

OVERVIEW OF
PROPERTY LAW
PRACTICE; APPLICABLE
LAWS TO PROPERTY
TRANSACTIONS AND
TRANSACTIONS
AFFECTING LAND



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Property law is designed to regulate the relation of persons to property thereby providing a secure foundation for the acquisition, enjoyment and disposal of property. Property law practice in Nigeria involves the process of acquisition of land and devolution of real property. Property law practice is dynamic; it deals with the transfer of interest in land (or real property). This is otherwise known as conveyance or conveyancing.

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PROPERTY LAW PRACTICE

Overview of Property Law Practice; Applicable Laws to Property Transactions and Transactions Affecting Land

1. Overview of Property Law Practice

Property law is designed to regulate the relation of persons to property thereby providing a secure foundation for the acquisition, enjoyment and disposal of property.

Property law practice in Nigeria involves the process of acquisition of land and devolution of real property. Property law practice is dynamic; it deals with the transfer of interest in land (or real property). This is otherwise known as conveyance or conveyancing.

A conveyance is transfer of any interest in land from one person to another. Conveyancing is the application of the law of real property in practice. It deals with the art of creating and transferring rights in land. Conveyancing transactions may occur in a number of situations such as **sales of land, leases, and mortgages**. Conveyances are described as including 'assignment', 'appointment', 'lease', 'settlement' and other 'assurances' and 'covenant to surrender', made by Deed, on a sale, mortgage, demise, or settlement of any real property, or any other dealing with of for any real property.

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A Will is an exception to a conveyance. This because it is testamentary and ambulatory; conveyance being *inter vivos*, operating at once or at a fixed time.

2. Applicable laws to Real Property Transactions

The sources of laws applicable to property transactions in Nigeria are; but for those legislations peculiar to property transactions, no less different from the sources of laws applicable to other legal relationships in Nigeria and may be categorized and briefly discussed under the following headings.

a. Customary law:

This is applicable to conveyance under native law and custom. A sale of land under customary law is complete once there is possession by the purchaser, evidence of payment of purchase price and witnesses to the transaction. Once these three requirements are established to be in existence, a valid sale could be said to have taken place: **Adesanya v. Aderonmu**.

Documentary evidence is inapplicable under customary law. This means that instruments like Deeds and Powers of Attorney cannot be used.

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b. **Case law:**

Case laws are decisions of superior courts in respect of disputes over property that may be brought by contending parties before the courts. Some landmark decisions that have shaped the landscape of property law practice in Nigeria include: **Savanah Bank v. Ajilo; Ogunleye v. Oni; International Textiles (Industries) Nigeria Limited v. Aderemi; Ude v. Nwara; Bucknor Maclean & Anor. v. Inlaks Limited;** just to mention but a few.

But, decisions of a **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.

c. **Received English Law:**

This comprises of the English Common Law, Doctrines of Equity and Statutes of General Application. These principles of the received English law apply to regulate property practice in Nigeria, particularly in respect of disputes that are tried before the High Courts and other superior courts of record.

According to the Supreme Court in **Ude v. Nwara**, English Law applies to property transactions in Nigeria where there is no comparable local legislation or customary law that applies to such a transaction.

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Some English Statutes of General Application applicable in property transactions in Nigeria are:

- (1) **Statute of Fraud Act 1677** - notable for its section 4 mandating that land transactions should be written down or evidenced in a memorandum in writing;
- (2) **Wills Act of 1837** - applicable to states of Nigeria that have not yet enacted their Wills Laws and
- (3) **Conveyancing Act 1881** - which applies in states yet to enact their property laws - especially some states of former Northern and Eastern Region. The law applies so long as there is no comparable local legislation enacted by such a state.

d. **Nigeria Legislations**

- (1) **Constitution of the Federal Republic of Nigeria 1999** (as amended); **section 43** of which provides for the right to own immovable property in any part of the federation.

Section 44(1) also went further to enact the Common law principle that leans against the taking away of proprietary vested rights without specific legal authority and the provision of compensation.

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Section 44(2)(c)(d) 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; or relating to vesting and administration of property of persons adjudged or otherwise declared bankrupt nor 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)** of the Constitution provides for the sanctity of the Land Use Act.

- (2) **Land Use Act Cap L5 Laws of the Federation of Nigeria, 2004** - applicable throughout the Federation. This is 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 will with respect to non urban areas are conferred on Local Governments.

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(3) Registration of Title's Law Cap. R 4 Laws of Lagos State 2004

This law requires titles to land to be registered as first or subsequent registrations. The principal purpose of this law is for the State to guarantee titles that have been investigated and registered by the Registrar of Titles so that purchasers of land can rely on it in determining if the vendor has title to sell the property and the encumbrances that attach to the land.

(4) Property and Conveyance Law Cap. 100 Laws of Western Region of Nigeria 1959 (PCL)

This law applies to most of the states of the former Western Region of Nigeria. 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)** thereof and all conveyances of land or interests in land for the purposes of creating any legal estate are void unless they are made by deed - **sections 77(1) and 78(1)** thereof.

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(5) Illiterate protection Act Laws

An illiterate is a person who is unable to read or write or understand the language of a particular document. The various Illiterate Protection Laws are made to protect illiterate persons involved in property transactions generally from fraud. It is like a very wide umbrella and covers all forms of writing or document written at the request of an illiterate person. The Federal Capital Territory and the various states have what are commonly referred to as Illiterate Protection Laws. In Lagos State, it is **Cap 13 Laws of Lagos State 2003**; while in the Federal Capital Territory, it is the **Illiterate Protection Act, Cap I 1, vol. 3, Laws of the Federal Capital Territory, 2006**.

(6) Legal Practitioners Act Cap L 11 Laws of the Federation of Nigeria 2004.

Section 22(1)(d) of the above law provides that if any person other than a legal practitioner prepares or in expectation of reward, any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration or relating to or with a view to proceedings in any court of record in Nigeria, such a person shall be guilty of an offence.

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(7) Land Instrument Preparation Laws of various states

These laws require that the preparation of instruments and documents on sale or transfer of land can only be done by a Legal Practitioner. A good example is Cap. 84 Laws of Kaduna State 1991.

(8) Land Instrument Registration Laws of Various States

This law defines a registrable instrument and also makes provisions for the effect of non registration of a registrable instrument. A good example is that of Lagos State, that is, Cap. L 58 Laws of Lagos State, 2003.

(9) Stamp Duties Act/Laws

Stamp Duties are a form of taxation paid to the Federal or State Governments on documents such as Conveyances on Sale, Lease or Mortgage of Land, Agreements, Contracts, Bills of Exchange, Promissory Notes and Instruments (Letters and Certificates of Admission, Instruments of Apprenticeship, Insurance Policies). Stamp duties require that the above instruments be stamped.

There is a Stamp Duty Law for every State, example Cap. S.10 Laws of Lagos State 2003 and a **Stamp Duty Act Cap**

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S8 Laws of the Federation of Nigeria 2004 for the Federal Capital Territory (FCT), which provide for the procedure for stamping of documents and the effect of failure to stamp a document. Duty on land within the control of the State is paid to State Internal Revenue Service; while duty on land in control of the Federal Government is paid to the Federal Inland 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.

(10) Wills Law of States

Even though the **Wills Act 1837** is an English Statute of General Application in Nigeria, some states have replaced it with their individual Wills Laws. A good example is the Wills Law Cap W2, Laws of Lagos State 2003.

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 (that is the right to make a Will) is sometimes restricted by imposing limitations on the maker of the Will in respect of the disposition of 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

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(11) Companies and Allied Matters Act Cap C 200 Laws of the Federation of Nigeria 2004

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 Companies and Allied Matters 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.

(12) Administration of Estate Laws of States

Many states of Nigeria have laws regulating the estate of deceased persons. A good example is the Administration of Estates Law of Lagos State Cap A3 Laws of Lagos State 2003. These laws cover issues such as devolution of estate on personal representatives, rights, duties and obligation of personal representatives, process of obtaining probate and administration of estate.

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(13) Landlord & Tenant Law (Example, Lagos Tenancy Law No 14, 2011)

The **Lagos State Tenancy Law 2011** applies to all premises (business and residential) in all parts of Lagos State except;

- a. Apapa
- b. Ikeja GRA
- c. Ikoyi and
- d. Victoria Island

There are also exceptions to residential premises under **section 1(2) of the Law**. These are:

- i. Residential premise owned or operated by an educational institution for its staff and students;
- ii. Residential premises provided for emergency shelter;
- iii. Residential premises in a care or hospital facility and (or) in public or private hospital or mental health facility.
- iv. Residential premises made available in the course of providing rehabilitative or therapeutic treatment.

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(14) Recovery of Premises Act

This law which is principally and exclusively applicable in the Federal Capital Territory, Abuja makes provisions for the recovery of possession of premises.

(15) Land Tenure Law Cap. 59 Laws of Northern Nigeria, 1963

(16) Interpretation Act Cap I 23 Laws of the Federation of Nigeria 2004

(17) Land Use Change Law No. 11 2001 Cap. L 61 Laws of Lagos State 2003

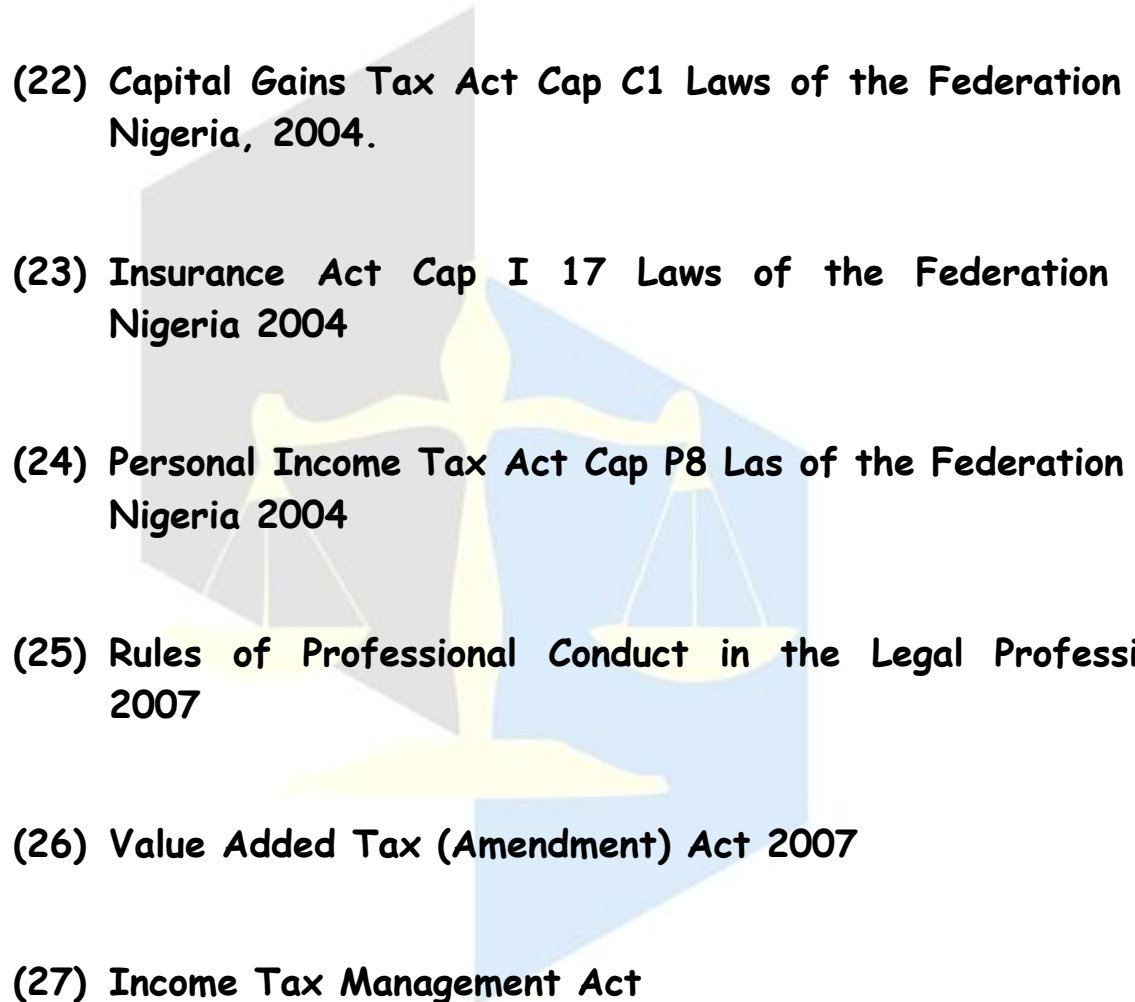
(18) Law Reform (contracts) Act Cap. 517 Vol. 3 Laws of the Federal Capital Territory, 2006

(19) Various State High Court Civil Procedure Rules

(20) Probate Resealing Act Cap 31 Laws of the Federation of Nigeria 2004

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- (21) Mortgage Institution Act Cap. M19 Laws of the Federation of Nigeria, 2004.
- (22) Capital Gains Tax Act Cap C1 Laws of the Federation of Nigeria, 2004.
- (23) Insurance Act Cap I 17 Laws of the Federation of Nigeria 2004
- (24) Personal Income Tax Act Cap P8 Las of the Federation of Nigeria 2004
- (25) Rules of Professional Conduct in the Legal Profession 2007
- (26) Value Added Tax (Amendment) Act 2007
- (27) Income Tax Management Act

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3. Transactions Affecting Land in Nigeria

a. Pledge of Land:

A pledge 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 the case of a pledge, 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:

- (i) the pledge itself;
- (ii) the parties to the pledge;
- (iii) the witnesses, time and circumstances of the pledge; and
- (iv) the consideration for the pledge - *Anyaegbunam v. Osaka* (2000) FWLR (Pt. 27) p. 1942.

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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 long it might have been in possession of the Pledgee - *Akuchie v. Nwamadi* (1992) 8 NWLR (Pt. 258) p. 214 at 226

Pledge is common under customary law dealings and is governed by Customary Law. In a pledge, only possession is given. The pledgor can recover his property at any time - once a pledge always a pledge. Ingredients of a pledge include - (a) The pledge (b) parties (c) witness, time of circumstances of the pledge and (d) consideration.

b. Gift of Land:

Gift of Land, in property law 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 characterized. A declaration of title to land can be made by the courts based on a gift of land. A gift of land is *inter vivos*, that is gift made to living persons which become absolute during the lifetime of the grantor. Certain conditions make a gift of land valid. These are the following ingredients:

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- (i) Intention of the donor to make the gift;
- (ii) Completed act of delivery; and
- (iii) Acceptance of the gift by the beneficiary - **Anyaegbunam v. Osaka.**

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 thereafter.

c. Leases/Leasehold:

This is an agreement between two (2) persons which result in a relationship of landlord and a tenant or lessor and lessee. A Tenancy is a relationship that is created where a Landlord (Owner of Real Property) grants to another person known as Tenant exclusive right to possess, use, and enjoy the property for a specified period of time, usually but not necessarily in exchange for a stipulated price or consideration otherwise known as rent.

In a lease, there is possession of premises for use for a term of years (minimum of which is three (3)) after which the premises reverts back to the lessor. Thus, the term of years is lesser than then lessor's interest.

A **Tenancy** is different from a **Lease** in the following respects:

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- i. A Tenancy is 3 years is lesser than the landlord's interest; while a lease grants a term of years above three (3) years.
- ii. A Lease is usually executed by Deed; while a Tenancy is not, it may oral or in writing.
- iii. Appointment of an agent to execute a Lease is by Deed; while that of a Tenancy is not.
- iv. The following laws are applicable to Leases: Real Property Act, Property and Conveyancing Law, Land Use Act, Land Registration Law, & Personal Income Tax Act.

d. **Mortgage and Change of Land:**

Mortgage is generally the conveyance of a legal and equitable interest in a property with a provision for redemption, that is, upon the repayment of the loan, the conveyance becomes void or the interest is re-conveyed. The borrower is called the Mortgagor or Chargor; while the lender is the Mortgagee or Chargee. Thus, there is transfer of possession and title, but with a provision for redemption of the security in real estate.

A mortgage deed is a registrable instrument which attracts payment of stamp duty. The following laws are applicable to mortgage transactions - Land Use Act, Property and Conveyancing

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Law, Conveyancing Act, Stamp Duties Act, Land instrument Registration Law and Mortgage Institution Act.

e. Donation of Power:

Donation of a Power of Attorney 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 document of sale. It is an agency relationship for collection of rent and recovery of premises. The person donating the power is called the Donor and the person to whom the power is donated is called the Donee. The following are the applicable laws:

- Illiterate Protection Act/Laws, Land Instrument Registration Laws and Stamp Duties Act.

f. Sale or Alienation of Interest in Land:

This may be according to customary law or a formal contract between the seller/buyer or vendor/purchaser. In the case of a formal contract, the legal title vest on the purchaser upon the execution of a formal conveyance. The following laws are applicable - Statute of Fraud, Law Reform (Contract) Law, Property and Conveyancing Law, Registration of Titles Law, Conveyancing Act, and Land Use Act.

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g. Use of Wills/Deeds/Account/Probate

The following laws are applicable- Wills Act, Wills Laws, High Court Civil Procedure Rules, Administration of Estate Laws

Summary

A conveyance is the transfer of any interest in land from one person to another. Every conveyance must be drafted except customary transactions; but every draft not a conveyance. For property transactions, please note that:

- 1) In a **Pledge**, the **Pledgor** gives possession to a pledgee, without transferring title. The reversionary right of the pledgor is perpetual.
- 2) In a **Lease**, the **lessor** gives possession to a **lessee** for a term of years, especially over 3 years, with or without consideration.
- 3) In a **Gift of Land**, intention to transfer, complete act of delivery, acceptance of the gift by the person and the voluntariness of the gift makes the gift of land absolute. A Deed is used since no consideration passes.

NB: Customary grant of land, Sale of land, Inheritance or Devolution of land, Gift of land, conquest and forced occupation, etc.

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NB the following Land Documents: Deed, Power of Attorney, Accent (applicable in states under the Property and Conveyancing Law), Forms on Registration of title law, Leases and Tenancies, Mortgage, Wills - you may be required to draft any of these documents.

NB: Ingredients of a sale under native law and custom are:

- a) Payment of purchase price
- b) presence of witnesses and
- c) possession by the purchaser.

NB: According to **Ude v. Nwara** - English Law applies to property transactions in Nigeria where there is no compatible local legislation or customary law that applies to such a transaction.

NB: Documents are stamped within 30 days of execution

NB: According to **Anyaegbuham v. Osaka** - once a voluntary gift of land has been made and accepted, the grantors right over the land is destroyed.

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