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**QUESTION :**

Prepare a brief paper [not more than 3 pages, 12pt , Times New Roman,1.5 line spacing]on the customary land tenure system as practiced in your locality[state the locality, state, local government or community you are writing about].**This should briefly cover the creation, ownership, management and determination of family or communal land in your locality**. Note that the examiner expects you to write based on your research or knowledge acquired with respect to customary land tenure in your locality.

**INTRODUCTION**

This paper seeks to critically examine Customary land tenure system in **Ikwerre local** **government, Rivers state** this examination will include The type of system ,The creation ,The ownership, The management and the determination of land in this locality will all be examined critically and properly engaged .

Land tenure is the system of landholding in a given society. Land tenure is the relationship, whether legally or customarily defined ,among people, as individuals or groups, with respect to land. customary law on the other hand are the custom and usages traditionally observed among the indigenous African peoples and which forms part of culture. In the popular case of ***owoniyi V omotosho***, customary law was described as “a mirror of accepted usage” and common law of Nigerian people. customary law embraces both ethnic, tribal laws and muslim laws .Customary land tenure system refers to the system of land holding governed by customary law. The Nigerian customary laws differs from one locality to the other and from one tribal group to the other, but for this paper the main focus is on the **Ikwerre local government area in Rivers state.**

It is very important to know that in ikwerre local government area in Rivers state customary land ownership is family land holding.

In case ***Efunwape okulate and ors v Gbadamosi Awosanya, per Uwaifo***,[[1]](#footnote-1) JSC defined family as “the body of persons who live in one house or under one head, including parents, children, servants…The group consisting of parents and their children, whether living together or not; in wider sense all those who are nearly connected by blood or affinity…Those descendants claiming descent from a common ancestor; a house; kindred lineage.”

Family land ownership can simply be defined as ownership or title to land held by a family either nuclear or extended family.

In Ikwerre local government area in Rivers state land is held by families, mostly including the extended family.

**CREATION OF FAMILY LAND TENURE.**

This can be done in two ways, Family property may arise by operation of law or by acts of the parties.

**[1] Creation by Operation of Law**

If a landowner who is subject to customary law dies without a Will, his acquired property, devolves on his children as family property in accordance with the applicable customary law rules. This is the way family property is commonly created. Family property may also arise from a declaration under a Will as where a testator devised a property to his heirs jointly to hold as family property.

**[2]Creation by acts of the Parties.**

Parties may by their own acts create family property, by way of first settlement, purchase, conquest or absolute gift of land. Each of these methods of creation of family property by the acts of the parties will now be considered.

**[First Settlement]**:In ***Ajala v Awodele & Ors[[2]](#footnote-2)***, the Supreme Court held that settlement is one of the traditional modes of acquisition and that where the plaintiff’s case is that the land was acquired by settlement, it should not be open to question as to who made the grant.

**[Conquest]**: Where a family conquers a people, it may appropriate the land of the conquered. It was legitimate for a family to base its ownership of land to act of conquest in the distant past. Note, however, that conquest can no longer be a legitimate mode of acquiring land in this modern time.

**[Purchase]**:Family property may arise where family money is used to purchase land.

**[Gift]**:Where a family is a donee of unconditional gift of land, family property is created.

**OWNERSHIP OF LAND SYSTEM.**

***{Woodman}*** defines family as “a group of persons lineally descended from a common ancestor exclusively through males (in communities called patrilineal for the reason) or exclusively through females starting from the mother of such ancestor (in communities called matrilineal for this reason) and which group succession to office and property is based on this relationship.”

The term “family” in relation to a family property means a group of persons who are entitled to succeed to the property of a deceased founder of a family. Such persons are usually the children of the deceased founder of the family.

Family land is land vested on family as a corporate entity. The individual member of the family, therefore, has no separate claim of ownership to any part or whole of it. However, a member of a family can sue to protect or defend the interest of the family in respect of any family property. But, if he does not have the authority of the family to bring the action, the family will not be bound by the result, unless the family, by the principle of estoppel, is prevented from denying that action.

A member has no disposable interest in family property either during his life time or under his will.

**MANAGEMENT OF LAND SYSTEM.**

The family head personifies the family. As such, the powers and rights of ownership of family land are vested in, and are exercisable by him on behalf of the family. The family head takes charge of the management and control of the land in a loose made of speech, he is sometimes referred to as the owner and trustee of the land.

It is the responsibility of the family head to preserve family property from any unlawful interference and to keep it in a good state of repair; to allocate portions to the needing members; where the property is rented out, to collect the rent; and take part in the transfer or alienation of family property to give a valid title to the transferee.

In ***Bassey v Cobham[[3]](#footnote-3)***, it was held that the head of the family being in a position towards community land similar to that of a trustee, and the members of the family being beneficiaries, may claim his rights in respect of such communal law if the head neglects or refuses to assert such rights. Also, the position of the family head has been likened to that of a trustee in the English sense.

**DETERMINATION OR TERMINATION OF FAMILY LAND.**

**[A]. Absolute Transfer.**

Absolute transfer of family property occurs where the family transfers the totality of its interest in the family land to another person. This may be by way of sale or gift. Where this happens, the transferee becomes the absolute owner. A transfer of family property is proper and valid where the transfer is sanctioned by the family head and principal members of the family. A conveyance purporting to transfer family property without the consent of the family head and the principal members is void ab initio.

**[B]. Partition.**

According to **[[4]](#footnote-4)(*Merriam-Webster dictionary):*** This is the action of parting; The state of being parted.

According to[[5]](#footnote-5) *(****Oxford Advanced learners dictionary)*** partition means to divide something into parts. for example partition the country.

Partition is the act of sharing of family property among the members of the family. In ***Alhaja Barakat Alafia & Gbode Ventures Nig. Ltd***, it was held that partition means the permanent division of land for purposes, not of user only, but of ownership as well.

1. Citation;(2000)LPELR;SC.198/1992.EFUNWAPE OKULATE AND ORS V GBADAMOSI AWOSANYA. [↑](#footnote-ref-1)
2. 3PLR/1971/12 AJALA V AWODELE. [↑](#footnote-ref-2)
3. (1924) 5 NLR 92. BASSEY V COHBAM, [↑](#footnote-ref-3)
4. MERRIAM WEBSTER DICTIONARY [↑](#footnote-ref-4)
5. OXFORD ADVANCED LEARNERS DICTIONARY. [↑](#footnote-ref-5)