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**Level:** 400

**Course:** Land Law II (LPB 402)

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**Question:** Prepare a brief paper on the customary land tenure system as practised 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.

Land tenure is the system of landholding in a society. According to Prof Mqeke, customary law is defined as the “custom and usages traditionally observed among the indigenous African peoples and which form part of the culture of those peoples.”[[1]](#footnote-1) It is the law that was handed down from time immemorial from ancestors and as such, it represents a collection of precedents and decisions of the by-gone chiefs. It entails the customs and usages traditionally observed among the indigenous people that formed part of their culture and religions.[[2]](#footnote-2)

Customary law was described as “a mirror of accepted usage” in *Owonyin v Omotosho*[[3]](#footnote-3) and the common law of Nigerian people in Ex Parte Ekepenga*[[4]](#footnote-4)*.It should be noted, however, that the term “customary law” is used in a blanket form and it should not be taken to indicate that there is a single uniform set of customs throughout Nigeria as Nigeria is a society with diverse tribes, customs and cultures.

This paper shall briefly discuss the customary land tenure system of the Bini (Benin) people of the Southern part of Nigeria in Edo State. The customary land tenure system amongst these people is communal in nature.

**Creation/Ownership**

Under Benin native law and custom, land is a communal property of all the Bini people, but the legal estate of the land is vested and resides in the Oba of Benin as trustee for his people.

The Supreme Court per Idigbe, JSC in *Arase v. Arase*[[5]](#footnote-5), held that by the principles of the Bini customary tenure system, all land is owned by the community for whom the Oba of Benin holds same in trust, and that it is the Oba of Benin who can transfer to any individual, the “ownership” of such land.[[6]](#footnote-6)

In the early times, the Oba divided Benin into wards which were headed by chiefs appointed by him and around 1947, he created **ward councils** for each ward whose duty was to recommend applications for plots of land to the him. The said ward councils were replaced with **ward plot allotment committees** in 1961 whose main function was to receive and recommend applications for building plots to the Oba for approval.

A person that desires land on which to build applies for it to the Oba of Benin (who is the only authority competent under Benin customary law to make allocation or grant of land in or outside Benin City) through the appropriate ward plot allotment committee in which the land is situated. The committee carries out an inspection of the site in order to ascertain its location and ensure the desired land is free of dispute, after which they will give their recommendation to the Oba. Upon receipt of such recommendation, the Oba gives his approval to the applicant who thus becomes the beneficial owner thereof in accordance with the Benin custom. The Oba signifies his approval by writing “Approved” in the body of the application, followed by his signature on the grantee’s written application. It is the approval given to an application by the Oba that is required by Benin customary law to vest title of land in the grantee and a grant of land by the Oba becomes effective from the date he appends his signature of having approved the application for the said land.[[7]](#footnote-7)

In *Okeaya v. Aguebor[[8]](#footnote-8)*, the Supreme Court of Nigeria outlined and established the above stated principles and procedures as governing the acquisition of land under Benin customary law. The court also emphasised that the inspection of the proposed land by the ward plot allotment committee is imperative. This case as decided by the Supreme Court has become a *locus classicus* of Benin custom relating to land ownership.[[9]](#footnote-9)

**Management**

The Oba administered land through chiefs or community heads at the village level, with the odionwere (senior elder) and edion (elders) exercising power over land use and allocation. Land was controlled and managed by the village head and the elders’ council and the odionwere was responsible for handling “petty or routine” land questions.

Any member of the community could farm new land without permission, so long as no one else was farming towards the same spot and it had not been farmed in for at least eight years. However, the rights gained by clearing and farming were temporary as most farmers cultivated for one season only and then moved to another land, families did not retain areas permanently and land for food crops was held communally.

Strangers/outsiders required permission of the Enogie (the centrally appointed head chief, if one existed) or odionwere to settle or farm.[[10]](#footnote-10)

**Determination**

Benin customary tenancy may be determined in any of the following ways:

* Abandonment:

A tenant relinquishes his claim to a land when he leaves with no intention to return to the land.

* Failure to fulfill agreement:

Sometimes land is allotted to individuals by the community on the ground that they would do something on the land before a certain time elapses, for example, lay the building’s foundation within a year, or relinquish title to the land.

* Accomplishment of purpose:

When tenancy is granted for a specific purpose, like farming, the tenancy is terminated when the purpose is fulfilled and the rights gained by clearing and farming in Benin were temporary as most farmers cultivated for one season only and then moved to a new land after which the tenancy would be terminated.

* Forfeiture:

Forfeiture is a determination of the customary tenancy by a court order upon a proven allegation on the complaint of the overlord of act(s) of misbehaviour constituting denial of his title by the customary tenant. Acts of misbehaviour include persistent refusal to pay customary tributes to the *Enogie* or *odionwere.*

1. Mqeke RB Customary Law and the New Millennium (Lovedale Press: Alice, 2003) 3 [↑](#footnote-ref-1)
2. Juma, L “From ‘Repugnancy’ to ‘Bill of Rights’: African Customary Law and Human Rights in Lesotho and South Africa” 2007 (1) Speculum Juris 88-112 94 [↑](#footnote-ref-2)
3. (1961) All NLR 304 at 309 [↑](#footnote-ref-3)
4. FSC 204/1961 of 30/4/1962 (Unreptd.) [↑](#footnote-ref-4)
5. (1981) 5 SC 33 at 58 [↑](#footnote-ref-5)
6. See also Otogbolu v Okeluwa (1981) 6-7 SC 99 at 116 [↑](#footnote-ref-6)
7. **Aigbe-v Edokpolor (1997) 2 Scl P.8 35 pt 70** [↑](#footnote-ref-7)
8. (1970) 2 S.C 1AII NLR [↑](#footnote-ref-8)
9. ‘Benin Customary Land Tenure System’ (n.d.) < <https://www.edoworld.net/Benin_Customary_Land_Tenure_System.html>> accessed 24 April 2020 [↑](#footnote-ref-9)
10. James Fenske, ‘Trees, Tenure and Conflict: Rubber in Colonial Benin’ [2014] 110 *Journal of Development Economics <* <https://www.sciencedirect.com/science/article/pii/S0304387813000709>> accessed 24 April 2020 [↑](#footnote-ref-10)