

The Law of Things in Native Law

The Law of Things is that branch of law which deals with the different kinds of property known under a particular legal system, how they are classified, ~~to~~ what rights may be held in regard to them and how such rights are acquired and lost.

Thus under European Law there are two main classifications of things, namely

- ① Movable and Immovable Things
- ② Corporeal and Incorporeal things

Movable things include cattle, horses, tables, etc anything which can be moved from one place to another
Immovable things are things which cannot be readily moved like land, houses or anything firmly attached to either land or houses.

Corporeal things are things which have a body and can be touched or handled like a table, an ox etc
Incorporeal things are things which do not have a body but nevertheless exist in contemplation of the law eg. a right such as a right of way.

The things known to Native Law consisted of the normal equipment of peasant peoples ~~to~~ such as cattle or land or houses. ^{or household equipment} In other words both movable things and immovable things are known to Native Law

As far as rights to things are concerned the principal rights known to European ^{law} are Ownership, Possession, Servitude and Mortgage. These rights may be held either in respect of movable or immovable things or corporeal or incorporeal things.

It would appear that in Native Law
 The ownership of movable things was a well established
 right. A person could own cattle or crops or clothing
 but when it comes to the ownership of immovable
 things it is doubtful whether this right had
 yet been developed in Native Law. The most-
 important type of ^{immovable} property in ~~at~~ respect
 of which there is doubt as to the existence
 of the right of ownership is Land.

In the view of ~~the~~ some land in an Opium
 community was owned by the Chief. Thus the
~~Schopere in his book on Native Land Tenure in~~
^{Native Land Commission of 1883}
~~Bechuanaland~~ states that "the land occupied
 by a tribe is regarded theoretically as the
 property of the paramount chief; in relation to the
 tribe he is a trustee holding it for the people
 who occupy and use it in subordination
 to him, on communistic principles". The Native
 Affairs Commission of 1903-5 states "The land was
 administered by the chief & his councillors for
 the people". Schopere in his "Land Tenure" says
 "the individual must live wherever he is placed
 by the chief or his son headman."

On the other hand it would appear that
 once a piece of land was allotted to an
 individual he could not easily be disturbed
 in his rights and he could even pass his
 rights on to his heirs. The individual's
 right to land included (i) the right to land
 to reside on (ii) the ^{right} to land to plough and (iii) the
 right to ~~land~~ to graze his stock on the
 Commongrass. But the individual retained