See **U.B.N. PLC V. AYODARE & SONS NIG LTD, FMB PLC V. BABATUNDE**

- Effects of Governor's consent on equitable mortgage

- 

### **STAMPING AND UP-STAMPING OF MORTGAGE DOCUMENTS**

- The need for mortgage deed to be stamped
- Required to be stamped ad valorem within 30 days (see **S 23 Stamp Duties Act**) of its execution.
- Effect of failure to stamp mortgage documents or insufficient payment of stamp duties on registration and evidence.
- **NOTE:** In Lagos State, 1.5% of the value of the up-stamped document is payable before the document is registered.

#### **UP-STAMPING**

- Up-stamping is the payment of additional stamp duties on a mortgaged instrument to reflect additional facility obtained by the mortgagor.  
The following conditions must be fulfilled
- the property is the same
- the parties are the same
- Value of the property is sufficient to cover the additional facility
- new stamp duties are paid to (up-stamp) the document
- The up-stamped document is registered Is Governor's consent required for up-stamped legal mortgage?
- Whether Governor's consent is required in granting new facility or loan using the same property as collateral or security see **OW, ONIBOYS TECH SERVICES LTD V. UBN PLC, ADEPATE V. BABATUNDE**

#### **UP-STAMPING AND SUCCESSIVE LEGAL MORTGAGE**

- Up-stamping relates to obtaining an additional facilities from the same mortgagee using the same property, while successive legal mortgage relates to obtaining different facilities, using the same property from different mortgagees.
- Please note priority in successive legal mortgages. Please note the priority in successive legal mortgages

#### **IS CREATION OF SUCCESSIVE LEGAL MORTGAGE APPLICABLE TO ALL THE JURISDICTIONS?**

- Successive legal mortgage is possible under the PCL by virtue of s. 163(1) which abolishes the common law principle of interesse termini.
- By virtue of s. 50 LRL, Lagos State can also create successive legal mortgage

#### **DISCHARGE OF MORTGAGE**

- mode of discharge of mortgage depends on the mode of its creation.

- Legal mortgage by way of demise or sub-demise created in the CA States is discharged by a **deed of discharge or a deed of release or surrender** which is registrable.
- Legal mortgage under the PCL is discharged **by way of a statutory receipt. S. 135 PCL or by a deed of reassignment, release, surrender or discharge**
- Equitable mortgages are discharged **by receipt of payment of the principal and interest**
- In Lagos State, a discharge of a legal mortgage is effected **by the completion of Receipt of a Mortgage.**

### **ETHICAL ISSUES**

1. To uphold the law and in this case to ensure that the correct amount is paid on stamp duties. Rule 1 RPC. Staying within the bounds of law. Rule 15 RPC
2. To act skillfully and competently by ensuring that the necessary clauses are inserted in the mortgage agreement Rule 16 RPC

**THANK YOU**

### **ASSIGNMENT**

#### **TASK FOR MORTGAGES III**

Pal and Pat Integrated Limited owns a factory at Industrial Area, Ibadan, Oyo State with two large warehouses and other facilities covered by a Certificate of Occupancy No OY 56735 and an estate of 10 units of 3bedroom flats at Ajao New Extension, Ikoyi, Lagos covered by Certificate of Occupancy No LA 35789. The management of the company approached Ziba Bank PLC to obtain a loan facility for the sum of N30million for the purpose of expanding the business and used the property at Ibadan as security. The mortgage instrument was assessed and stamped at the value of N20million and when the Company was called upon to apply for the consent of the Governor to perfect the mortgage, the company declined on the ground that they have some internal issues to settle at the Board of Directors of the company before that can be done. The Company had earlier used its property at Ikoyi Lagos to obtain a facility in the sum of N10million from Agreeable Bank PLC on the 25<sup>th</sup> of April, 2015 the property is however valued at N75million, they later approached the same Bank to obtain an additional facility in the sum of N35million to be paid by the 31<sup>st</sup> day of December, 2019. The interest rate for the initial facility with Agreeable Bank PLC is 20% percent, but the Bank intends to motivate early repayment by accepting 15% if paid promptly.

1. Identify the stages to register the mortgage instrument with Ziba Bank and list the documents that you will require for that purpose.



2.
  - a. What is the implication of the refusal of Pal and Pat Integrated Limited to apply for governor's consent?
  - b. Identify instances where Governor's consent would not be required in mortgage transactions.
3. What advice can you give Ziba Bank PLC in view of the mortgagor's refusal to apply for governor's consent?
4. Assuming the mortgage with Ziba Bank PLC was duly registered as a legal mortgage, by what means can it be discharged and what are the implications?
5. What are the implications of stamping of the mortgage instrument with Ziba Bank Plc?
6. Advise Agreeable Bank Plc on the legality or otherwise of the grant of the additional facility.
7. Draft the operative part of the initial agreement between Pal and Pat Integrated Ltd and Agreeable Bank PLC.
8. Outline list of instructions you will obtain in order to draft the Mortgage Agreement between the parties.
9. Assuming Pal and Pat Integrated Ltd wishes to use the property (comprising the factory and warehouses) in Ibadan to obtain another loan of N10million from Isolation Quar Bank Ltd;
  - a. Advise the parties of the propriety or otherwise of using the property in Ibadan.
  - b. Would your answer be different if the property were to be in Rivers State?
10. Identify the similarities and differences between the transactions in question 6 involving the additional facility of N35million and question 9 involving the proposed transaction between Pal and Pat Integrated Ltd and Isolation Quar Bank Ltd (using the property in Ibadan).

**(WEEK 14)**

**LAND REGISTRATION LAW (LAGOS), 2015**

**LESSON OUTCOMES**

- Identify features of the LRL as they affect sale of land, leases, mortgages, power of attorney and other real property transactions.
- Differentiate between LRL, Lagos and Land Instrument Registration Law (LIRL) of the various states
- Appreciate the procedure & documents for electronic search under the LRL, 2015
- Draft an Electronic Search Report in Lagos.
- Identify documents for real property transactions in Lagos under the LRL
- Complete the forms under LRL, Lagos
- Appreciate all ethical issues arising under the operation of the LRL

**PURPOSE OF THE LAND REGISTRATION LAW, 2015**

- to harmonize the system of registration of titles and the system of registration of instruments, in Lagos State
- repealed the following enactments (**s. 121 & 122**):
- (1) Registration of Titles Law Cap R1, Laws of Lagos State, 2003;
- (2) Land Instrument Registration Law, Lagos, Cap L58, Laws of Lagos State, 2003,
- (3) Electronic Management Systems Law, 2007; and
- (4) Registration of Titles (Appeal) Rules Cap R4, Laws of Lagos State, 2003

**MEANING OF REGISTRATION UNDER THE LRL**

- Depends on the peculiar circumstances. Varies from transaction to transaction. Registration under LRL could mean any of the following:
  - a. Registration of Documents (see sections 1, 17 and 26, LRL)
  - b. Registration of Holder of Land
  - c. Registration of Title to Land (See the Long Title and section 4(1), LRL);
  - d. Registration of Dealings or Transactions in land (See section 3(4), LRL);
  - e. Registration of Land (see the Short title).

**DIFFERENCES BETWEEN LRL AND LIRL(2)**

- a. LIRL is strictly about registration of documents, unlike LRL which is a mixture
- b. Under LIRL, registration does not make for indefeasibility, unlike under the LRL

- c. Under LIRL, there is difference in Registers or documents kept at the registry
- d. Under LIRL, reg need not be concluded within 24 hours, unlike under the LRL

**DIFFERENCES BETWEEN LRL AND LIRL (2)**

- (e) Under LIRL, unregistered registrable doc are admissible to prove transaction or payment of consideration but not to prove title. Under LRL, not admissible at all
- (f) No issuance of Land Cert, unlike in LRL
- (g) Absence of registrar's power to compel registration
- (h) Sublease above 3 years may not be registered on property subject of mortgage without prior written consent of the mortgagee under the LRL. This restriction is absent under LIRL. Under the LRL, revocation of registered PoA must be registered; else, revocation not effective, unlike under the LIRL
- (i) Immunity avails Land Registry Officials under the LRL (s.117), unlike under the LIRL 6

**MANDATORY DOCUMENTS TO BE MAINTAINED BY THE LAND REGISTRY, LAGOS**

1. Register of Transactions relating to transfer of interest in land;
2. Land Registry Map
3. Parcel File ;
4. The Day List
5. Mutation Record
6. Nominal Index
7. Register of Power of Attorney **Ss. 1,12, 13 & 15, LRL**

**THE LAND INFORMATION MANAGEMENT SYSTEM (LIMS)**

Reg under LIMS is electronic and mandatory. The following Registers must be kept for the purpose of the LIMS:

1. Day List;
2. Register of Mortgages;
3. Register of Caution; and
4. Other Register as the Registrar may prescribe.

**WHO MAY BE ACCREDITED TO CONDUCT A SEARCH UNDER LIMS (s.25)**

1. Law Firms;
2. Financial Institutions;
3. Corporate Institutions; and
4. Registered Estate surveyors & Valuers
5. Any other group or organisation so accredited by the Registrar

**NOTE:** Only duly accredited persons may conduct searches under LIMS 9  
**PROCEDURE FOR CONDUCTING A SEARCH UNDER LIMS (ss. 22)**

1. Submit an application in the prescribed Form 3;
2. Application may be made online;
3. Consideration of application by the Registry;
4. Issuance of an official report of search in Form 4. **REGISTRATION OF DOCUMENTS UNDER LRL (ss. 6,7,26, 27 & 101)**

- Time for registration - within 60 days from grant of Governor`s consent
- No registration until after survey

**CASES REQUIRING REGISTRATION (ss. 31, 36, 49, 58, 60, 61, 63, 63, 64, 69)**

1. Power of Attorney, documents of grant and sub-lease above not below 3 years;
2. Any succession – whether intestate or testate;
3. Any revocation, acquisition, excision;
4. Any overriding interest or any trust, right or interest acquired by operation of law;
5. Any purchase of mortgage property after foreclosure or in exercise of the power of sale ;
6. Any mortgage **12 CASES REQUIRING REGISTRATION (2)**
7. Any judgment or Writ of execution issued by court in respect of lease, mortgage;
8. Certificate of Purchase;
9. Any sale, sublease, mortgage by deed.
10. Any restrictions
11. Any variation in a subsisting registrable sublease; (see (see ss 42-48)
12. **Caution/caveat**

**NOTE:** Original holder need not register

- **TIPS RELATING TO REGISTRATION (ss. 29, 35, 36,113 & 118)**
- **REFUSAL OF REGISTRATION (ss. 7 & 9)**
- **EFFECTS OF REGISTRATION UNDER LRL, 2015 (ss. 6, 24, 28, 29, 30, 39, 40, 108 & 109) 14**

**SUB-LEASE (ss. 42- 48)**

- 5 years and above must be registered, subject to Governor's consent.
- Creation of sublease in respect of land subject of mortgage must be with mortgagee's prior written consent.
- Surrender of a subsisting sublease on a land subject of a mortgage must be with the mortgagee's prior written consent.
- No sublease must be created to commence at a later date exceeding 21 years, otherwise the document is void.

- Variations in a sublease must be registered before the expiration of the subsisting term

**MORTGAGES (ss. 49, 50, 52, 5542-48)**

- Registration of mortgages/charges is mandatory;
- Successive mortgages, caution are permitted provided that mortgagees take priority according to date of creation;
- Consolidation is permitted where parties expressly provided for it
  - Consolidation takes effect only after registration of mortgages to be consolidated
- Discharged is by registration of a **Deed of Release**.

**POWER OF ATTORNEY (ss. 56, 57, 94)**

- Power of Attorney dealing with land must be registered + Gov.'s consent for Irrevocable PoA
- Revocation of registered PoA takes effect on notice revocation given to the Registrar; -actions taken in good faith by a person who had NO notice of revocation at the date of taking such actions are not affected.
- **Note:** implication of not registering an irrevocable PoA on a later document made pursuant to it.

**Encumbrances & Restrictions**

A registered holder is subject to:

1. encumbrances, conditions and restrictions,
2. Prior liabilities;
3. Prior interests;
4. Bankruptcy laws;
5. Overriding interest
6. Restrictive covenants;
7. Prohibition relating to infants ss. 111, 66, 67, 68, 73, 93, 94, 95, 18

**FORM OF EXECUTION OF DOCS UNDER LRL (ss. 75, 76, 77)**

- Registrable doc must be executed by all parties to the transaction;
- When is Doc deemed executed?
- Note when attestation or illiterate jurat is mandatory (**s. 76**) 19

**REGISTRATION OF FAMILY REPS (SS. 89-92)**

- Not more than 10 members of the family; Grounds for amendment of family Register
  - 1 Death
  - 2 Inability to act as a result of mental /physical incapacity, absence or imprisonment;
  - 3 to add more reps to take the number to 10;
  - 4 pursuant to a court order; 20

**MISCELLANEOUS**

- Rectification: SS 96 –100
- Acquisition by adverse possession: s.112
- Legal Representation: Any application required to be filed may be filed under the LRL through a legal Practitioner;
- Immunity of Land Registry Officials: s . 117
- Offences & Penalties: s. 199; Transmission, Trust & Bankruptcy : ss 80 to 93

### **FORMS & PRECEDENTS UNDER LRL:**

- LRL Form 1: Application for Registration of Titled Land
- LRL Form 2: Application for Registration of Land Covered by Deed or Certificate of Occupancy
- LRL Form 3: Application for Searches
- LRL Form 4: Electronic Search Report
- LRL Form 5: Application for CTC
- LRL Form 6: Application for Registration of Caution
- LRL Form 7: Application for Withdrawal of Caution 22

## **ASSIGNMENT**

### **Scenario& Tasks**

Mr. Mat Musabalives in Benin City. Mr Mat Musabais married to Adekemi and they have five children --- John, Jide, Jumai, Jolaade, and Jumoke. Mr. Mat Musabaowns the following properties, among others:

- (13) The 3-bedroom bungalow at 15, Ore Street, Benin City, (his residence) which he purchased from his business partner, Chief Damien of 45, Sapele Street, Benin City for N15 million in 2009;
- (14) The 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos, which Mr. Musaba bought from Madam Kareem in 2010. Mr. Musaba assigned his legal interest in the property by way of a sub-demise in June 2020 to Diamond Bank to secure a loan of N280 million he took from the bank. The legal due date is 12 July 2023. Mr. Musaba nowproposes to grant a term of ten years on the same property to Bo Nigeria Limited at N6 million per annum. The term to commence on 22 August 2020;
- (15) The 5-rooms bungalow at 4, Obalende Road, Ikoyi, Lagos, which Mr. Musaba inherited from his mother, Chief (Mrs.) Arinne who died intestate in 2015. On July 10, 2017, Mr. Musaba secured a loan of N200 million

from First Bank Plc of 12, Marina, Lagos using the property as security for the legal mortgage. The duration of the mortgage is five years;

Mr. Musabaplans to undertake the following additional transactions:

- (c) To purchase a plot of land at 16, Bauchi Street, Ojota, Lagos for and in the name of his first son, John (17 years old). The property belongs to MrEbukaMankuand hiswife Anuli. They live at 88, El-Aminu Street, Kaduna; price is N120 million,
- (d) To execute an irrevocable Power of Attorney in favour of Mr. SanuMadiq, the Managing Partner of Mr. SanuMadiq& Co, a firm of Estate Managers and Consultants located at 12, Ore Close, Karu, Abuja, to enable Mr.SanuMadiq to undertake on Mr. Musaba`s behalf the transactions involving the properties at Ikoyi, Lagos and the one at Ojota, Lagos.

Mr. Musaba has approached you for advice on the proposed transactions, especially with respect to his properties located in Lagos.

### **Answer the following questions**

#### **Question One**

- m) State any five differences between registration of the proposed sale involving the property at Bauchi Street, Ojota, Lagos (under the Land Registration Law, Lagos) and registration of the sale involving the property in Benin (under the Land Instruments Registration Law (LIRL) of Edo State.
- n) Mention the mandatory records that must be maintained in the Land Registry, Lagos for the purpose of real property registration under the LRL, 2015. How do these differ from the document(s)/recordsthat must be maintained for purposes of operation of the land Information Management System (LIMS) in Lagos;
- o) For purposes of the various applications Mr. Musaba may have or choose to make under the LRL, 2015, state the prescribed Form under the LRL, 2015 that would be relevant for each of the following applications and processes:
  - (xv) Application for CTC,

- (xvi) Application for search under LIMS,
  - (xvii) Registration of interests covered by Certificate of Occupancy,
  - (xviii) Application for registration of titles to land,
  - (xix) Registration of caution, and
  - (xx) Withdrawal of caution.
- p) In respect of the purchase of the property at 16, Bauchi Street, Ojota, Lagos,
- i. identify the person or persons who are authorized to conduct searches in Lagos State Lands Registry.
  - ii. Outline the procedure required to be followed to conduct a search under the LIMS in respect of the property at 16, Bauchi Street, Ojota, Lagos;
- q) Advise Mr. Musaba on the following:
- i. The real property interests, property transactions, and land documents or holders that are registrable in Lagos.
  - ii. State the consequences of failure by the person obliged to apply for registration of a registrable interest in Lagos State.
  - iii. Are there any instance or instances in which registration is not mandatory? Identify that/them.
  - iv. On what grounds (if any) may the Registrar decline registration under the LRL, 2015?
- r) Set out the various obligations, roles, powers and responsibilities of the Registrar in respect of registration of interests, lands, holders and transactions under the LRL, 2015.
- s) Comment briefly on the various features of registration under the LRL, 2015
- t) List all special precautionary measures that must be taken at the Lagos land registry in respect of the irrevocable Power of Attorney executed in favour of Mr. SanuMadiq to ensure he would be able to validly carry out the proposed transactions on behalf Mr. Musaba and to ensure that the various instruments of transfer to be executed in respect of the transactions over the properties in Ikoyi and Ojota are accepted for registration.



- u) List out the various interests or rights that may constitute a form of encumbrance on the rights of Mr. Musabaas a holder of landed properties in Lagos;
- v) To ensure their acceptance for registration in Lagos State, highlight the proper form of execution and attestation of Deeds under the LRL, 2015;
- w) Advise MrMusaba on the validity of the proposed transaction with Bo Nigeria Limited.
- x) Assuming the property at Ore Street was in Lagos State and now, Mr. Musabaproposes to sell the property to the Aduba family of Ikorodu, describe the procedure the family would adopt to ensure due registration of its representatives for purposes of effecting this and similar real property transaction on behalf of the family. On what grounds may such registration be rectified?

### **Pre-Class Activity**

Each student must read chapter seven (7) of the Property Law Practice Handbook, and the topic, Land Registration Law (Lagos), in textbooks

**(Week15)**  
**WILLS AND CODICIL – 1**  
**CONTENTS**

- a. Meaning
- b. Types of Wills
- c. Rationale for making a Will
- d. Who can make a Will
- e. Conditions for validity (Due execution)
- f. Testamentary capacity
- g. Proof of validity of a Will

**WILLS**  
**Major Features**

- Testamentary
- Ambulatory
- Voluntary

**TYPES OF WILL**

- Formal Will –
- Holographic Will –
- Mutual / Reciprocal Will –
- Statutory Will-.
- Privileged will –
- \*S. 6 Wills Law Lagos State, Armed Forces Act s. 276 (1).

**Advantages of making a Will/ Rationale for making a Will/ Reasons for making a Will**

- Disposition of property as the testator wants
- To avoid the application of the rules of intestacy
- Have a opportunity of appointing his executors
- To confer extended powers on executors
- Appoint guardian for minors
- Give directives on burial

**Disadvantages**

- Does not enhance community living
- Expensive – Paying a solicitor to draft same
- Mistake may invalidate the Will (or a gift)

**TESTAMENTARY CAPACITY**

- a . Age – as stipulated by the relevant law
- 21 years – **S. 7 Wills Act 1837**
- 18 years – **S. 3 Wills Law Lagos State**

**\*\* exception** – seaman/mariner/ crew of commercial airline at sea/air – S. 6 Wills Law Lagos State b. Mental capacity - sound mind. No lunacy or infirmity of mind Okelola v Boyle (1998) 2 NWLR, PT 539, page 533 – sound mind, memory and understanding

### **TESTAMENTARY CAPACITY**

At time of giving instructions and when executing the Will – PARKER v. FELGATE (1883) 8 PD 83

**\* PARKER v FELGATE**

**BATTAN SINGH v AMIRCHAND (1948) 1 ALL ER 152**

### **MENTAL CAPACITY –**

**The factors/test to determine sound mind:**

- a. He understands the act of making a Will and its legal effect
- b. He knows the extent of the property he wants to dispose of
- c. He has a recollection of the object of his bounty
- d. He knows the manner of distribution of his pty in the Will **BANKS v. GOODFELLOW (1871) QB 544**

### **Proving mental capacity**

#### **1. Presumption of sound mind**

\*Where the Will appeared *ex facie* rational and logical (**omnia prae sumuntur rite esse acta**)

**2. Extrinsic/Positive evidence:** clear evidence consistent with sanity and capacity of mind

- By attesting witnesses and others
- Testator's conduct before and after making the will
- General habits of the testator
- Medical evidence – **Adebajo v Adebajo (1971) ALL NLR 155**

### **Factors that may affect mental capacity**

- a. Undue influence –
- b. \*\*\* Persuasion is not undue influence – Hall v Hall
- c. \*\* Gift given because of romantic consideration held not tainted by undue influence Johnson v. Maja (**1950/51) 13 WACA 290 MONEYPENNY v BROWN (1711) 22 ER , 651 FEDERAL ADMINISTRATOR v JOHNSON (1960) LLR 290**

b. Delusion:

\* Existence of delusion not enough, it must affect his faculties at the time of making the Will **Banks v Goodfellow (1871) QB 544 –**

### **\* Mistake and Fraud**

\*\*\* A Will must be with testator's approval and knowledge

**Okelola v Boyle (1998) 2 NWLR, PT 539, 533 Williams v Bankole, (1964) LLR 91**

\* Suspicious circumstances **Wintle v Nye (1959) 1 WLR, 284 , Thomas v Jones (1928) Ch 126**

**Conditions for validity of a formal Will/ Requirements for a valid Will**

- a. Writing - **S. 9 Wills Act 1837 , S. 4 Wills Law Lagos State**
- b. Signed by Testator – **S. 9 Wills Act 1837 4 Wills Law Lagos**

**1. Testator's Signature:**

- a. He signs personally in joint presence of at least two witnesses
- b. Testator signs the will privately and acknowledges his signature in joint presence of at least two witnesses
- c. Somebody signs for testator in his presence and by his direction and he acknowledges same in joint presence of at least two witnesses

\*\* Thumb impression also accepted – **NELSON v AKOFIRANMI (1959) LLR 143**

**Attestation**

\* By at least 2 witnesses

**Attestation by Witnesses**

- \* Witnesses' signature must be after testator's signature
- \* Each witness signs in Testator's presence
- \* Witnesses may not sign in each other's presence but must sign in the presence of the Testator

**S. 7 Wills Law Lagos**

**Witnesses as Beneficiaries.**

The general rule is that where beneficiary or his/her spouse attests to a Will, they will lose the gift. S. 15 Wills Act 1837, **Ross v Counters (1980) Ch 297 S. 8 Wills Law Lagos**

**Exceptions:**

- a. There are more than 2 witnesses to the Will – **S. 8. Wills Law Lagos State**
- b. The gift is confirmed in a later Will to which he/she or his/ her spouse is not a witness
- c. The gift was made in settlement of some obligation – **S. 15 Wills Act, S. 8 Wills Law Lagos State**
- d. The witness is merely a trustee of the gift – **Creswell v Creswell**
- e. The marriage between the attesting witness and the spouse happened after he/she attested the Will – **Aplin v Stone (1904) 1Ch 543**

## PROOF OF DUE EXECUTION

### Presumption of due execution

#### **Omnia Praesumuntur Rite Esse Acta – Will**

appears ex facie regular. For the presumption to be invoked

- Will must be regular on its face
- Have proper attestation clause
  - b. Proof by positive evidence \*no formal or insufficient attestation clause
  - \*evidence by attesting witnesses \*lawyer that drafted the will etc. **CODICIL** - a mini or supplementary Will by which a testator alters, amends, revokes what is contained in a Will \*\*Must be made in accordance with law and all other requirement for a valid Will also apply

### FUNCTIONS OF A CODICIL

- a. Affirms the content of a Will
  - b. Alter or amend the provisions of a Will
  - c. Correct clerical errors and validate alterations in a Will
  - d. Revokes a Will
  - e. Revives a Will
  - f. Republishes a Will
- \* A Codicil should always be linked by reference to the Will it seeks to alter, amend affirm, etc

## ASSIGNMENT

### TASK

1. Mr Olubunmi Oluwadare, a businessman, resides at NO 33 Alhudahuda Street, New GRA, Sabon Gari, Abuja FCT. He has been happily married to his wife, Cecilia for the past 25 years and they are blessed with 5 children. Mr. Olubunmi has just survived a vehicular accident which almost took his life along the Kaduna- Abuja Expressway. He was hospitalized for 6 weeks. He has just been discharged and is now recuperating at home. The brush with death has made Mr. Oludare realize that life is transient and can be lost at anytime. He has therefore decided that he will settle his affairs so his family will not go through any crisis in the event of his demise. He has therefore approached Mrs. Angela Rotini, a new wig, to advise him on how to go about taking care of his affairs so that his vast estate, comprising of houses in different States of Nigeria and abroad, cash and other investments will be inherited by people he loves and cares about. Mr Oluwadare asked his pastor Mr Isreal Koko and his wife to attest the will.

**Attempt the following questions-**

- (xxi) Advise Mr Oluwadare on the merits of making a will as against intestacy.
- (xxii) Assuming that Mr. Oluwadare gave his house at the village to Miss Jane Kuko, the first daughter of Mr Isreal Koko, advise her on the validity of the gift.
- (xxiii) Would your answer in (b) be the same if the house was given to Mrs Israel Kuko
- (xxiv) Would your answer in (c) be the same if the house was given to Mrs Isreal Kuko (i) as a settlement of an indebtedness, (ii) as a Trustee, (c) if Mrs Israel Koku attested the Will 3 days before her nuptials to Mr. Israel Koku. Give reasons.
- d. Six months after making his Will, Mr. Oluwadare was paid his professional fees for a contract he had executed for the government. He used part of the money to acquire a Toyota Jeep and a 3 bedroom semi- detached flat at No. 3 Oduduwa Street, Wuse, Abuja-FCT. Who among his beneficiary would likely inherit those properties. State other categories of properties that may fall into the same estate.
- (xxv) Mr Olorundare is desirous of having his Will executed appropriately, advice him on the different ways he could execute his Will.
- (xxvi) Assuming Mr Oluwadare was a soldier stationed inside Sambisa forest on military operation, advice him on how he could validly execute his will. Would your answer be the same if the testator was a pilot and was flying to Japan when he made the will. Give reasons.
2. Mrs Osarumen Oyikoko, an indigine of Bayelsa State, resides at No. 33 Abidjan Street, Badagry, Lagos State with her husband and 5 grown-up children. She was a successful business woman and has, in the course of engaging in the business of exportation, acquired landed properties in major cities of the world. Mrs Oyikoko had called her solicitor, Mr. Doall Allshine and intimated him of her intention of making her last Will and Testament. She had also told him that

instructions for a befitting burial would be part of the Will seeing that she has worked so hard in her lifetime so feels she is entitled to be sent-off with all the fanfare and pageantry befitting a woman of her status. Mrs. Oyikoko was supposed to meet with the Solicitor on 13th March, 2018 for drafting of the Will but had to cancel because of some family emergency that necessitated her going to the village. Their meeting was therefore re-scheduled for 14th April, 2018 at 3:00pm. On the said date, Mr. Doall Allshine was in his office waiting for his client when he got a phone call from her husband informing him that Mrs. Oyikoko had died. That she died in the village and has since been buried. After her burial, her family was informed of a Will she had prepared while at the village. The Will was made and written in Mrs Oyikoko handwriting. In the said Will she had given all her landed properties in Nigeria to her cousin Miss Ungulu Mushe for taking care of her when she was sick in the village. She also gave the remainder of her properties to her Uncle who had helped in purchasing the medications she had needed.

**Answer the following question**

12. Assuming Mrs Oyikoko had made her Will as originally agreed to with Mr. Doall Allshine and it included her instructions for a befitting burial, advise her on the steps to take to ensure her burial instructions are adhered to.
13. The children of Mrs Osarumen Oyikoko are planning on opposing the grant of Probate the following grounds
  - i. that the document was not prepared by her solicitor, Mr. Doall Allshine
  - ii. that the document cannot be regarded as a Will because it was not typed
  - iii. that Miss Ungulu Moshe manipulated Mrs. Oyikoku into giving her the properties in the Will.
- c. Assuming that when Mrs Oyikoko had suffered from delusion in her lifetime and this is one of the grounds on which her children are challenging the validity of the Will, advice the propounders of the Will on how to prove that Mrs Oyikoko had the requisite sound mind when making her Will.

**(WEEK 16)**  
**WILLS & CODICILS PART 2**  
**By Appolos Dimas**  
**. OUTCOMES**

At the end of the lesson student should be able to:

1. Mention types of legacies
2. Explain circumstances under which legacies may fail
3. Explain how a will can be revoked
4. Explain revival and republication of a will
5. Explain alteration and erasure on will
6. Identify ethical issues on legacies in a will and revocation of a will. By Appolos Dimas.

**WHAT ARE LEGACIES?**

Legacies are devises (disposition of real estate) or bequests ( disposition of personality) given by a testator in his Will. A devise is used in relation to disposition of real estate. A bequest is used in relation to disposition of personality. By Appolos Dimas.

**TYPES OF LEGACY**

- The types of legacies in a will are:
  1. Specific legacy
  2. General legacy
  3. Demonstrative legacy
  4. Pecuniary legacy
  5. Residuary legacy
  6. Annuities
  7. Contingent legacy
  8. Substitutional legacy By Appolos Dimas.

**SPECIFIC LEGACY**

- This is a gift to a beneficiary that is named, identified and sufficiently described leaving no room for speculation to its identity.
- The gift is distinguishable from other property of the testator.

**GENERAL LEGACY**

- This is a gift which is named, but not specifically and sufficiently identified. The gift is not distinguishable from other property of the testator. By Appolos Dimas.

**DEMONSTRATIVE LEGACY**

- This is a gift which the testator directs to be satisfied out of a specific fund or pool of property. See **WALFORD v. WALFORD (1912) AC 658, DAWSON v. REID (1915), 113 L.T 32.**



- Demonstrative gift could be pecuniary or otherwise, provided the testator state in his will, where such a gift can be source from. By Appolos Dimas.

### **PECUNIARY LEGACY**

1. This is simply a gift of a sum of money.
2. It may be specific pecuniary gift, general pecuniary gift or demonstrative pecuniary gift depending on how the clause is drafted. By Appolos Dimas.

### **ANNUITIES**

- It is a form of pecuniary legacy that is paid periodically (yearly). See **RE EARL OF BERKELEY( 1968) 3 ALL ER 364**. By Appolos Dimas.

### **RESIDUARY LEGACY**

- It is made up of the residue of the testator's estate. By Appolos Dimas.

### **WHAT CONSTITUTES RESIDUARY LEGACY?**

1. Gifts that failed
2. Gifts that were realized after the testator's death.
3. Gifts that lapse
4. Gifts that were renounced
5. Gifts acquired after making the Will.

### **CONDITIONAL LEGACY**

- A legacy given on the condition that the legatee does or refrain from doing something.
1. Where the condition precedent is immoral or contrary to public policy, it would be void and the legatee will take free of the condition.
  2. If the condition is impossible to perform, then the legatee would not get the gift. By Appolos Dimas.

### **SUBSTITUTIONAL LEGACY**

This is an alternative legacy, given where a gift had been given to prevent total loss in case the gift in the will adeems. By Appolos Dimas.

### **FAILURE OF LEGACIES**

- A legacy may fail by:
  1. Ademption
  2. Abatement
  3. Lapse
  4. Gift to witnesses and their spouses
  5. Ground of public policy
  6. disclaimer By Appolos Dimas.

### **REVOCATION OF A WILL**

- Generally, a will remains revocable during the life time of a testator.

- A testator cannot delegate or authorize another person to revoke his will after his death. By Appolos Dimas. **HOW CAN A WILL BE REVOKED?**
- A will may be revoked either by voluntary act of the testator or involuntary act which results from the operation of law. Pursuant to section 20 Wills Act and **section 13 Wills Law Lagos State** there are 3 ways which a will can be revoked voluntarily:
  1. By burning or tearing with intention to revoke
  2. By a later or subsequent will or codicil
  3. By written declaration of intention to revoke the will. A Will can be revoked involuntarily i.e. by operation of law e.g. by subsequent marriage. By Appolos Dimas.

#### **REVIVAL OF A REVOKED WILL**

By section **22 of the Will Act and Section 15 of Wills Law of Lagos State** a will or codicil that is revoked can be revived by :

1. Re execution
2. A codicil duly executed and showing the intention to revive the will. See **IN THE GOODS OF TERRIBLE**. By Appolos Dimas.

#### **REPUBLICATION OF WILL**

- A Republication means confirmation or affirmation of the validity and content of a will.
- It can be done either by:
  - 1 Re- execution of the will with proper formalities as provided in section 9 of the Wills Act.
  - 2 By a duly executed codicil containing references to the will or codicil republished. By Appolos Dimas.

#### **ALTERATIONS AND ERASURES ON THE FACE OF WILLS**

- **By Section 21 Wills Act and section 14 Wills Law of Lagos.** A will may be altered by either re-execution or by codicil.
- Every alteration in a will after execution must be reexecuted as a will.
- Where the original words before alterations are apparent, probate is granted with those word included in the will while the alteration is ignored. See **GOODS OF BEAVAN**.

#### **ETHICAL ISSUES**

- Dedication and Devotion to the cause of the client. Rule 14(1) RPC 2007
- Privilege and confidentiality of a client. Rule 19(1) RPC 2007
- Duty not to Call at client's house or place of business. Rule 22 RPC 2007
- Acting within the bound of the law. Rule 15 RPC 2007
- Dealing with client's property. Rule 23 & 14 RPC 2007 By Appolos Dimas.

**(WEEK 17)**  
**WILLS AND CODICILS 3**  
**LIMITATIONS AND RESTRICTIONS ON TESTAMENTARY FREEDOM AND**  
**DRAFTING A WILL**  
**OUTCOMES**

- At the end of the class students would be able to :
- Explain limitations on the testator
- State the nature of information required to prepare the Will
- Mention the various parts of a Will
- Explain the effects of various parts
- Draft a will and a codicil
- Identify ethical issues arising from 1,2, and 5 above.
  - No restrictions on testamentary freedom under the Wills Act 1837. See **BANKS V GOOD FELLOW (1870) QB549.**
  - In Nigeria restrictions are based on statutory restrictions, customary law limitations and Islamic law limitations.

**Statutory Restrictions**

- Reasonable financial provisions for dependents- Section 2 Wills Law Lagos State
- Who are the dependents?
- Under what circumstances can the application be made? See the following cases **Re Coventry (1980) Ch.461** and **Re Dennis (1981) 2 All ER 140.**

**Customary Limitation**

- Customary Law restrictions Section 1 Wills Law of Lagos State . See also
- sections 4(1) Wills Law Kaduna State and S. 3 (1) Wills Law Oyo State. –
- The customary restriction affect the property to be disposed of by the Will. See the following cases **IDEHEN V IDEHEN(1991) 7 SCNJ(Pt II) 196,** **LAWAL OSULA V. LAWAL OSULA(1995) 9 NWLR Pt 419 p. 259**
- Note what constitute Igiogbe **UWAIFO V UWAIFO (2013) All FWLR Pt 689.p 1116.**
- Also note condition that must be fulfilled to enjoy Igiogbe. See **AIGUOKUNREGHIAN V IMARUAGHERU (2015) All FWLR, Pt 785, Pg 269.**

**Islamic Law Limitations**

- Islamic Law restrictions
- **ADESUBOKUN V YUNUSA (1971) 1 ANLR 225-** a Muslim made his will in accordance with the Wills Act. See also Section 2 Wills law, Kaduna State.
- See also **AJIBAIYE V AJIBAIYE ( 2007) All FWLR Pt 359 at 1321.**

### **Taking instructions**

➤ Instructions to be taken

1. Full names ( including aliases of the testator)
2. Names and addresses of the executors
3. Names and addresses of the beneficiaries
4. List and particulars of the testator's property and how he wants them shared.
5. What should happen in the event of the death of a beneficiary .
6. Religion of the testator
7. Any relatives ( dependents) of the testator
8. Instructions on residuary estate .
9. Names and addresses of the witnesses.
10. Previous will or Codicil
11. Details of guardian for infant children
12. Instructions on funerals
13. Custody of the will
14. Remunerations of the executors.

### **Formal parts of the Will and effects**

1. Commencement
2. Date
3. Revocation Clause
4. Appointment clause
5. Charging clause
6. Gift clause
7. Residuary clause
8. Testimonium
9. Execution/ attestation clauses.

### **Specimen will**

THIS IS THE LAST WILL AND TESTAMENT OF .....alias ..... No. 234 Wuro hausa, Yola, Adamawa State, made this .....day of .....2020

1. REVOKE all my former wills and testamentary dispositions
2. I APPOINT ..... of..... And ..... to be the executors of my will
3. I DECLARE that ..... being a legal practitioner shall be entitled to his charges and be paid his usual professional fees for work done, time spent and services rendered in the administration of my estate.
4. I Give my black Toyota Prado car with registration no... to my son John 5. I Give a two bedroom flat to my daughter Mercy IN WITNESS of which I have executed this Will the day and year first above written Mr..... Signed by

the testator, Mr..... In the joint presence of us who in his presence and that of each other attested the Will and subscribed our names as witnesses  
.....

### **Ethical considerations**

- Dedication to the client's work Rule 14 RPC
- Acting within the bounds of law Rule 15 RPC
- Calling at client's house Rule 22 RPC
- Dealing in client's property Rule 23 RPC
- Acting competently in drafting the Will and Codicil Rule 16 RPC

**THANKS**

### **PRE CLASS ASSIGNMENT**

Mr. Mat Musaba a Benin traditional Chief lived all his life in Lagos and a very successful plank seller. He was married to Adekemi and had five children namely, John 20 years, Jide 16 years, Jumai 8 years, Jolaade 6 years and Jumoke 3 years old. Before his death on 20<sup>th</sup> July, 2020, he was diagnosed with prostate cancer at the Lagos State University teaching hospital and he was told he had few months to live. He instructed Aboki Audu Esq to write his Will. The Will was executed on 4<sup>th</sup> May, 2020 where he bequeathed his three-bedroom bungalow situate at Ahmadu Bello way, GRA Ikeja, Lagos to his first son John. He equally gave all other properties situate in Lagos to his girlfriend Tayo that stood with him during his trying period. After his death, the Will was found by his wife Adekemi. She read the Will and felt betrayed by her husband despite her true love for him and her sacrifice in the marriage. She has approached you for legal advice. Answer the following questions.

- a. Comment on the validity of his bequest to his girlfriend.
- b. Advice Adekemi on how she can protect her children in the circumstances.
- c. Assuming the testator being a Benin traditional Chief and his eldest son John (born out of wedlock) has been disinherited of his dwelling house in Benin and the Will contained the following clause:  
**"I DECLARE that I make the above demise and bequest when I am quite sane and well. It is my will that nobody shall modify or vary this Will. It is my will that the native law and custom of Benin shall not apply to alter or modify this Will"** Comment on the validity of the bequest and as well as the clause containing the above declaration.

- d. Assuming the testator resided in Ilorin and was subject to Islamic Law. Advise him on the way and manner in which he can dispose of his property.
- e. If you were the testator's solicitor, in drafting his Will what information would you require from him?
- f. Draft the following clauses of the testator's Will
  - i. Commencement,
  - ii. Appointment
  - iii. Revocation.
- g. Assuming Mr. Mat Musaba is not sure of how to compensate his executors for carrying out the work of executorship and he wants to ensure his executors do not decline the execution of his estate. Advise him on what to do.
- h. Draft any clause you deem fit to actualize your advice in (f) above.
- i. Assuming the witnesses to testator's Will are Audu Ali of No. Ali Street Ikeja Road Lagos and Ladi Sani of No. 41 Ahmadu Bello Way Victoria Island Lagos.
  - a) Draft the execution and attestation clauses to be included in the Will.
  - b) Assuming the testator is a blind man draft the execution and attestation clauses to be included in the Will.
  - c) Assuming the testator had authorized Mr. Ahmed Musato sign the Will on his behalf. Draft the execution and attestation clauses.
- j. As a legal practitioner engaged in drafting this Will. List 7 professional responsibilities you must be conscious of in the course of your professional services.

**(WEEK 18)**

**PROBATE PRACTICE & ADMINISTRATION OF ESTATE  
(VIRTUAL LECTURE)**

**LEARNING OUTCOMES:**

- At the end of the lesson, students would be able to:
- state when application for probate and Letters of Administration is non-contentious and contentious
- state the procedure to obtain Probate (non-contentious and contentious cases, including need for double probate)
- state when caveat may cease to be effective against application for Probate or Letters of Administration
- draft (Letter of application) and fill documents required to process probate
- explain the procedure to obtain Letters of Administration (non-contentious and contentious)
- mention the documents required to obtain Letters of administration
- fill the documents required to obtain Letters of administration
- identify ethical issues arising from process of obtaining Probate.

**MEANING OF PROBATE/L.A.**

- Judicial procedure/authority that validates the representation, powers and functions of an executor in a testamentary document.
- Judicial procedure/authority that confers the representation of an administrator in an application for letters of administration.

**TYPES OF GRANTS**

1. Grant of probate with Will attached and executors appointed in the Will
2. Grant of probate/L.A. (without executors appointed or has died or renounced probate)
3. Grant of administration without Will (deceased died intestate).

**APPLICATIONS FOR PROBATE AND LETTERS OF ADMINISTRATION**

- When non-contentious
- When contentious
  - Or. 61 r. 1(1)(2) Lagos HCCPR., 2019; Or. 62 r. 1/Or. 64 r. 1&2 FCT High Court CPR., 2018.
- ❖ **NOTE:** undue interference with the estate (executor de son tort)
- ❖ See Or. 62 r. 18/Or. 61 r. 17 (Lagos); Or. 62 r. 3&18 (FCT); ADENIYI-JONES v. MARTINS (1943) WACA. 100.

### **PROCEDURE TO OBTAIN PROBATE WHEN NON-CONTENTIOUS**

- ✓ Application usually proved in a COMMON FORM
- ✓ Will to be duly executed by the testator (NELSON v. AKOFIRANMI) (1959) LLR. 143
- Discovery/Reading of the Will – or.64 r.25 (FCT);
- Application for probate and accompanying documents
- Advertisement/publication
- Proving the Will – or. 62 r. 17 (Lagos)
- Order of court to issue grant of probate – Or. 63 r.19 (Lagos); or. 62 r.44 (FCT).

### **PROCEDURE TO OBTAIN PROBATE WHEN CONTENTIOUS**

- Application usually proved in a SOLEMN FORM
- Will to be duly executed by the testator – or. 62 r.5-10(Lagos); or.64 r.30 - FCT
- Discovery/reading of the Will – or. 62 r. 1&2 –Lagos; or. 64 r. 22&25 –FCT.
- Application for grant – or.61 r.3&4 (Lagos); or. 64 r.1&2 FCT
- Advertisement/publication
- Objection or caveat (Form 5 or 6 –Lagos; Form 51 or 52 –FCT) – or.63 r.18(Lagos); or.64 r.47(2)&(3) – FCT; see also s. 21 Administration of Estate Law (Lagos State).
- ✓ See **DANJUMBO v. DANJUMBO (1999) 7 SCNJ 112. 8.**
- Note: Validity, Effectiveness and when Caveat may cease to be effective;
- see **Or. 63 r. 18(5)(7)(15) –Lagos; Or. 64 r. 47(4)(11) –FCT.**
- Citation/Warning (Form 7 –Lagos; Form 53 –FCT) – see Or. 62 r. 18(8)-Lagos; Or. 64 r. 47(7)- FCT.
- Enter appearance (Form 8 –Lagos; Form 54 –FCT) – see Or. 63 r. 18(9)(10) –Lagos; Or. 64 r. 47(9) – FCT.
- Probate action/court proceeding; see OKELOLA v. BOYLE 1981) 1 SCNJ 63.
- NOTE: Grant of L.A. pending court proceeding or appeal to preserve the estate (grant Pendete lite) – Or. 64 r. 17 – Lagos; Or. 64 r. 53- FCT Grant of probate

### **NEED FOR DOUBLE PROBATE**

- Absence of adult executor when the other executors applied for probate
- Where the executor (now of full age) was under aged when the other executor/s applied for probate
- Where the executor was ill when the other executor/s applied for probate\



- Where more than 4 executors were appointed by the testator
- See Or. 61 r. 13 - Lagos; Or. 64 r. 40 - FCT.

### **DOCUMENTS REQUIRED TO PROCESS PROBATE (NON-CONTENTIOUS & CONTENTIOUS)**

- ✓ Application letter
- ✓ A copy of the Will duly marked by the applicant – Or. 62 –Lagos; Or. 64 r. 6 –FCT
- ✓ Death certificate of the testator
- ✓ Proof of identity of the deceased and that of the applicant
- ✓ Oath by executor/s
- ✓ Affidavit stating the date and place of death and domicile of the testator
- ✓ Writ of summons

### **ADDITIONAL DOCUMENTS TO PROCESS PROBATE (WHEN CONTENTIOUS)**

- ❖ Notice of caveat – Form 5 or 6/Form 51 or 52
- ❖ Citation/Warning – Form 7/Form 53
- ❖ Notice of Appearance – Form 8/Form 54

### **LETTERS OF ADMINISTRATION**

- When is it granted? See Or. 63 r. 1&9/Or. 64 r. 16(Lagos); Or. 64 r. 53 (FCT)
- ✓ Intestacy
- ✓ Partial intestacy
- ✓ Administration generally (with Will attached)

### **PROCEDURE TO OBTAIN GRANT OF NON-CONTENTIOUS L.A.**

- Same procedure as in the grant of non-contentious probate
  - Application (filling and return of probate forms)
  - Publication
  - Grant of Letters of Administration
  - See Or. 61 r. 3 (Lagos); Or. 64 r. 1&2 (FCT)

### **DOCUMENTS REQUIRED FOR GRANT OF NON-CONTENTIOUS L.A.**

- ✓ Application and other documents accompanied with:
  - ❖ Oath of administration
  - ❖ Inventory
  - ❖ Affidavit of next of kin
  - ❖ Bond
  - ❖ Bank certificate

- ❖ Particulars of landed property
- ❖ Schedule of debts and funeral expenses
- ❖ Justification for sureties
- ✓ See Or. 63 (Lagos); Or. 64 r. 1&2 (FCT)

### **PROCEDURE FOR GRANT OF CONTENTIOUS L.A.**

- Same procedure as in grant of contentious probate
- Application for L.A.
- Publication
- Caveat by the challenger/s
- Citation by the applicant
- Appearance to citation by caveator
- Probate action in court
- Grant or refusal of L.A.

### **DOCUMENTS REQUIRED TO PROCESS CONTENTIOUS L.A.**

- ❖ Same as ones to process non-contentious L.A., but includes:
- ✓ Caveat in Form 5 or 6 (Lagos)/Form 51 or 52 (FCT)
- ✓ Warning/Citation in Form 7 (Lagos); Form 53 (FCT)
- ✓ Appearance to citation/warning in Form 8 (Lagos)/ Form 54 (FCT)
- See Or. 61 r. 7&8 (Lagos); Or. 64 r. 1&2 (FCT) 20

### **WHO CAN BE GRANTED PROBATE/L.A.?**

- ❖ Discretion of court/order of priority
- ✓ See s.26 A.E.L; Or. 62 r. 22 (Lagos); Or. 62 r. 43 (FCT)
- ❖ Order of priority for the grant
- ✓ See s. 49 A.E.L (Lagos); Or. 64 r. 15 (FCT)
- ✓ *OBUSEZ v. OBUSEZ* (2007) 10 NWLR(pt. 1043) 430; *ASERE v. ASERE* (1992) 6 NWLR (pt. 197) 316.

### **REVOCATION OF GRANT OF PROBATE OR L.A.**

- ❖ **NOTE:** Circumstances for revocation of grant of Probate or L.A.
- See Or. 61 r. 19(1)(2) – Lagos; Or. 64 r. 46 – FCT

### **RESEALING FOR OBTAINING L.A.**

- ❖ **NOTE:** The procedure for resealing
- See s. 2 Probate Resealing Act; Or. 62 r. 25 (Lagos); Or. 64 r. 45 (FCT)

### **GRANT OF L.A. IN RESPECT OF SMALL ESTATE**

- ❖ Who can be granted? – s. 3(5) Administration of Estates (Small Estate payment exemptions) Law, cap. A4, 2005 (Lagos)
- ❖ Requirement for statutory declaration – s. 3(1) (Lagos)
- ❖ Requirement for surety/estate duty? – see Or. 63 r. 4(5) –Lagos; Or. 64 r. 44(5) –FCT ; s. 3(4) –Lagos.

- ❖ Certificate of Administration to administer small estate – s. 3(3) – Lagos 2

### **ETHICAL ISSUES**

- Solicitor to take full instructions
- Solicitor to avoid falsification of testamentary documents
- Solicitor to avoid compromise with the deceased family members  
fraudulent intent
- Solicitor to show competence and professionalism in Probate matters.

### **ASSIGNMENT**

#### **PROBATE AND ADMINISTRATION OF ESTATE 1**

#### **TASKS**

Mr. Mat Musaba, a seasoned comedian, is a native of Kofadandoya, Kano State and resident at Plot 48 Rikos Avenue, Abuja.

He lived all his life and died in Abuja on March 28, 2020 at the age of 72 as a result of complications from covid-19 at the Round Life Specialist Hospital, Abuja leaving a Will dated July 24, 2019. Musaba was survived by his wife, Mrs. Adekemi Musaba, two sons and three daughters namely: John (32), Mrs. Jumai Musaba-Dangana (30), Jolaade (27), Jumoke (27) and Jide (24).

Musaba, in his Will, appointed his wife (Adekemi), his first son, Eng. John Musaba of No. 43 Allen Road, Ikeja-Lagos as Executors of his last Will.

He owned a 4-bedroom duplex at No. 9 Konga Avenue, Apapa, Lagos; a 3-bedroom bungalow at No. 15 Ore Street, Benin City; a 2-bedroom flat at Plot 16 Ogui Drive, Abuja; 3-bedroom duplex at No. 25 Orange Street, Garki-Abuja and a 4-bedroom duplex with boys' quarters at No. 48 Kings Drive, G.R.A. Kano.

He also owned a Toyota Prado Jeep (2014 model- KJA-214 AA), Honda Accord car (2014 model- EKY- 902 ST), Silver lining Rolex wrist watch, Kawazaki power bike (2012 model- GWA-432 DX) and BMW X5 SUV (2015 model- ABC 523-AG) and other personal properties as contained in his said Will.

Mr. Mat Musaba maintained Current accounts with Zenith Bank PLC, Ikeja Branch, Lagos (Account NO: 0020150318) and Access Bank PLC, Wuse Branch, Abuja (Account NO: 0320150180).

#### **Answer the following questions:**

1. (a) Advise Mrs. Adekemi Musaba on what the family needs to do in order to legally administer the estate of the deceased.  
b. State the procedure the family would adopt to achieve this purpose.

- c. Would your answer be different assuming that Mat Musaba's brother, Badiru, wants to protest the validity of the Will? If yes, advise the parties on steps to take in this direction.
  - d. Assuming John Musaba was not in the country when probate was granted. He has now come back and wants to take part in the administration of his father's estate. Advise him on what he should do.
  - e. Assuming that the executors of Mat Musaba have applied for and obtained probate, advise them on the step/s they need to take to be able to deal with his property in Kano, Cotonou, Lagos and Benin City.
  - f. Assuming Mat Musaba did not appoint anyone to act on his behalf in the Will. Saratu, his wife's niece (who recently got admitted to the University of Abuja but who spent three months as an intern in a Law firm) told her aunty that her husband's Will was as good as not writing a Will. Mrs Musaba is confused and wants your opinion. Advise her. State other instances when this advice would be applicable.
2. Assuming that Musabalived and died in Lagos without leaving a Will, advise his family on:
- (a) The document/s they would need to obtain in order to legally administer the estate of the deceased.
  - (b) The person/s to whom the document could be issued.
  - (c) State the procedure to be adopted to obtain the document/s mentioned in 2(a) above.
  - (d) State other instances when such document/sin 2(a) above may be applied for at the probate registry.
  - (e) Advise the family on the step/s to take to administer Mat Musaba's estate where he dies without leaving a Will but has personal properties without any realty.

### **Scenario & Tasks**

Mr. Mat Musaba lives in Benin City. Mr Mat Musaba is married to Adekemi and they have five children --- John, Jide, Jumai, Jolaade, and Jumoke. Mr. Mat Musaba owns the following personal and real properties, among others:

- (6) A 3-bedroom bungalow at 15, Ore Street, Benin City, (his residence) which he purchased from his business partner, Chief Damien of 45, Sapele Street, Benin City for N15 million in 2009;
- (7) A 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos, which Mr. Musaba bought from Madam Kareem in 2010;
- (8) A 5-rooms bungalow at, Obalende Road, Ikoyi, Lagos, which Mr. Musaba inherited from his mother, Chief (Mrs.) Arinne who died intestate in 2015;
- (9) A Toyota Prado jeep;

- (10) The sum of Two Million Naira in his account domiciled at Jaiz Bank Plc.

Mr. Musaba has been diagnosed with a prostate cancer and he has been told he has few months to live. He instructed Aboki Audu Esq. to write his will. The will was executed on 1<sup>st</sup> December, 2019 with the following clauses:

8. I give my 3-bedroom bungalow at 15, Ore Street, Benin City to my son John.
9. I give N 2million from my account No. 34342424 domiciled at Jaiz Bank to my daughter Jumoke.
10. I give my 5-rooms bungalow at Obalende Road, Ikoyi, Lagos to my son Jide.
11. I give my Toyota Prado Jeep to my son Jolade.
12. I give my 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos to my daughter Jumai.
13. The remainder to all my children to be shared equally.

**Answer the following questions:**

- n) Identify the type of gifts in clauses 1, 2, 3, 4 and 5.
- o) Are there any implication(s) on the gifts in clauses 4 and 5?
- p) Assuming clause 6 is not inserted in the will, what are the likely consequences.
- q) What properties will add up to the gift in clause 6?
- r) Two days after the testator's death, it was discovered that the Lagos State Government had acquired the 5-rooms bungalow at Obalende Road, Ikoyi, which had been bequeathed to his son Jide on ground of public interest to be used as COVID 19 isolation center. Comment on the legal implication of the gift to his son Jide.
14. It was also discovered that the testator had mortgaged his 40-feet-wide warehouse at 17, Dolapo Street, Okota, Lagos to secure a loan to contest for a Senatorial seat which he lost and had not redeemed before his death. Comment on the effect of the mortgage on the gift to his daughter Jumai.
- s) Assuming John died one hour before the testator's death, state legal implications on the gift to him?
- t) Would your answer in (f) above be different if John is survived by a 5 years old son?
- u) List other exceptions to the effect on a gift to a beneficiary who predeceased the testator?
- v) Assuming after the Will had been executed and the testator decided to change his mind about the bequest to his daughter Jumoke and he

cancelled it and in its place name his Son Jide who graduated with a first class from the Nigerian Law School.

- w) Comment on the implication of such alteration.
- x) Assuming after the alteration the bequest to Jumoke is still visible on the face of the will. Comment on the legal implication.
- y) By what other means the testator could have achieved the same result in (j) above?
- z) Assuming before the testator's death he had asked for your advice on how he could revoke his Will. Advise him.

**(WEEK 19)**  
**PERSONAL REPRESENTATIVES AND ASSENT**  
**Outcomes for Today's Lesson**

- Different Ways of appointing personal representatives
- Who is entitled to letters of administration in intestacy
- Number of personal representatives to be appointed
- Qualities of persons to be appointed
- Circumstances where they can be entitled to remuneration
- How they can withdraw or renounce representation
  - Duties & Liabilities of Personal Representatives
- Accounts to be maintained & filed by personal Reps
- Effect of failure or inaccurate filing
- How to discharge personal reps from liabilities of administration
- When Assent is needed and its essential elements
- Drafting of assent and identifying possible Ethical issues

**Who Are the Personal Representatives?**

- Administrators and Executors of a Will when appointed by the court and the Testator respectively.
- Appointment could be express, by implication, or by operation of law

**Appointment by Court**

- Incapacity due to Mental or Physical infirmity.
- One Executor and a Minor interest or life interest
- Person entitled is out of jurisdiction Who can Be Appointed Executor?
  - Any Person, including Artificial Persons or Trust Corporation

**QUALITIES OF AN EXECUTOR**

- Willingness, Availability, Executor's Capacity, No Conflict of Interest, Harmony, Honesty, Knowledgeable, Young Age

**NO OF EXECUTORS?**

❑ Section 24(1) AEL

- Administration may be granted to one person but where there is a minority or life interest involved, it may not be granted to less than two persons except where it is granted to trust corporation

➤Note Probate can be granted to one person if sole executor or others renounce probate. S. 9 AEL Lagos

### **Remuneration of Personal Representative**

➤Services are gratuitous. Exception:

- ❖Court orders reasonable remuneration, Rule in Criddle v. Piper, Charging Clause
- ❖Executors not to be witness

### **Renunciation & Cessation of Executorships**

- Positive act of Filing Form for Renunciation or Affidavit disclosing same. Must renounce all, not partial
- Executorship ceases when executor dies without taking probate or renounces probate
- Administration devolves as if there was no executor appointed. S. 6 AEL Lagos

### **Can Executor Withdraw Earlier Renunciation?**

- Yes! with the permission of the Registrar Section 7(1) AEL. Actions taken previously remain valid
- Executorship where LA already granted? LA must be cancelled or revoked before probate is granted

### **Who Is Executor De Son Tort**

➤Any person who intermeddles with or administers the estate without authority. This can be an executor appointed by T or a Beneficiary under the Will. The act need not be wrongful. Arranging for burial is excluded

### **Liabilities of Executor de Son Tort. S. 18 AEL Lagos**

- Personally Liable for loss suffered by the estate, Expenses incurred, services rendered to the estate, creditors of the estate including debts incurred by the deceased
- Liability for fine. > **N50,000**. (Lagos) and >**N5,000** (Abuja)
- Liability for Estate Tax
- Liability for Citation

### **Letters of Administration**

- Administration of estate of deceased may be by executors upon grant of probate, or by administrators after grant of LA.
- ❖Intestacy, partial intestacy
- Administration can be granted with or without a will annexed



❖ No executor appointed or void for uncertainty, died or renounced probate, Break in chain of Executor

### **When Administration may be Granted (Cotd)**

- Administration Pendente Lite. S. 10 AEL;
- Administration by Administrator-General where estate is unrepresented
- Grant Durante Absentia (12 Months after Testator's death). Application by a creditor
- Administration by Attorney
- Grant Ad Collingenda Bona (to preserve perishables)
- Grant Durante Minore Aetate (Upon majority grant revoked and fresh grant made to the minor now adult)
- Grant Durante Dementia

### **Order of Priority Section 49 AEL Lagos**

- Surviving Spouse(s) (Marriage under MA: Obusez v. Obusez);
- ❖ Customary Marriage (She can apply as Next Friend/Guardian of her minor children)
- Children of Deceased (All the children or some for convenience of administration)
- Parents, Brothers and Sisters (Full/Half), Grand Parents, Uncles and Aunties (Full), Creditors of the Intestate
- ❖ Despite this order, the court exercises discretion

### **Obusez v. Obusez**

- Marriage Under the Act and Intestate Estate Marriage had 5 Minor children
- 1 st Respondent (deceased wife) charged with murder of deceased
- Deceased's Life Policy had 1st Appellant (His Twin Brother) and his two children as Beneficiaries
- Deceased Buried in Twin Brother's compound
- 2 nd Respondent was deceased close friend, not related by blood
- Letters of Administration was granted to 1st and 2nd Respondent

### **Rationale- S. 49 (5) AEL Lagos**

- ❖ Succession to ppty not determined by burial place or by life policy made inter vivos
- ❖ The rule does not prescribe Blood Relationship

### **Powers of Personal Representative**

- Power to **postpone distribution** for at least **One year**. S. 47 AEL. Limitations: Court Order, pecuniary/general interest attracts interest, not applicable to debts
- Power to Mortgage or sell property to raise funds to settle debts

### **Sale by Multiple Personal Reps: Personality v. Realty**

#### **✓ Personality- Joint and Several**

✓ **Realty-** Powers are **joint**. Concurrence of all executors Required except: Court order, other PR not yet granted probate: **Clara Erewa v. J. I. Idehen**

- Power to Appropriate Assets but not to exceed value of legacy. S. 44(1) (5) (7) AEL
- ❖ Independent valuer, Consent of Beneficiaries, Not to touch Specific Legacy
- Implied Authority to deal or manage estate in favour of Bona Fide Purchaser
- Power to run T's Business for purposes of realizing proper value or power granted under the Will
- Power to Appoint Trustee for Infant Beneficiaries

### **Right of Indemnity**

- Right of Indemnity
- Investment powers per Will of Trustee Investment Act
- Power to institute or continue action (Pre-existing actions or 3 yrs of death) Exception- Defamation
- No commencement of action as administrator before grant- See **Ingali v. Moran (1944) 1 All ER 97**
- ❖ Doctrine of relation back
- Power to insure before distribution
- Power to delegate with supervision

### **Duties of PR:**

- To Prove the Will, Ensure decent burial (Instruction as to Burial), gather in the estate, Pay all liabilities and just debts, Ascertain Beneficiaries, Duty of Care, Fiduciary Duty/Good Faith, No Conversion, Account and Inventory. Issue Assent

### **Validity of an Assent**

- Writing, Signed by all the executors, and must contain the names of the beneficiary. PR cannot refuse to execute an assent without good reason; He will be compelled

### **Mode of Pmt: Solvency or Insolvency of Estate**

➤Solvent (Undisposed then Residuary Gifts. Insolvent (Funeral, Testamentary and Admn Expenses have priority over all other debts. Creditors are not paid in full and Beneficiaries receive nothing) **S. 38 AEL Lagos**

### **Accounts to be Filed by Personal Representatives**

➤Accounts of the Admn to be filed with the court every 12 months  
❖ Inventory of all assets in the estate, Account of all monies received, purchases made, out of pocket expenses, vouchers in the hands of the executors and a verifying affidavit

### **Assent: When Is Assent Required?**

➤To pass title to a Beneficiary under a Will or Intestacy  
➤Elements: Writing, signature of PR, name of beneficiary, description of ppty

### **Formal Parts of an Assent**

➤Commencement, Parties' Clause, Vesting Clause, Declaration Clause, Acknowledgement clause, Testimonium, Execution and Attestation Clauses  
THANK YOU FOR LISTENING

## **ASSIGNMENT**

### **PRE-CLASS TASK ON PERSONAL REPRESENTATIVE**

Mr. Mat Musaba lived and died in Abuja on March 28, 2020 at the age of 72 following complications of covid-19 at the Round Life Specialist Hospital, Abuja leaving a Will dated July 24, 2019. Musaba was married under the Act and was survived by his wife, Mrs. Adekemi Musaba, two sons and three daughters namely: John (32), Mrs. Jumai Musaba-Dangana (30), Jolaade (27), Jumoke (27) and Jide (24). Musaba appointed as executors his first son, John Musaba and Master ChuksMusaba aged 12yrs old, a love child from his Mistress of 25 years. Mr. Musaba's Will contains the following clauses:

'I give N2Million from my account No 34342414 domiciled at Jaiz Bank to my daughter Jumoke'

'I give my Toyota Prado Jeep to my son Jolade'

'I give N2Million to my childhood friend Chief Yekovie in settlement of my long-standing debt to him'

It is now five months since Mr. Musaba died and probate was granted to his estate. Mr. John Musaba refuses to distribute the estate to the beneficiaries despite all entreaties. The beneficiaries have now consulted you as a new wig for advice on options open to them.

**Answer the following questions:**

1a. Advise the beneficiaries on the position of the law In respect of MrJohn's refusal to distribute the estate.

1b. Would your advice in (a) above apply to Chief Yekovie?

2a. The executors in the above Will sent a bill of N8 Million to the family of Mr. Mat Musaba as their professional fees for the task of administering the estate. Advise the family on the position of the law regarding the issue.

2b. Would your advice in (2a) above be affected if Mr. Mat Musaba's Will had the following execution/Attestation clause. Give reasons for your answer

Signed: .....

Mr. Mat Musaba (Testator)

Signed: .....

John Musaba (Witness 1)

Signed: .....

Devon Engel (Witness 2)

3a. John Musaba remembers all the mid night pains his dad had caused his mother in the later years of their marriage and vows not to have anything to do with Mr. Musaba both in life and death. Advise John on steps he needs to take to avoid liability of any sort.

3b. Assuming John Musaba sought and obtained a valid advice and had taken the requisite steps to avoid liability, and that he was the sole executor, advise the family of Mr. Mat Musaba on the next steps to take.

3c. Mr. John Musaba attended an all-night vigil of the Gathering of Angels Church, Kawuka,Taraba State in which the Church's General Overseer ministered the Word of God. He now has a change of heart and wishes to comply with MrMusaba's instructions in his Will. He wants to know if he has lost the opportunity forever. Advise him.

4a. Mr. Musaba's first daughter, Mrs. JumaiMusaba-Dangana, who had been estranged from her husband and had been living in one of Mr. Musaba's houses in Gwarinpa, finds to her excitement that Mr. Musaba had devised the same property to her. Being in critical need of money, she immediately began to rent out the rooms and collect rents. Advise her on the propriety or otherwise of her action

4b. Mr. John Musaba got wind of Mrs. JumaiMusaba-Dangana'saction and immediately took out writ seeking an order of injunction to restrain her. Infuriated, Mrs. Jumai argues Mr. John is acting ultra vires without grant of probate. Advise the parties.

5a. The Executors, in a bid to offset debts of Mr. Mat Musaba, sold his 40 Feet wide warehouse at 17 Dolapo Street,Okota Lagos to Chief Onwalchide. Advise Chief Onwa on the validity of the transaction.

5b. Despite the sale of the ware-house, the estate is short of cash to satisfy the pecuniary gift of N2 Million to Jumoke. The executors decide to augment the available cash with the Toyota Prado Jeep to Jumoke. Advise the executors on the propriety or otherwise of this contemplated action.

6a. Mr. Mat Musaba had a bakery factory 'Mat Musaba Bakeries'. The executors want to sell the bakery business. The executors consider offers made so far very ridiculous. What would be your advice to them?

6b. Mr. Mat Musaba's estate is found not to be sufficient to cover all the Testator's debts and devises under the Will. There are competing demands from both the beneficiaries and Mr. Musaba's creditors. Advise the executors on how to proceed in the seeming confusion.

6c. The executors have now fully administered the estate. Each beneficiary was taken to the property gifted to him or her. However, there is contention as to who keeps the Will in the event of future dispute as to ownership of their newly acquired properties. Advise them.

**(WEEK 20)**  
**TAXATION IN PROPERTY LAW PRACTICE**

**TAXATION**

❖ **Outcomes**

- ❖ Explain taxation and identify the various taxes payable on property transactions affecting land in Nigeria.
- ❖ Explain and calculate Capital Gains Tax (CGT) where applicable.
- ❖ Discuss ethical issues arising from breach of the rules by legal practitioners engaged in tax transaction.

**TAXATION**

❖ **Content:**

- ❖ Applicable tax laws relating to Property Law Practice.
- ❖ The concept of taxation in Property Law Practice.
- ❖ Types of taxes.
- ❖ Calculation of Capital Gains Tax.
- ❖ Some other charges in property transactions.
- ❖ Ethical issues a

**TAXATION**

❖ **Applicable Laws**

- ❖ Stamp Duties Act Cap S8 LFN 2004
- ❖ Value Added Tax Act Cap V1 LFN 2004
- ❖ Capital Gains Tax Act Cap C1 LFN 2004
- ❖ Personal Income Tax Act Cap P8 LFN 2004
- ❖ Tenement Rate Laws of the States
- ❖ Land Use Charge Law of Lagos State CAP L61 Laws of Lagos State 2003
- ❖ Companies Income Tax act

**TAXATION**

❖ **What is Taxation?**

❖ **Definition**

**TAXATION**

❖ **Types of Taxes in Property Law Practice?**

- ❖ Capital Gains Tax;
- ❖ Personal Income Tax,
- ❖ Value Added Tax;

- ❖ Stamp Duties;
- ❖ Land Use Charge
- ❖ Tenement Rates
- ❖ Ground Rent
- ❖ Consent fee
- ❖ Company Income Tax;
- ❖ Withholding Tax on

### **TAXATION**

- ❖ **Capital Gains Tax (CGT)**
- ❖ What is CGT? – S. 2 Capital Gains Tax Act 2004 .
- ❖ Which assets are chargeable? S. 3
- ❖ At what rate? – S. 2 (1)
- ❖ Who can be levied? – Ss. 2, 8(7)
- ❖ Any Exemptions? Ss.

### ❖ **TAXATION**

#### ❖ **How to calculate Capital Gains Tax**

- ❖ Step 1 = Determine the consideration received for property
- ❖ Step 2 = Deduct the amount paid at the time the property was originally acquired.
- ❖ Step 3 = Further deduct all allowable expenditure\* from the consideration obtained.
- ❖ Step 4 = Find 10 % of the balance.
- ❖ The figure arrived at would be the CGT payable.
- ❖ \*(Note: Allowable expenditure is described as costs wholly, exclusively and necessarily incurred for the acquisition of assets together with incidental

### **TAXATION**

#### ❖ **Scenario**

- ❖ In August 2013, Mrs Badru bought a bungalow in Jos, Plateau for N10,000,000.00. She spent N1,000,000.00 in renovating the four bedrooms. To raise funds for her daughter's wedding in 2015, she sold the property to Mrs. Babayaro for 30,000, 000.00. She employed the legal services of Mr. Nylander in the disposal of the property. The latter posted the property in the dailies for one week at the sum of N1,000,000.00 and paid the agent the sum of N500,000.00. He also charged N500,000.00 as his legal fees.
- ❖ Calculate the Capital Gains Tax on the transaction

## **TAXATION**

### ❖ **Solution**

- ❖ Consideration received for the property = N30,000,000.00
- ❖ (Original) Purchase price of property = N10,000,000.00
- ❖ Further deductible expenditure = \*N3,000,000.00
- ❖ Total deductions = N13, 000,000.00
- ❖ Balance (after all deductions) = N17,000, 000. 00
- ❖ Capital Gains Tax =10% of N17,000,000.00 = N1,700,000.00
- ❖ \*N10m(Purchase price of Property)+ N1m (renovations) + N1m (advertisements) + N500,000.00 (Agency fees) + N500,000.00 (le

## **TAXATION**

### ❖ **Stamp Duties:**

- ❖ Regulation?
- ❖ Examples of documents qualifiable for Stamp Duty.
- ❖ How are they collected? – State/ Federal – s. 4 (2)
- ❖ Rate of computation of stamp duty. S. 19 SDA and s. 163 CFRN 1999.
- ❖ Time limit? S. 23
- ❖ Effect of not stamping?

## **TAXATION**

### ❖ **Personal Income Tax**

- ❖ Definition. See s. 1, 2 & 8(1) PITA 2004
- ❖ Regulating Act
- ❖ To where is it remitted?
- ❖ What does it accrue upon?
- ❖ Basis of assessment is PAYE usually made at source of earnings.
- ❖ For Trade or business, taxation is based on the profit & loss account prepared by the company.
- ❖ Whose responsibility is to calculate what is due?

## **TAXATION**

### ❖ **Value Added Tax**

- ❖ Definition
- ❖ Regulating Act?
- ❖ What is charged? S. 2
- ❖ Rate? S. 3. Take note of amended rate.
- ❖ Chargeable Persons. S. 12
- ❖ Sums charged are remitted to who?.



- ❖ Are legal practitioners levied VAT?

## **TAXATION**

### ❖ **Tenement Rate**

- ❖ What is?
- ❖ Regulating Law?
- ❖ See clause 1(j) of the 4th Schedule to the Nigerian Constitution.
- **In Lagos State:**
- Land Use Charge (LUC) is a Lagos State Property Tax backed by the LUC Law 2018.
- LUC is a consolidation of Ground Rent, Tenement Rate and Neighborhood Improvement Levy.
- Other states however, operate tenement rate.
- Are there exemptions?

## **TAXATION**

### **Other Charges**

- ❖ **Ground Rents:** Tax paid typically acknowledging title of Governor as an overlord. Paid towards the grant of right of occupancy.
- ❖ **Consent Fees-** Tax charged before grant of Governor's Consent.
- ❖ **Registration Fee:** This is required to be paid under Land instrument Registration provisions to enable the registration of document

## **TAXATION**

### ❖ **Ethical issues?**

## **ASSIGNMENT**

### **TASK ON TAXATION**

Mrs. Adekemi Musaba bought a parcel of land at No. 34 Leah Road, Asokoro-Abuja from Engr. LanreMomodu in 2004 for N1.3million. She built two blocks of 3-bedroom flats and a large corner shop on the land at a cost of N35m. After the death of her husband, Mr. Mat Musaba, in 2019, she sold the property to Chief Rufus Adigwe for N120 to raise funds to complete a specialist hospital project, in memory of her late husband, in Benin City, Edo State. She advertised the sale in "Tatafo National Magazine" for N300, 000.00; she paid the estate agent sum of N1m, paid the sum of N1.2m to Uzor Akande, the Solicitor handling the sale for the parties. The sum of N800, 000.00 was spent to renovate the roof of the corner shop; the sum of N150, 000.00 was spent by Mrs. Adekemi Musaba on

food and beverages and N60,000.00 on drugs and first aid for the site workers while building the property at Asokoro.

Uzor Akande advised Mrs. Adekemi Musaba not to pay any tax in respect of the transaction. Chief Rufus Adigwe wants the sale to be perfected as quickly as possible as he wants to apply for a mortgage facility from Stanbic Royal Bank PLC and the property is to be used as security. Chief Rufus Adigwe and Uzor Akande, who acted as solicitor for both parties, connived to do everything possible to evade payment of consent fees and registration.

ANSWER THE FOLLOWING QUESTIONS:

1. List the taxes required to be paid in respect of the transactions in the scenario.
2. State the items in the scenario that constitute “allowable expenditure” in computing Capital Gains Tax.
3. Using the scenario above, compute the Capital Gains Tax payable on the property and state the person responsible for the payment.
4. Assuming Adekemi Musaba refused to pay stamp duties, state the effect(s) of refusal on the document executed in relation to the transaction between her and Chief Rufus Adigwe.
5. Mention the effect(s) of Mrs. Adekemi Musaba's failure to pay consent fee.
6. State the propriety or otherwise of Uzor Akande's role in circumventing the payment of taxes.
7. State the ethical responsibilities of a solicitor engaged in transactions involving payment of property tax.