**NAME: MORDI STEPHANIE ANWULI**

**MATRIC NUMBER: 16/LAW01/126**

**COURSE: LAND LAW II**

**COURSE CODE: LPB 402**

Land tenure is the system of landholding in a given society. According to Prof Mqeke in his work *Customary Law and the New Millennium*, 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.” Therefore, customary land tenure system is the system of landholding in a given society in accord to their existing customs and traditions. That is to say, in accord to their customary law. Nigerian customary law differs from one locality to the other and from one tribal group to the other, although sharing some common principles and features. The same goes for the customary land tenure system which forms part of the customary law of each locality and community in Nigeria.

In Delta State, a state known for its various differing tribes and communities the same applies as there are various differing but somewhat similar customs and traditions applicable to the many tribes and communities in existence. In my community, Ebu located in Oshimili North, land is held by the family. That is to say, land is family owned, although individual concept of landholding is becoming more popular in recent days. Family here comes within the meaning given by Woodman in *Customary Land Law of the Ghanaian.* He 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.” In Ebu, family in the context of landholding is patrilineal, meaning that only the males are able to inherit land and hold stakes in land. Although as the concept of will becomes more and more popular, the head of family may decide to include others such as brothers or daughter into the meaning of family in landholding. In Ebu , family land can be created in various ways. Family property may arise where a family, through their own ancestors were the first to settle on a virgin land and exercised acts of ownership over sufficient length of time, numerous and positive enough to warrant inference of exclusive ownership. As such, the bounds to which the lands extend is usually determined by long lasting and easily noticeable land features such as tall trees or rocks. Family property may arise where family money is used to purchase land. For example, where brothers come together to purchase a piece or several pieces of land without words of partition. It may also be created where 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. 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.

In Ebu, family land is managed by the oldest male of the family. He acts as the head of the family that is to say, he 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 as more of a spokesperson, he is sometimes referred to as the owner and trustee of the land. It is his responsibility as the family head to preserve family property from any unlawful interference and to keep it in a good state of repair and all others as may be agreed upon. And although he is referred to as the owner of the land, that is only in name as it would be more befitting to refer to him as a representative or trustee as the land belongs to the family in the sense of the patrilineality. Therefore, he alone does not have sole decision-making powers and must consult the rest of the members of the family with stakes in the land when making decisions in regard to the land. This implies that he cannot sell, alienate, and transfer the family land to another person without the consent of all the family member who have a stake in the land.

The determination of a family land can be done in several ways but the most common to the Ebu community is by partition. Partition is the act of sharing of family property among the members of the family. In the case of land owned by a nuclear family, it remains a family land so long as the patriarch is alive but where he dies, it may remain a family land where he intends it to remain that way but with no intention, the kinsmen (umunna) of the family that is to say brothers, uncles or cousins of the deceased landholder can share the land to the male children of the deceased so that they also can have their own family lands in relation to their nuclear families. It is common occurrence that the first male child receives the most of it including the land where the house of the father stands on. While the rest are shared amongst the other children usually in accordance to their ages. Partition may also occur in accord to the will of the deceased which was oral in the former days and written in modern days. But excluding such amiable means of partition, it may also occur as a result of disputes, weakening family bonds and so, it is therefore not advisable to partition land in consequence to a dispute. A family may also decide to gift part of its property to a benefactor enabling the benefactor to exercise rights over that piece of land and of which the family can no longer lay claim to as long as it was passed to the benefactor in the presence of three male members of the family acting as witnesses and this is usually done with already partitioned lands. Land may also be determined by absolute transfer of property. This 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*. Nonetheless, this means of determination of family property is highly unpopular as it is frowned upon as family land (Atakpa) is the land in which ancestors of the family are buried in and the passing of this land is the same as denying your ancestors and their efforts. In essence although family land can be sold and passed on where all principle members of the family have come to a mutual decision, it is highly frowned upon and normally would not be done.