

A Comparative Analysis on the Laws of Succession in Nigeria and the United Kingdom

Sarah Bamro ISHAKU

LCU/PG/003081

Being a Thesis Written in the Faculty of Law and Submitted to Post Graduate School, Lead City University, Ibadan In Partial Fulfilment of the Requirement For The Award Of Master Of Laws(Lm)

2023

DECLARATION PAGE

I, ISHAKU SARAH BAMRO hereby declare that the work in this thesis “A comparative analysis of the laws of succession in Nigeria and the United Kingdom was carried out by me in the faculty of law, Lead City University Ibadan under the supervision of DR. Oluyemisi Abimbola. The information derived from the literature has been duly acknowledged in the text and list of references provided. No part of this work has been presented for another degree at any institution.

Do Not Copy, Lead City University, Nigeria

APPROVAL PAGE

This research entitled a comparative analysis on the laws of succession in Nigeria and the United Kingdom written by ISHAKU SARAH BAMRO has been read and approved as meeting the standards of the faculty of law in partial fulfilment of the requirements for the award of the Master of Laws (LLM) degree of Lead City University, Ibadan.

DR. OLUYEMISI ABIMBOLA

Date

(Supervisor)

DR. OLUYEMISI ABIMBOLA

Date

(Dean Faculty of Law)

External Supervisor

Date

CERTIFICATION

I certify that this research was carried out by ISHAKU SARAH BAMRO (LCU/PG/003081) in the Faculty of Law, Lead City University Ibadan, Oyo State in the 2022/2023 academic session under my supervision.

DR. Oluyemisi Abimbola

(Supervisor)

Date

.....

DR. Oluyemisi Abimbola

(Dean)

.....

Date

Do Not Copy, Lead City University, Nigeria

DEDICATION

This thesis is dedicated to God Almighty and to my mother Mrs. FLORENCE ISHAKU for her constant love, prayers and support throughout this LLM Program.

Do Not Copy, Lead City University, Nigeria

ACKNOWLEDGEMENTS

I am extremely grateful to God Almighty for helping me throughout my LLM Program at Lead City University Ibadan and the Lead City University for providing this opportunity. I am thankful to my supervisor, Dr Oluyemisi Abimbola for her impactful contribution and guidance towards this legal research, without her help this thesis would not have been concluded, I am forever grateful to her. I am grateful to the supervisors and lecturers for their constant guidance towards this thesis and LLM program.

My profound gratitude goes to my mum and brothers for always been a call away to offer encouragements, my friends and colleagues for their contributions and help and lastly to my lecturers who have impacted me with knowledge throughout my LLM Program.

Even though the above, mentioned institutions and persons have assisted in the process of this research, I stand responsible for this thesis.

ABSTRACT

The Nigerian Legal System developed from the British legal system as Nigeria was a British colony until independence in 1960. The law of succession in Nigeria is thus governed by various legal instruments which includes Received English laws, Nigerian legislation and Administration of Estate laws and customary laws of the various ethnic groups and Islamic law while the United Kingdom's legislature have passed legislations to regulate succession such as the Wills Act 1837 and the Administration of Estate Act 1925. This thesis was carried out through a qualitative research, materials were sourced from both primary and secondary source which include statutory laws, customary laws, books, journal articles and the internet. This thesis examined the laws of succession in Nigeria and the United Kingdom and carried out a comparative analysis and despite the seeming similarities of the laws of succession between the two countries, the laws differ from one another and have distinctive features in terms of uniformity, codification and the rights of testators, spouses, family and dependants. This thesis offer ways on how the estate of a deceased can be properly administered and distributed hindering meddling interlopers claiming rights that are not theirs in the first place which is common under the customary law of inheritance. This thesis has carried out a comparative analysis between the laws of succession in Nigeria and the United Kingdom stating similarities and differences and provided solutions to the challenges.

Do Not Copy, Lead City University, Lagos

TABLE OF CONTENTS

	PAGE
Title	i
Declaration	ii
Approval	iii
Certification	iv
Dedication	v
Acknowledgement	vi
Abstract	vii
Table of Contents	viii
Table of Statutes	ix
Table of Cases	x
Chapter One: General Introduction	1
1.1 Background to the Study	1
1.2 Statement of the Problem	6
1.3 Aim and Objectives of the Study	7
1.4 Research Questions	7
1.5 Significance of the Study	8

1.6	Justification of the Study	8
1.7	Scope of the Study	9
1.8	Limitation of the Study	9
1.9	Methodology	9
1.10	Operational Definition of Terms	9
1.11	Structure of the Study	10
Chapter Two: Conceptual, Theoretical Framework And Literature Review		
2.1	Conceptual Framework	12
2.1.1	Definition of Terms	12
2.2	Theoretical Framework	19
2.2.1	Freedom of Disposition Theory	19
2.2.2	Feminist Theory	21

2.3 Forms of Succession
22

2.4 Laws of Succession 26

2.5 Use of Laws of Succession
29

2.6 Literature Review
29

CHAPTER THREE: THE LEGAL FRAMEWORK ON SUCCESSION IN
NIGERIA AND THE UNITED KINGDOM

39

3.1 Testate Succession laws in Nigeria 42

3.1.1 Wills Act 1837 and Wills Act Amendment Act 1852
42

3.1.2 Wills Laws of Nigeria
45

3.2 Intestate Succession Laws in Nigeria
55

3.2.1 Administration of Estate Act 1925
56

3.2.2 Administration of Estate Laws of Nigeria
57

3.2.3 Customary Intestate Succession in Nigeria
59

3.3 Testate Succession laws in the United Kingdom
85

3.3.1 Wills Act 1837 and Wills Act Amendment Act 1852
85

3.4.2 Inheritance (Provision for Family and Dependents) Act 1975
89

3.4 Intestate Succession laws in the United Kingdom
91

3.4.1 Administration of Estate Act 1925
91

3.4.2 Succession (Scotland) Act 1964
92

CHAPTER FOUR: SIMILARITIES AND DIFFERENCES BETWEEN THE

LAWS OF SUCCESSION OF NIGERIA AND THE UNITED KINGDOM

95

4.1 Similarities between Testate laws of Succession of Nigeria and the United Kingdom 97

4.1.1 Wills Act 1837 and Wills Laws of Nigeria	97
4.1.2 Wills Act Amendment Act 1852	99
4.1.3 Administration of Estate Act 1925 and Administration of Estate Laws Nigeria	99
4.2 Differences Between Testate laws of Succession of Nigeria and the United Kingdom	102
4.2.1 Wills Act 1837 and Wills Laws of Nigeria	102
4.2.2 Administration of Estate Act 1925 and Administration of Estate Laws Nigeria	105
4.2.3 Customary Wills	105
4.2.4 Writing requirement	105
4.3 Similarities between Intestate laws of Succession of Nigeria and the United Kingdom	107
4.3.1 Administration of Estate Act 1925 and Administration of Estate Laws Nigeria	107
4.4. Differences between Intestate laws of Succession of Nigeria and the United Kingdom	108
4.4.1 Right of spouse to inherit	108
4.4.2 Right of Adopted children	110
4.4.3 Method of distributing amongst children	112
4.5 Challenges of Law of Succession	118

CHAPTER

FIVE:

CONCLUSION

120

5.1 Summary

of

Findings

120

5.2 Conclusion	126
5.3 Recommendations	133
5.4 Contribution to Knowledge	137
5.5 Areas for Further Study	138
Bibliography	140
Biodata	153
The University Compliance Certification	154

Do Not Copy, Lead City University, Nigeria

TABLE OF STATUTES

Administration of Estate Act 1925

Administration of Estate Law, Lagos State

Adoption Act 1976

Inheritance (Provision for Family and Dependants) Act 1975

Marriage Act 2004

Succession (Scotland) Act 1964

Wills Act 1837

Wills Act Amendment Act 1852

Wills Law Cross River State

Wills Law Kaduna State

Wills Law Lagos State 1990

Wills (Soldiers and Sailors) Act 1918

Do Not Copy, Lead City University, Nigeria

TABLE OF CASES

Administrator General v Tuwase [1946] 18 NLR @ 88.....70, 112

Aduba & Ors v Aduba [2018] LPELR 45756 (CA).....73

Agidibi v Agidibi [1996] 6 NWLR (PT454) 300.....26

Ajibaiye v Ajibaiye [2007] 18 LRLR Vol 8911.....54

Akinyele v Opere [1968] ALL LR 65 @ 6766

Anekwe v Anekwe [2014] 9 NWLR (Pt412) 393:408.....73

Arase v Arase [1981] N.S.C.C 101,114.....83,
104

Banks v Goodfellow [1870] LR 5 QB 549.....17

Chinwere v Masi [1998] 1 NWLR (Pt17) 254,270.....72

Dawodu v Danmole [1962] 1WLR 1053.....67,
68

Egbe & Anor v Eigbe& Ors [2013] LPELR 20292 (CA) P 26-
27.....53

Egharevba v Orounghae [2001] 11 NWLR (Pt724) 318.....77,
115

Ejimaike v Ejimaike [1972] 2 ENLR P.11.....	71,
114	
Idehen v Idehen [1991] 4 NWLR (Pt198)	
382	5,76,78,79,80,81
Kadira v Fagbola [1932] 11 NLR	
110.....	66
Lawal Osula v Lawal Osula [1995] 9 NWLR (Pt 419) SC	
259.....	103
Lewis v Bankole [1908] 1 NLR @ 100.....	4,
66	
Mark Ugbo & Daniel Asemota v Sunday Asemota (Unreported) suit	
8/49/70.....	60
Nwugege v Adigwe & Ors [1934] ALL NLR	
134.....	72
Ogunbawal v Layiwola [1975] 3 CCHCJ/HC	
327.....	69,109
Okelola v Boyle [1998] NWLR (Pt 539) p.53.....	17
Okon v A.G Cross River [1991] 6 NWLR (Pt248) P.452.....	
4,28,58	
Olulade v Oviosu (unreported) Ikeja Division 27/11/198/suit no	
153/81.....	69

Olungbowa v Okungbo (unreported) suit 8/493/87.....	83
Osuagwu v Soldier [1959] NRNLR 39.....	62
Salibu v Nwariaku [2003] 7 NWLR (Pt 819) P.452.....	3, 28
Tapa v Kuka [1945] 18 NLR	526
Thompson Oke & Ors v Robinson Oke [1964] 1 ALL NLR (Pt 1) 443.....	75, 114
Ukeje v Ukeje [2014] 11 NWLR (Pt 412) 393:421.....	73
Uwaifo v Uwaifo [2002] JELR 45062 (CA).....	76, 115
Yinusa v Adebosokan [1968] NNLR 97.....	62

Do Not Copy, Lead City University, Nigeria

Chapter One

General Introduction

1.1 Background to the Study

Succession has always been an integral part of existence on earth even before advancement of law, cultures have had their principles governing them on how to transmit rights and obligations after the death of a person to his or her heirs.

Succession is the orderly passage of power, assets or other property from one entity to another. Corporate and government structures also typically create rules of succession to ensure orderly transfer of power under a variety of circumstances.¹ Succession basically means the devolution of the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death.²

It deals primarily with the distribution of a deceased person's estate to his heirs and successors. It deals with the rules governing the administration of the estate by the personal representatives of the deceased state participation in respect of the real estate situate within its territory and personal

¹ Patrelipartners Legal Practitioners, "Estate Planning and Succession in Nigeria". Available at

<https://www.patrelipartners.com/estate-planning-and-succession-nigeria> accessed on the 3rd of July 2023

²² Law Insider, Succession definition <https://www.lawinsider.com/dictionary/succession> accessed on the 3rd of July 2023.

estate of the deceased person subject to its jurisdiction.³ It suffices to say that succession may either be testate or intestate.

The law of succession therefore is all about the transfer or devolution of property on the death of another, it is concerned with inheritance, the right to inherit, the order in which inheritance is bequeathed and the condition precedent under which one can succeed another.⁴

In Nigeria, succession can be testate or intestate. Where a deceased person made a will, he is said to have died testate. The testate succession is the passing of rights or property through a will⁵. Will is a written document that allows individuals to direct the way their inheritance would be maintained and divided after their demise⁶ The concept of wills in English form can be traced to England after the Norman conquest of 1066, where a man had the power to dispose of both his real and personal assets by will⁷.

The law governing a will made in Nigeria is the Wills Act, 1837, which applies to states in the northern and eastern part of Nigeria. In Lagos state, the applicable law is the Wills Law and some western states. Common law rules govern largely essential validity of wills, particularly on the rules on testamentary capacity and undue influence.

³ Animashaun & Oyeniya in *Law of Succession, wills and probate in Nigeria.*; MIJ Professional Publishers. (2002) P.3

⁴ Moses Bello, "Principles and Practice under Customary Law". Available at <https://nji.gov.ng/images/workshop-paper/2017/refresher-judges-and-kadis/s4.pdf> accessed on the 3rd of July 2023.

⁵ B.A Garner, Blacks Law Dictionary (10th ed) p.1660.

⁶ Economic Times, "What is Will" available at <https://m.economictimes.com/definition/will/amp>. Accessed on the 4th of July 2023

⁷ Animashaun & Oyeniya in *Law of Succession, wills and probate in Nigeria.*; (MIJ Professional Publishers 2002).

In Nigeria, testate succession is primarily governed by Wills Act, 1837, and applicable Wills Law of various states, Intestate succession can be divided into non customary which is governed by Estate Laws and intestate succession under customary law.⁸

The intestacy succession is where a deceased person dies without writing a will or a valid will that fails to dispose all his assets or a leaving a document purportedly to be a will but does not comply with the formalities of a will.

The intestacy rule in Nigeria can be applied in two ways; under the English Common Law via reception laws or under state laws enacted to govern the administration of the deceased estate. State laws are only applicable when the deceased was subject to statutory law by contracting a marriage under the Marriage Act and where he died intestate.⁹

Basically, intestate succession in Nigeria involves the application of four systems of law; common law, Administration of Estate Laws of the various state, the customary and Islamic law.

Where a deceased dies intestate and is not subject to customary law or Islamic law during his lifetime, the intestacy rules under the Administration of Estate Act or Law will come to play in the administration and distribution of the deceased property to his beneficiaries.

In the case of *Salibu v Nwariaku*¹⁰ the deceased died intestate survived by his wife whom he married under the Marriage Act. The supreme court held that the applicable law to the succession

⁸ Ibid

⁹ Animashaun & Oyeniyin “*Law of Succession, wills and probate in Nigeria.*;(MIJ Professional Publishers 2002).P.3

¹⁰ [2003] 7NWLR (pt819) p.452

and distribution of estate was the Administration of Estate Laws.¹¹ Statutory marriage takes over all forms of inheritance as held in the case of *Okon v A.G Cross River*.¹²

The patterns of succession under customary law in Nigeria have almost as many variations as the ethnic groups in the country, the native law regulates inheritance and succession to property, for the purpose of this study, the focus will be on the major ethnic groups of Nigeria.

Under the Yoruba customary law of succession, only the deceased's children (male and female) in *Lewis v Bankole*¹³. There are two basic ways of sharing a deceased man's estate under the Yoruba native law and custom namely; per stirpes (*Idi Igi*) and per capita (*Ori Ojori*)¹⁴

The Igbo customary law of succession have slight variants but the dominant principle is primogeniture, that is succession by first male child.¹⁵ It has however been judicially settled the custom which discriminates against women in relation to inheritance is repugnant to natural justice, equity and good conscience.

¹¹ Jide Bodede; Intestate Succession in Nigeria under the Marriage Act. available at <https://www.linkedin.com/pulse/intestate-succession-in-nigeria-under-the-marriage-act-jide-bodede>. accessed on the 15th of August 2023

¹² [1991]6NWLR (Pt 248) p452

¹³ [1908] 1NLR @100

¹⁴ Michael, Miebeka; "Succession and Inheritance of Property under Nigerian Laws; A comparative analysis". European Journal of Social Sciences. Available at <https://europeanjournalofsocialsciences.com/issues/PDF/EJSS-62-2-05.pdf>. accessed on the 24th of August 2023

¹⁵ Ibid

The Hausa custom is mostly regulated by the Sharia (Islamic Law). The rules of inheritance on Islam is in two-fold. It makes the female co-sharer with the male.¹⁶ The Holy Quran spells out the right of inheritance in different capacities.

The Benin customary law of succession centers on the “*Igiogbe*” culture which the house in which a Benin man lived and dies devolves on his first son absolutely. *Igiogbe* is the house in which the deceased lived, it cannot be disposed by a will.¹⁷

Since the Supreme Court judgement in the case of *Idehen v Idehen*¹⁸ in which the court held that the two houses of the deceased constitute his “*Igiogbe*”, many first sons now lay claim to their father’s entire estate claiming all constitute *Igiogbe* and they are entitled to inheritance thereof.¹⁹

The United Kingdom is a multi-unit state which consists of England, Wales, Scotland and Northern Ireland. Different rules regulate both moveable and immovable property. The intestacy in the United Kingdom is statutorily regulated while that testacy is governed by the will of the testator. The main laws that regulate inheritance of immovable property is the Administration of Estate Act 1925 which sets out the order of priority on intestacy.²⁰

¹⁶ Saliku Muhammad, “Principles and Practices of Succession under Islamic Law”. Available at <https://nji.gov.ng/images/workshop.papers/2017/refreshed> accessed on the 24th of August 2023

¹⁷ Section 3(1) wills law of Bendel state, applicable in Edo and Delta state.

¹⁸ [1991] 4 NWLR (pt198)382

¹⁹ Donatus Sunday, “Bini customary law of inheritance, shift in igiogbe as a case study”(June 2012) available at <https://du.diva-portal.org/smash> accessed on the 28th of August 2023

²⁰ Michael, Miebeka; “Succession and Inheritance of Propert under Nigerian Laws;A comparative analysis” European Journal of Social Sciences available at <https://europeanjournalofsocialsciences.com/issues/PDF/EJSS-62-2-05.pdf> accessed on the 14th of August 2023

Estates in the United Kingdom are distributed through the execution of wills by testators, the formalities of the drawing up and implementation of such wills must comply with the statutory requirements. The statutory requirements include the domicile of the testator and testamentary capacity. The drafting and execution of wills is regulated by the Wills Act 1837.²¹

So far as the succession is not determined by will, it is regulated by the laws of intestate succession. Where a deceased person has not left a will, his/her property is distributed in accordance with the rules in Part IV of the Administration of Estate Act 1925(as amended). The statute determines in summary, the order and priority of succession and the beneficiaries entitled to the estate.

The research adopted is doctrinal methodology, historical and comparative approaches that examine theories, laws and decisions of both inferior and superior courts. The objective of this study is to critically examine the law of succession in Nigeria and the United Kingdom and give a comparative analysis with recommendations on ways to improve the law where necessary.

1.2 Statement of the Problem

Due to Nigeria's colonial history with England and even after the end of colonialism, Nigeria's legal system still resembles that of the United Kingdom. The laws of succession have been made to imitate that of the United Kingdom. Meanwhile, some of these laws have been modified or amended to include necessary provisions to protect the heirs or beneficiaries of the deceased estate. However, various states in Nigeria have their applicable Wills Law and the United Kingdom as well has Inheritance Act 1975. Intestate succession is done based on the principles of Administration of Estate Laws.

²¹ Ibid

Despite the conspicuous similarities of the law of succession in Nigeria and the United Kingdom, there are however some differences and inadequacies. The United Kingdom has over time amended their laws of succession and have made subsidiary laws to complement their laws of succession like the Inheritance (Provision for Family and Dependants) Act 1975, the Inheritance and Trustees' Powers Act, 2014, and Cohabitation Rights Bills, 2017. These laws all complement the aspects of succession laws that are outdated and need change. The laws of succession in Nigeria are however archaic and outdated and still uses the statutory laws it borrowed from its colonial masters.

This thesis seeks to examine and give proper and detailed comparative analysis on the similarities and differences of the laws, the problems of the law and in the end offer recommendation for proper administration and distribution a deceased's estate.

1.3 Aim and Objectives of the study

The main aim of the study is to carry out a legal discourse on the law of succession in Nigeria and the United Kingdom. The Objectives of this thesis are:

- To examine law of succession in Nigeria and the United Kingdom
- To compare and analyse the similarities and differences between the law of succession in Nigeria and the United Kingdom
- To give a conclusive summary on the similarities and differences between the laws and offer ways on how the differences can fix the inadequacies of the law in Nigeria.

1.4 Research Questions

This thesis seeks to answer the following questions;

- i. What are the laws of succession in Nigeria and the United Kingdom
- ii. How are the laws similar and in what way do they differ from one another.
- iii. What differences and amendments in the laws of succession of the United Kingdom can be adopted into the Nigerian law of succession in order to protect the rightful heirs and beneficiaries of a deceased person.

1.5 Significance of the study

This study on the law of succession in Nigeria and the United Kingdom will be of immense benefit to the Nigerian judicial system, families and the society at large. It will give insight on the historical background of the laws giving the reader proper understanding of the laws.

This study will further serve as a repository of information for decision making for people on how they will want their estate to be devolved. This thesis will contribute to the body of existing literature on the concept of law of succession and serve as a guide for researchers that desire to carry out similar research on the above topic.

1.6 Justification of the Study

This study will give a proper understanding on the law of succession in Nigeria and the United Kingdom for students, legal practitioners, scholars of the law, the judiciary and other relevant stakeholders.

1.7 Scope of the study

The study of comparative analysis on the law of succession in Nigeria and the United Kingdom will cover on the testate and intestate succession laws, when it is used, how it affects the parties involved, the similarities they share and also differences.

1.6 Limitation of the study

The limitation of the study is that both customary and statutory laws govern succession in Nigeria, there are over 250 ethnic groups in Nigeria with indigenous customary laws which makes it impossible to analyze and compare in a single study, thus this research is limited to the statutory laws and a few customary laws of Nigeria on succession.

1.7 Methodology

This study is a qualitative research. Materials are sourced from both primary and secondary sources. The primary source includes Wills Act 1837, Inheritance Act 1975, Administration of Estate Laws as well as judicial authorities.

The secondary source will include books, articles from learned journals and internet materials.

Therefore, this study is essentially a library-based research.

1.8. Operational Definition of Terms

Law; this is a body of rules of actions or conduct prescribed by controlling authority and having binding legal force that which must be obeyed and followed by citizens subject to sanctions or legal consequences.²²

Succession: in legal parlance, it means the orderly passage of power, assets or property from one entity to another, it is the transmission of rights and obligations from a deceased person to a living person.

Testate succession: this is a type of succession that is carried out through a will. The estate or property will be distributed as the deceased bequest in the will.

²² Black's Law Dictionary, 6th ed

Intestate succession; this is a type of succession carried out without a will, state laws where the deceased resided will decide the distribution of asset.

Wills: a will is a written document that allows individuals to direct the way their inheritance would be maintained and divided after their demise.²³

1.9. Structure of the Study

This essay is divided into five chapters; Chapter One discusses the background to the study introducing the work, statement of problem, aim and objectives, significance of the study, definition of terms, the methodology, the structure, the period within which the study will be conducted and the anticipated contribution to knowledge.

Chapter Two is the literature review, discusses an introduction into the law of succession, examines the nature of available literature, highlights conceptual framework, the concept of law of succession, forms of succession, and the challenges.

Chapter Three discusses extensively the different forms of succession and the laws guiding the practice in Nigeria and the United Kingdom. It begins with an introduction, it examines the laws on testacy and intestacy in Nigeria and the United Kingdom which includes the Wills Act and Laws and Administration of Estate Act and Laws, common law rules and decisions of the court.

Chapter Four carefully elaborates on the similarities and differences on the forms of succession and the laws in Nigeria and the United Kingdom. It compares the testacy and intestacy laws of the two states.

²³ The Economic Times, "What is Will" <https://m.economictimes.com/definition/will/amp>. Accessed on the 4th of July 2023.

Finally, Chapter Five is an assessment of the discussion in the study, summary of the research, the conclusion and the recommendation.

Do Not Copy, Lead City University, Nigeria

Chapter Two

Conceptual, Theoretical Framework and Literature Review

In this chapter, a general overview on the law of succession will be carried out in different parts which include the conceptual framework, theoretical framework and literature review of the existing literature on the laws of succession in Nigeria and the United Kingdom.

2.1 Conceptual Framework

Law of succession deals with the transmission of rights and obligations of a deceased person to his/her legal heirs.

The law of succession governs the transfer of property, assets, rights and obligations, it sets out rules and guiding principles for determining who is entitled to inherit the estate and how it is to be distributed.²⁴

In the course of this study, certain terms are referred to and used interchangeably. These terms will be discussed below.

2.1.1 Definition of Terms

Law; it is general knowledge that there is no universally accepted definition of law, only attempts by scholars, authors, jurists to give it a befitting definition for proper understanding of what law entails. The term law has different meanings in different places or societies at different times.

²⁴“ Law of Succession” UOLLB First Class Law Notes(2023) available at < <https://www.uolb.com/blog/law/law-of-succession> > accessed 5 September 2023.

John Austin defined law “as an aggregate set of rules set by a man as politically superior or sovereign to men as political subjects” on the other hand, Benjamin Nathan Cardozo stated that “a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by courts if its authority is challenged, it is a principle or rule of law.”²⁵

Salmond defines law “as the body of principles recognized and applied by the state in the administration of justice” and according to Dean Roscoe “law is a social institution to satisfy social world, it is a social engineering and an instrument to balance between the competing or conflicting interests.”²⁶

Therefore, generally and for the purpose of this study, law denotes a body of rules which regulate conduct of people living within its jurisdiction, it serves as a guiding principle when carrying out certain actions and processes.

Succession: succession is the orderly passage of power, assets or property from one entity to another. It can loosely mean inheritance, the right to inherit, the order in which the inheritance is bequeathed and the conditions precedent under which one can succeed another.²⁷

Succession takes place when a person or entity passes power or property to some other party. It is concerned with the transfer or devolution of property.

²⁵ “Introduction to law” available at < <https://www.toppr.com/guide/business-law/cs/introduction-to-law>. > accessed 5 September 2023.

²⁶ “ Meaning, Nature and Function of Law” available at < <https://law.uok.edu.in/files/5ce6c765-1013-446c-bbac> > accessed on 5 September 2023.

²⁷ Legal Practitioners “ an overview of estate planning and succession in Nigeria”. Available at < <https://www.patrelipartners.com/estate-planning-and-succession-in-nigeria> > accessed 5 September 2023.

Inheritance: Britannica Dictionary defines inheritance as “the devolution of property on an heir or heirs upon the death of the owner”²⁸ Inheritance can be used interchangeably with succession, it is simply the practice of passing on assets and properties to beneficiaries and heirs.²⁹

Estate: an estate is a legal term for the combined assets, property and finance of an individual, an estate basically contains all financial holdings and responsibilities which means all assets and debts.³⁰

It is all the property an individual owns at death including personal property, real property, money and debts.

Beneficiaries: a beneficiary is a person or entity who is designated to receive the benefits of property owned by a person. A beneficiary can be named to receive property or other financial advantages.³¹

A beneficiary basically receives all or part of the estate, receives money or both, a beneficiary can be a person, group of people, corporate body or organizations like charities etc.

Dependant: dependant in succession is any person who was being wholly or substantially maintained or supported by the deceased at the time of the person’s death.³²

²⁸ Britannica dictionary “inheritance” available at < <https://www.brittanica.com/topic/inheritance-law> > accessed 5 September 2023.

²⁹ “Inheritance and customary law in Nigeria” (2018) available at < <https://www.leadwaycapital.com/inheritance-and-customary-law-nigeria> > accessed 5 September 2023.

³⁰ Law District “Estate” < <https://www.lawdistrict.com/legal-dictionary/estate/amp> > accessed 5 September 2023

³¹ Julia Kagan “what is a beneficiary? How they work, types and examples”(august2022) available at < <https://www.investopedia.com/terms/b/beneficiary.asp> > accessed 5 September 2023.

³² Section 40 Succession Act 1981.

A dependant can be a spouse, child, parent or siblings of a deceased person.

Customary law: this refers to the laws which are derived from the customs of the people. It is the oldest source of law which exists, there is no uniform customary law in Nigeria as even amongst communities of the same ethnic group, the laws vary from one community to another.³³

It is the law that applies the norms, rules of behavior, values of a people, in Nigeria, customary law may be divided in terms of nature into two classes; ethnic law and Islamic law. Ethnic law is indigenous and applies only to members of a particular ethnic group while Islamic law is religious law which is based on Muslim faith and applicable to members of the faith.³⁴

Testate succession: this is the type of succession that is carried out according to the instructions the deceased person while alive wrote down in a will for the distribution of his/her property.

A person is said to have died testate if he left a will. The distribution will have to be consistent with a valid Will. The deceased outlines who inherits what assets and the proportions. An executor is responsible for carrying out the instructions, such as locating the beneficiaries, collecting and distributing the assets.³⁵

Will: a will also known as last will and testament, is a legal document that allows a person to specify how they want their assets to be distributed after their death. It directs how an inheritance

³³ “ Customary law” available at < <https://www.learnnigerialaw.com/learn/legal-system/customarylaw> > accessed 6 September 2023.

³⁴ Mathew Enya “ Customary Law, Social Development and Administration of Justice in Nigeria” available at < <https://www.scirp.org/journal/paperinformation.aspx?paperid73207> > accessed 6 September 2023.

³⁵ “ What Is The Difference between Testate and Intestate?” available at < <https://www.dicksonlegal.com/what-are-the-differences-between-testate-and-intestate/> . > accessed 5 September 2023.

is to be divided and maintained, it set forth wishes of the deceased, it must comply with the law where it is executed.

It must meet certain formalities such as being in writing and witnessed by competent individuals. It also addresses matters like appointment of guardians for minors and executors.³⁶ Wills include physical assets, financial assets, personal possessions.

Testator: a testator is the legal term for an individual who creates a will, laws vary according to jurisdiction or who is eligible to create a will but generally a testator has to be an adult and of sound mind. The key responsibility of a testator is to create a thorough and comprehensive will that is valid and will be held up in court.³⁷

Testamentary capacity: this refers to a person's ability to make a valid will. It is the legal term used to describe a person's legal ability to make or alter a valid will. It was held in *Banks v Goodfellow*³⁸ the level of understanding required by the test varies according to the complexity of the will, the assets and claims on the testator.³⁹

³⁶ Ibid (n1).

³⁷ Patrick Hicks "Everything You Need to Know About the Role of a Testator of a will" available at < <https://trustandwill.com/learn/testator> > accessed 5 September 2023.

³⁸ [1870] LR 5 QB 549.

³⁹ The Gazette "what is testamentary capacity" available at < <https://www.thegazette.co.uk/all-notices/content/100844> > accessed 5 September 2023.

The requirement varies across states in Nigeria. Lagos requires 18 years⁴⁰, the Wills Act stipulates 21 years, there are however exceptions for seamen, mariners or crew of commercial airline.⁴¹

In *Okelola v Boyle*⁴², it was stated that no person is capable of making a will who is not of sound mind, memory and understanding.⁴³

Therefore, testamentary capacity involves a testator being of the required age and having the mental ability to write a will disposing his assets and properties.

Executor: an executor is an individual appointed to administer the last will and testament of a deceased person. The main duty of an executor is to carry out the instructions to manage the affairs and wishes of the deceased. The executor is appointed either by the testator of the will or by a court, in the case where no one was appointed.⁴⁴

Probate: this is the legal process through which a will is proved to be valid by a court. It involves the formal regulation of the executor named in the will and authority granted to them to administer the estate.⁴⁵

⁴⁰ Section 3 Wills Law, Lagos state.

⁴¹ Section 6(1) Wills Law Lagos State.

⁴² [1998] NWLR (Pt539) p.53.

⁴³ Dayo Audu and Esther Randle, “The Concept of Wills: Law and Importance”(august 2022) available at < <https://www.mondaq.com/nigeria/wills-intestacy-estate-planning> > accessed 5 September 2023.

⁴⁴ Julia Kagan, “what is an executor? Definition and responsibilities” (July 2022) available at < <https://www.investopedia.com/terms/e/executor.asp> > accessed 5 September 2023.

⁴⁵ Ibid (n1)

Before a next of kin or executor named in a will can proceed further with the distribution, sell or transfer of a deceased's estate, they need to apply for a grant of probate.

Deed of Assent: this is a document or instrument used by the executor or legal administrator of an estate to transfer, hand over or vest a legal interest or title in a deceased person's property in the name of the beneficiary indicated in a will or any other third party.⁴⁶

Intestate Succession: intestate succession occurs when a person dies without leaving a valid will. The assets of the deceased will be determined by the laws of intestacy in the state where the person passed away. The rules of intestate succession vary.⁴⁷

Partial Intestacy: a partial intestacy is when the deceased dies leaving a valid will but the will does not dispose of all his estate. In that situation, the intestacy rules will be applied to those assets which are not disposed of under the will.⁴⁸

Administrator: an administrator of estate is appointed by a court to oversee the estate distribution and maintenance process. The administrator contacts beneficiaries, distributes property and pays

⁴⁶ "What is a Deed of Assent in Nigeria" available at < <https://chamanlawfirm.com/what-is-a-deed-of-assent-in-nigeria> > accessed 5 September 2023.

⁴⁷ "intestate succession" available at < <https://www.cornell.edu/wex/intestate-succession> > accessed 6 September 2023.

⁴⁸ Pennington Cooper " the intestacy rules" available at < <https://www.penningtonslaw.com/expertise/individuals/contentious-probate-and-trust-dispute> > accessed 6 September 2023.

debt according to the state intestacy laws. The courts assign an administrator if there is no will, the will is invalid or an executor was not named in the will.⁴⁹

2.2 Theoretical Framework

The law of succession involves the transmission of the rights and obligations of the deceased person in respect to his estate to his heirs and successors. It deals primarily with the distribution of a deceased person's estate to his heirs and successors. It also deals with the rules governing the administration of the estate by the personal representatives of the deceased person including state participation in respect of the real estate situate within its territory and personal estate of the deceased person subject to its jurisdiction.⁵⁰

2.2.1 Freedom of Disposition Theory

Freedom of disposition is the dominant principle of each succession which advocates that the law should grant people freedom to dispose of their property in any way they want. Two schools of thought surround this theory⁵¹

⁴⁹ "What is an administrator of estate?" available at < <https://www.freewill.com/learn/administrator-of-estate/>. > accessed 6 September 2023.

⁵⁰ Animashaun & Oyeniyan "Law of Succession, wills and probate in Nigeria.:(MIJ Professional Publishers 2002).P.3.

⁵¹ Schmidt Law, "Freedom of disposition" available at < <https://www.lawcornell.edu/wex/freedom-of-disposition>. > accessed 8 November 2023.

The first is that freedom of disposition is a political right and is subject to some constraint and the other is that, freedom of disposition is a natural right and should not be constrained by the law in any way.⁵²

Overriding rules that regulate the donor's freedom of disposition can be separated into two categories; the prescriptive restraint regulates the donor's freedom because the donor might give the property that is subject of a mandatory transfer to donees whom he/she might otherwise prefer to benefit. The other type is the proscriptive restraint which prohibits certain dispositions of property.⁵³

In Nigeria, a person when alive often has the freedom to dispose of his property to whomever he chooses. However, when he dies, limits have been put upon that freedom. These limits are often justified on cultural and religious grounds.⁵⁴

Testamentary freedom became complete in England and Wales in 1891, with the enactment of the Mortman and Charitable Uses Act and even before then the Wills Act, 1837 granted a testator the complete testamentary freedom to do whatever he wished with his property and in

⁵² Ibid.

⁵³ Mark Glover, "A Social Welfare Theory of Inheritance Regulation" (2018) Utah Law Review: Vol 2018: No 2, Article 4.

⁵⁴ Oriakhoba et al, "Statutory Limitations to Testamentary Freedom in Nigeria: A Comparative Analysis" (February 2023) 4 Nnamdi Azikwe University Journal of International Law and Jurisprudence.

Banks v Goodfellow⁵⁵ the complete freedom was affirmed by court and held that the English law leaves everything to the unfettered discretion of the testator.⁵⁶

2.2.2 Feminist Theory

This is tilted towards the protection of the rights of women and children. The theory relates to the discrimination of women in relation to inheritance based on the reliance on cultural beliefs.⁵⁷

This theory's first wave focused on suffrage and political rights, then the second wave focused on inequality across workplace, family and reproductive rights and the last emphasizes on globalization, postcolonialism and postmodernism.⁵⁸

The Feminist theory is the nightmare and scourge of patriarchy, a system not only common in Africa but prominent in many parts of Nigeria, customary law which are native legislation of different ethnic groups in Nigeria. The majority of localities, particularly among the Igbos of Eastern Nigeria, lack of adequate customary rules and customs protecting women's right to inherit and succeed. They therefore, represent a significant barrier to gender equality, the economic emancipation of women and the realization of social justice in terms of growth, peace and security.

⁵⁵ [1870] LRQB 549 @ 564-565

⁵⁶ Oriakhoba et al, "Statutory Limitations to Testamentary Freedom in Nigeria: A Comparative Analysis" (February 2023) 4 Nnamdi Azikwe University Journal of International Law and Jurisprudence.

⁵⁷ Leo Okafor et al, "Conceptual and Theoretical Framework of Inheritance Rights of Women and Children In South Eastern Nigeria" Redeemer's University Nigeria, Journal of Jurisprudence and International Law Vol 3 (1) 2013.

⁵⁸ Sara Zeigher "Feminist Theory" available at < <https://mtsu.edu/first-amendment/article/1255/feminist-theory>. > accessed 8 November 2023.

Succession has its forms and types, the laws guiding it are in accordance to the type of succession in play, it has benefits/use to the society and also challenges to it.

2.3 Forms of Succession

Succession is the orderly passage of power, assets or other property from one entity to another.⁵⁹

Succession can be testate or intestate.

Testate succession is the passing of rights or property by will.⁶⁰ The deceased's properties are usually administered and distributed according to the content of the will. For wills, a man can bequeath all his assets to total strangers.⁶¹

Intestate succession occurs when a person dies without leaving a will. A person is considered intestate if he did not leave a will to dispose of his estate or he left a will which was successfully challenged and held to be invalid due to lacking testamentary capacity, undue influence or the will does not comply with the provisions of the prevailing laws for a valid will where the estate is situated or the domicile of the deceased.

In Nigeria and the United Kingdom when a person dies testate, leaving a valid will behind on how his/her estate is to be administered and distributed. There are steps to be taken before the estate can be properly administered and distributed.

A grant of representation is called a "grant of probate" where the executor named in the will is making the application to deal with the estate, it is required before they can administer the estate.

⁵⁹ Patrelipartners Legal Practitioners, Estate Planning and Succession in Nigeria. Available at <https://www.patrelipartners.com/estate-planning-and-succession-nigeria> accessed 7 September 2023.

⁶⁰ B.A Garner, Black's Law Dictionary(10th ed) p.1660.

⁶¹ *Modern Nigeria Land Law* (Evans Brothers) 1989 p.153.

The executor will collect the assets ensure debts are paid, funeral expenses and tax are sorted out and then proceed to distribute the remaining assets to the beneficiaries according to proportions dictated by the will of the testator.⁶²

Individuals have freedom to dispose of their entire estate, there is no marital property or forced heirship, minors inherit at the age of 18 and until they reach that age, marry or enter into a civil partnership earlier their share is held on statutory trusts under which the income is either used for their maintenance, education or benefit or it is accumulated.⁶³

For intestate succession in Nigeria, when a person is considered intestate, the assets may be administered and distributed using statutory or customary laws. The immediate family members can apply for a letter of administration from a state high court or ministry of justice. Nigeria has over 250 ethnic groups so therefore, the pattern of inheritance under customary law varies according to each ethnic group.⁶⁴

Where a deceased dies intestate and is not subject to customary law or Islamic law during his lifetime, the intestacy rules under the Administration of Estate Act or Law will come to play in the administration and distribution of the deceased property to his beneficiaries. The administration and distribution will be in accordance to the provisions of the Act or Law.

⁶² “ Wills and Probate in England and Wales” available at < <https://worldwidelawyers.co.uk/wp-content/uploads/2014/16/willprobatecouncil-england.pdf> > accessed 7 September 2023.

⁶³ McDermott Will and Emery “ Succession law in United Kingdom(England and Wales) available at < <https://www.lexology.com/library/detail.aspx/g=f6b1994c-b5eb-4da7-b4b6-12360fb7160b> > accessed 7 September 2023.

⁶⁴ “ What is Inheritance and Customary Law in Nigeria” available at < <https://chamanlawfirm.com/what-is-inheritance-and-customary-law-in-nigeria> > accessed 7 September 2023.

For customary law, the general principle of law is that a person carries his customary law with him, therefore, regardless of the customary law of his domicile, his personal law shall prevail.⁶⁵

In Bini and most eastern Nigerian ethnic groups, the primogeniture rule applies, the deceased property devolves to the eldest son exclusively under which the eldest son is expected to look after the other children.⁶⁶

The Yoruba culture has two methods of distribution. The first is the “*Idi-Igi*” method where property is shared according to the number of wives and “*Ori-Ojori*” where property is shared or distributed according to the number of children.⁶⁷

Northern Nigeria, among the Hausa tribe, succession is governed by Islamic law. According to an interview with Hussein Ali, inheritance is according to the dictates of the Quran, wives with children are entitled to inherit, the children inherit and if there are no children, the rest goes to the man’s family.⁶⁸

⁶⁵ *Osuagwu v Soldier* [1959] NRNLR 39

⁶⁶ Moses Bello “ Principles and Practice of Succession Under Customary Law” available at <
<https://nji.gov.ng/images/workshop-papers/2017/refreshed-judges-and-kadis/s4.pdf> > accessed 7 September 2023

⁶⁷ Michael, Miebeka; Succession and Inheritance of Property under Nigerian Laws; A comparative analysis. European Journal of Social Sciences available at <https://europeanjournalofsocialsciences.com/issues/PDF/EJSS-62-2-05.pdf>.
Last accessed on the 24th of August 2023.

⁶⁸ Hussein Ali (staff) Nigerian Institute of Advanced Legal structure.

In the United Kingdom, when a person dies without a will or a valid will, the estate must be shared out according to certain rules of intestacy.⁶⁹

Married partners or civil partners inherit under the rules of intestacy but divorced partners or cohabiting partners cannot inherit under the rules of intestacy, the children of the intestate person will inherit if there is no surviving partner or in the case of a surviving partner if it is worth more than a certain amount. Adopted children can also inherit, grandchildren, parents, brothers and sisters, nieces and nephews of the intestate person may inherit under the rules of intestacy but it depends on a number of circumstances while other relatives may inherit if the person who died had no surviving married partner, children, grandchildren, great-grandchildren, parents, brothers, sisters, nephews or nieces.⁷⁰

Where there are no surviving relatives who can inherit under the rules of intestacy, the estate passes to the crown.⁷¹

Partial Intestacy: this is a situation where some property in the estate of a testate deceased are not disclosed in his/her will. It occurs when the testator of a will though valid failed to dispose some specific property or failed to dispose effectively of some interest which has arisen in consequence of the will.⁷²

⁶⁹ “ Who can Inherit if there is no will-the rules of intestacy” available at <

<https://www.citizensadvice.org.uk/family/death-and-wills/who-can-inherit-if-there-is-no-will-the-rules-of-intestacy> > accessed 7 September 2023

⁷⁰ Ibid

⁷¹ Ibid (n38)

⁷² B.A Oni “*The Law of Succession in Nigeria*” (5th edn, lagos university press and bookshop ltd 2019) p. 259.

Basically, the instances where partial intestacy will occur are: where all named beneficiaries are dead, the will does not dispose of all the estate, part of the will have been set aside due to the fact that the will was been set aside because the will was successfully challenged or it involves a family property that cannot be disposed through a will.⁷³

Succession therefore is a method of administering, distributing and maintaining a deceased person's estate and can be done either through the direction of a will left by the deceased or through state laws and customary principles.

2.4 Laws of Succession

Succession, whether testate or intestate consists of rules that govern the devolution and administration of a deceased person's estate. Immoveable property is governed by the law of the place where the property is situated and moveable property is governed by the law of the domicile of the testator at the time of death as held in *Tapa v Kuka*.⁷⁴

(I) Nigeria's Laws of Succession

The key laws governing succession are: Marriage Act 2004, the English Wills Act of 1837, Administration of Estate Act 1925, the Wills (Soldiers and Sailors) Act 1918, Succession Law Edict 1989, Wills Law of various states and customary law.

There is no uniformity in Inheritance laws, it depends on the type of succession, personal law of the deceased or the type of marriage contracted by the deceased.

For testate succession, the Wills Act 1837, Wills Law of Lagos 1990, Wills Law of old Bendel State 1976, the Wills (Soldiers and Sailors) Act 1918, Wills Amendment Act of 1852 and

⁷³ Ibid page 260

⁷⁴ [1945] 18 NLR 5

Administration of Estate Act 1925 and Laws of the various states. These laws govern testate succession in Nigeria and states how wills should be drafted and executor, the power and duties of executors and administrators and rights of beneficiaries and heirs.

For intestate succession; it is divided into two, statutory and customary law. Administration of Estate Laws of the various state applies and where there is no local enactment, the Administration of Estate Act 1925 applies. The rules of succession on intestacy are set out in Part IV of the Administration of Estate Act 1925 in each state⁷⁵ and a person subject to customary law, native law-applies. For Lagos, Ogun, Oyo, Ondo or Bendel State (Edo and Delta), the Administration of Estate Law 1959 applies where customary law does not apply. In the northern and eastern states, English Common Law applies.⁷⁶

For the northern and eastern states, the law of the state applies.⁷⁷

In Islam law which governs the Hausa tribe's succession process, the rules of inheritance can be found in Chapter 4 verses 7, 11 and 12 of the Quran. Basically, the Quran is the law of succession for the Hausa customary law.⁷⁸

⁷⁵ Michael, Miebeka; Succession and Inheritance of Property under Nigerian Laws; A comparative analysis. European Journal of Social Sciences available at <https://europeanjournalofsocialsciences.com/issues/PDF/EJSS-62-2-05.pdf>.

⁷⁶ Anthony Diala "Reform of Customary law of inheritance in Nigeria: Lessons from South Africa" (2014)" available at < <https://www.saflii.org/za/journal/AHRJ/2014/31.PDF> > accessed 7 September 2023.

⁷⁷ Ibid

⁷⁸ "Northern Succession" available at < <https://motun911.wordpress.com/2019/09/13/northern-succession> > accessed 8 September 2023.

Where the property is subject to customary law or deceased was married under customary law or was subject to native law, customary law applies.⁷⁹ In the case of *Salibu v Nwariaku*⁸⁰ the deceased died intestate survived by his wife whom he married under the Marriage Act. The supreme court held that the applicable law to the succession and distribution of estate was the Administration of Estate Laws.⁸¹ Statutory marriage takes over all forms of inheritance as held in the case of *Okon v A.G Cross River*.⁸²

(II) United Kingdom's Laws of Succession

For testate succession in the United Kingdom, the drafting and execution of wills is regulated by the Wills Act 1837, Wills Act Amendment Act 1852.

In case of intestacy, the Administration of Estate Act 1925 (as amended) sets out the rules of intestacy in England and Wales. The Succession Act 1964 regulates intestate inheritance in Scotland and Northern Ireland.

⁷⁹ Anthony Diala “ Reform of Customary law of inheritance in Nigeria: Lessons from South Africa” (2014)” available at < <https://www.saflii.org/za/journal/AHRJ/2014/31.PDF> > accessed 7 September 2023.

⁸⁰ [2003] 7NWLR (pt819) p.452

⁸¹ Jide Bodede; Intestate Succession in Nigeria under the Marriage Act. Available at <https://www.linkedin.com/pulse/intestate-succession-in-nigeria-under-the-marriage-act-jide-bodede>. Last accessed on the 15th of August 2023

⁸² [1991]6NWLR (Pt 248) p452

The Inheritance (Provision for Family and Dependents) Act 1975 allows certain people to claim financial provision from a deceased person's estate where the will or the operation of the statutory rules which apply on intestacy fail to make reasonable provision for them.⁸³

2.5 Use of Laws of Succession

- The Laws of Succession tries to fulfill the wishes of the deceased by allowing or giving him/her the right to direct devolution of estate after death in a manner that pleases him/her.
- Law of Succession tries to provide a fair way to distribute a person's estate after death so that dependants and family are not cheated out of the deceased's estate.
- It also provides for aggrieved parties to find remedy or justice in situations where there is injustice or discrimination in the devolution of the deceased's estate.
- It acts as a check to ensure that wills and other testamentary documents are the wishes of the deceased by providing testamentary capacity tests and tests for fraud or duress.

2.6 Literature Review

According to B.A Oni, Succession is the acquisition of property by inheritance under the law of descent and distribution. It signifies the estate, rights and charges which a person leaves after his death, whether the property exceeds the charges or the charges exceed the property or whether he left only charges without property.⁸⁴

⁸³ "What is the Inheritance (Provision for Family and Dependents) Act 1975?" available at < <https://www.thegazette.co.uk/wills-and-probate/content/104007>. > accessed 8 September 2023.

⁸⁴ B.A Oni, "*The Law of Succession in Nigeria*" (5th edn, lagos university press and bookshop ltd 2019) p. 259.

Timor Leste, states that succession technically opens at the exact moment of the Author's death and at the location of his or her inheritance. The author is the deceased individual whose assets are being considered for inheritance. Once succession is opened, the heirs of the first order of succession must be gathered. An heir can receive all of the deceased's persons assets or a percentage of assets if there is more than one heir.⁸⁵

According to Zaid Abubakari et al, Inheritance is multifaceted and exhibits complexities of diverse origins from customary, statutory and religious sources. Inheritance is influenced by multiple laws deriving from both statutory and non-statutory sources. These laws define the manner of transfer, his eligibility, associated rights, responsibilities and restrictions. In Africa, plurality of laws derives historically from and those of colonial administration. Precolonial Africa had its rules and norms commonly termed as customary or indigenous laws which regulated human behavior and social interactions including inheritance with the advent of colonialism, additional legal systems were introduced by the colonial administration which they considered superior to native rules and norms.⁸⁶

True Trampin explains in his article that estate administration is a legal process that takes place after a person's death to manage and distribute their assets to their beneficiaries. The process involves identifying the deceased person's assets and liabilities, paying off debts and taxes and distributing the remaining assets to the beneficiaries according to the instructions of the will or if

⁸⁵ Timor Leste and others, "The Law of Succession" (2018) available < <https://law.standitural.edu.wp-content/uploads/2018/04/timor-leste-inheritance-law.pdf>. > accessed 29 September 2023.

⁸⁶ Abubakari and others, "Plural Inheritance Laws, Practices and Emergent Types of Property-Implications for Updating the Land Register" (2019),11,6007. Available at < <https://dui.org/10.3390/su112/6087>. > accessed 29 September 2023.

there is no will according to state laws. There are two main types of estate administration: testate and intestate administration. In testate administration occurs when the deceased leaves a valid will, the person named as the executor in the will is responsible for carrying out the instructions contained in the document. The executor has the authority to manage the deceased person's assets, pay off debts and taxes and distribute the remaining assets to the beneficiaries according to the will. Intestate administration occurs when the deceased did not leave a valid will. In this case, the court appoints an administrator to manage the estate. The administrator's role is similar to that of an executor, but they must distribute the assets according to the laws of the state where the deceased resided.⁸⁷

Maya defines that testate succession occurs when a person who makes a valid and enforceable will which ensures that upon the death of that person, his property passes to a person of his choice.⁸⁸

Femi defines a will or testament is a legal document that expresses a person's (testate) wishes as to how their assets (estate) is to be distributed after their death and which person (executor) is to manage the property until its final distribution. A codicil is an addition to a will, that is a supplement that explains, amends or notifies part of an already executed will.⁸⁹

⁸⁷ True Tamplin, "What is Estate Administration?" available at < <https://www.financestrategists.com/estate-planning-lawyer/estate-administration/>.> accessed 29 September 2023.

⁸⁸⁸⁸ Muya Kihumba, "Testae Succession" (June 2018) available at < <https://www.slideshare.net/MUYAKIHUMBA/testate-succession>.> accessed 29 September 2023.

⁸⁹ Femi Atoyebi, "An Overview of the Law of Succession in Nigeria." (November 2019) available at < <https://femiatoyebi.com.ng/an-overview-of-the-law-of-succession-in-Nigeria>.> accessed 29 September 2023.

Shine in an online article describes an executor as a person named within a Last Will and Testament, anyone over the age of 18 is legally allowed to be an executor, if they have the mental capacity to do so. Executors ascertain information on the assets and liabilities of the estate, gather the assets of the deceased and use them to pay any outstanding debts and distribute the remainder of the assets to whoever has been chosen as a beneficiary. The process can require anything from organizing the funeral to validating the will and representing the estate in any legal claims.⁹⁰

James Chen explained in his article that an administrator is a court-appointed individual who handles all remaining financial matters for a decedent. The administrator organizes all the pieces of the decedent's estate and then settles outstanding debt, expenses and other obligations. The Administrator is appointed by the court in the situation where the deceased died intestate that is without a will, the administrator distributes and maintains the estate according to the intestacy rule of the state. An Administrator can also be appointed by a court where the decedent had not named an executor in their will or if a named executor refuses or is unable to assume the responsibilities, the administration distributes and maintains the estate according to the instructions in the will.⁹¹

According to Vanessa in her article explained that, the laws that govern intestate succession in Nigeria are mainly of two sets. The state legislation where the deceased resided or the relevant native customary laws and practices of succession and inheritance indigenous to the deceased.

⁹⁰ "What is the role of the executor of a Will?" available at < <https://www.shine.com.au/resources/wills-and-estate/role-of-executor-of-a-will/>. > accessed 29 September 2023.

⁹¹ James Chen, "Administration: What It Is, Duties, Example" (July 2022) available at < <https://www.investopedia.com/terms/a/administrator.asp>. > accessed 29 September 2023.

Under the Islamic law it is known as the *Mirah* while under customary law, it will rely on proof and stringent tests to be accepted by the court. The inheritance under Sharia law is codified, the customary law is unwritten. For a successful succession and inheritance under the practice and procedure of any custom, that custom must naturally not be contrary to public policy or any statute in existence. It must be in existence, recognized and adhered to by the community at the relevant time when it is being sought to be relied upon.⁹²

Sharon Crosby defines Intestate Succession as a succession which occurs where a person dies without leaving a will. Sharon further explains that the intestacy rules in the United Kingdom also apply where a person leaves a valid will but it does not distribute all their estate. The rules to a surviving spouse has changed significantly following the Inheritance and Trustees' Powers Act 2014. The initial intestacy rules state allows the spouse to inherit the estate where there are no children but only a surviving spouse and where there is a surviving spouse and children, the spouse is entitled to the personal chattel and a statutory legacy following the enactment of Administration of Estate Act 125 (fixed net sum) Order 2020, the residuary estate if any is divided equally between the spouse and children. The children including legitimate and illegitimate children, adopted children will receive the estate. The parents whether unmarried except if one of them is not named on the birth certificate, sibling of full or half-blood and their

⁹² Vanessa C Ezumah, "Succession and Inheritance Under Customary Law: Practice and Procedure" (May 2023) available at < <https://nji.gov.ng/wp-content/uploads/2022/05/succession-and-inheritance-1.pdf>. > accessed 29 September 2023.

issues, grandparents, aunts and uncles. If there is no one within a class, the persons in the next class become entitled.⁹³

She further explains that the Cohabitation Rights Bill 2017-19, could also affect unmarried couples living together in the future. The Inheritance (Provision for Family and Dependents) 1975 extends the class of persons entitled to make a claim beyond the limits of those entitled under intestacy. It includes former spouses, civil partners, children treated as of the family such as step-children. The Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 states a beneficiary responsible for the death of the intestate will not benefit from an estate under the rules of intestacy. A beneficiary can disclaim their inheritance under intestacy rules prior to 1 February 2012⁹⁴.

Micheal et al in their article offered more exposure on the intestacy succession in the United Kingdom, the family members of the deceased are allowed to rearrange the distribution of the agreement which must exclusively direct and record any distribution of the property. All beneficiaries entitled to the estate must concur to all amendments, the rights of a child or minor or an adult with mental incapacity cannot be altered except through a court order. There is no jointly owned matrimonial or community proper under the UK inheritance laws since the enactment of the Married Women's Property Act 1882.⁹⁵

⁹³ Sharon Crosby, "What are the Intestacy rules in England and Wales?" (2020) Ladders Solicitors available at <
<https://www.ladders.co.uk/what-are-the-intestacy-rules-england-and-wales>. > accessed 31 October 2023.

⁹⁴ Ibid.

⁹⁵ Michael, Miebeka; Succession and Inheritance of Propert under Nigerian Laws;A comparative analysis. European Journal of Social Sciences available at <https://europeanjournalofsocialsciences.com/issues/PDF/EJSS-62-2-05.pdf>

Unclaimed estates are usually listed in the Gazette, this happens where there are relatives to inherit the estate. Such estate is regarded as an ownerless property or bona vacantia.⁹⁶

Aisha elaborates on the concept of community property and common law, in a community property state, assets acquired by either spouse during the marriage are considered to be jointly owned by both spouses. Each spouse owns a 50% interest in the property. It may include separate property that a spouse brought into the marriage, if it was converted to use by both spouses. Spouses have a right to dispose of their share of the community property in whatever way they desire, the deceased spouse can leave half of the family home to a different beneficiary other than the surviving spouse but cannot give away the other spouse's share or right to use community property.⁹⁷

She continues that in a common law state, ownership is determined by whose name is on the title, if only one spouse's name is on the deed of a home, that spouse owns the house even if the other spouse actually paid for it. A spouse is not automatically entitled to a 50% interest in property acquired during the marriage. Most common-law states protect a surviving spouse from complete disinheritance with an inheritance law that allows them to claim one-third to one-half of the decedent's property. A spouse can choose to leave less than their state's inheritance law allows but the surviving spouses can go to court to claim a higher amount.⁹⁸

Also, a joint tenancy with a right of survivorship, when one owner dies, the surviving owner receives 100% ownership of the property but for tenants in common, both parties own the

⁹⁶ Ibid.

⁹⁷ Aisha Success, "Inheritance Law and Your Rights" (2023) FindLaw Journal available at <
<https://www.findlaw.com/estate/wills/inheritance-law-and-your-right.html> > accessed 1 November 2023.

⁹⁸ Ibid.

property but neither of them has a right to the other person's share of the property after death. The deceased person's share of the property is distributed in accordance with the directions of their will or trust.⁹⁹

Reginald Onuoha explains the major principles of customary laws of inheritance in Nigeria under customary law generally, a husband cannot inherit his deceased wife's share of the property, devolution follows the blood, a wife is not considered to be blood and has no claim to any share. An exception to this when a widow decides to remain in her husband's house and in his name, the interest in the property is merely possessory. Among the Yorubas, Idomas and other communities, a husband cannot inherit from the wife just as the wife cannot inherit from him. Also, the rights of an adopted child are usually inferior to that of a biological child. For illegitimate children, the practice varies, the Yorubas accord equal rights to all children, it is same for the Annan, Ibibio, Oron and Nsukka among others. In some communities, illegitimate children are deprived of succession rights.¹⁰⁰

Vashali N explains that the concept of Islamic inheritance is rooted in the Islamic or Quranic principles enumerated by the Prophet. Islamic laws do not recognize joint tenancy and the heirs are tenants-in-common. Under Islamic Laws, male and female heirs alike have the right to inherit property. However, female heirs get only half of the quantum shares allotted to their male

⁹⁹ Aisha Success, "Inheritance Law and Your Rights" (2023) FindLaw Journal available at < <https://www.findlaw.com/estate/wills/inheritance-law-and-your-right.html> > accessed 1 November 2023.

¹⁰⁰ Reginald Onuoha, "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue." (2020) Nigerian Law Guru available at < <https://nigerianlawguru.com/article>. > accessed 1 November 2023.

counterparts, since under the Islamic system, females will go on to receive more wealth through maintenance provided by their husbands. The husband and wife are equally entitled to inheritance from their spouse.¹⁰¹

In an online article, the rules of intestacy in the United Kingdom are explained. There are strict inheritance laws, often referred to as the rules of intestacy. The rule of intestacy do not allow for modern family relationships, they make no provisions for unmarried and registered partners. This means that on intestacy, the surviving partner will not automatically inherit any of the property and possessions owned in the sole name of the deceased. The rules of intestacy also only recognize real and adopted children for the purpose of inheritance, they do not acknowledge step children. The estate will be divided between their relatives in a certain way. Jointly held assets may not pass under the rules of intestacy but instead pass to the surviving joint owner.¹⁰²

Therefore, succession is the acquisition of property by inheritance, the heirs of the deceased get the estate, every state or country has their body of rules and guiding principles for the administration of the estate and how it will be distributed to the heirs after their death. It is multifaceted and can be carried out through customary, statutory and religious guidelines.

Succession is either testate or intestate. Testate through a named executor in a will who carries out the instructions contained in the will or intestate through an administrator who acts accordingly to the dictates of the statutory, customary or religious rules the estate is subject to.

¹⁰¹ Vaishali N, “Muslim law of Inheritance” (July 2023) available at < <https://blog.ipleaders.in/muslim-law-of-inheritance/>. > accessed 29 September 2023.

¹⁰² “ The rules of Intestacy explained.” Available at < <https://www.co-oplegalservices.co.uk/probate-solicitors/rules-of-intestacy-explained/>. > accessed 30 September 2023.

For statutory rules, it is categorized into two; the state legislation where the deceased resided or where the estate is situated.

For Nigeria, statutory rules are Wills Act, 1837 and Laws, Administration of Estate Act, 1925 and Laws. The Customary laws are the various ethnic laws and Islamic law. And for the United Kingdom, inheritance laws are the Wills Act, 1837, Administration of Estate Act, 1925, the Inheritance (Provision for Family and Dependents) Act, 1975, which are complimented by Trustees' Power Act, 2014, Cohabitation Rights Bill, 2017-19, Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act, 2011.

These, existing literature, offer knowledge on what laws are applicable in Nigeria and the United Kingdom, the heirs that get to inherit the estate, in what order of priority and proportions. However, the literature fails to analyze these laws in comparison to each other, the laws are reviewed separately, this thesis lays the law side by side examining it and laying down the similarities and differences while pointing out, the inadequacies and how the law can be amended or laid down and what principles need to be initiated or repealed in order to have a fair system of succession.

Chapter Three

The Legal Framework on Succession in Nigeria and the United Kingdom

Succession takes place in every aspect of life, it is the one thing that is inevitable in life as every person must experience it at one point in their lives.

As a legal term, succession means taking the right of another as his or her successor, it denotes the transmission of rights and obligations of the deceased to his legal heirs. It does not only include the rights and obligations left by the deceased at the time of his death, but it includes new charges, rights and obligations that accrue to the existing ones after opening of the succession.¹⁰³

People usually want their estate to be distributed in a specific manner upon death, most of the people leave their property to their family, relatives and friends. The property of the deceased is distributed in a certain order of priority. This order of property distribution is succession or inheritance.¹⁰⁴

According to Kery R “Succession is concerned with the transfer or devolution of property on death”¹⁰⁵ Succession can also mean inheritance, the right to inherit, the order which inheritance is bequeathed and the condition precedent under which one can succeed another.¹⁰⁶

Testamentary succession leaves it to the testator to determine a suitable successor. It creates a legal framework for the exercise of the right to regulate one’s affairs by will.¹⁰⁷ The rules on

¹⁰³ “ Law of Succession Definition: Everything You Need to Know” available at < <https://www.upcounsel.com/law-of-succession-definition#:~:text=and%20intestate%20succession> > accessed 11 September 2023.

¹⁰⁴ Ibid

¹⁰⁵ Kerridge R Parry & Kerry, “ *The Law of Succession*” (London swwet & Maxwell 12 ed) p.1.

¹⁰⁶ Ibid

¹⁰⁷ Inge Kroppenber, “*Succession Law*” < https://max-eup2012.mpipriv.de/index.php/succession_law > accessed 11 September 2023.

intestate succession therefore determine the members of the deceased's family who are entitled to inherit.¹⁰⁸

In the case of a testate succession, the estate of the deceased, after satisfying all existing obligations, is distributed in the manner set out in the will, testate succession is relatively easier, the personal representative or executor needs to obtain a grant of probate to prove that the will is genuine. The probate allows the executor or personal representative to distribute the estate of the deceased according to the testament.¹⁰⁹

In the case of intestate succession, the estate of the decedent is subject to the rules of intestacy applicable in the state, whether it is statutory rules, customary rules or religious rules to which the decedent was subject to at the time of his/her death.

The development of the law of succession is closely related to the functions it has fulfilled at different times, these functions have undergone fundamental changes.¹¹⁰

Succession laws generally create a preference hierarchy among the potential heirs of the decedent, and will outline the order of priority for the distribution of the decedent's estate.¹¹¹

¹⁰⁸ Ibid

¹⁰⁹“ Law of Succession Definition: Everything You Need to Know” available at < <https://www.upcounsel.com/law-of-succession-definition#:~:text=and%20intestate%20succession> > accessed 11 September 2023.

¹¹⁰ Inge Kroppenber, “ Succession Law” available at < https://max-eup2012.mpipriv.de/index.php/succession_law > accessed 11 September 2023.

¹¹¹ “ Succession Laws” available at < <https://www.legalmatch.com/law-library/article/succession-laws.html>. > accessed 11 September 2023.

The law of succession regulates three separate legal issues, it achieves the transfer of the deceased's personal property to those who are entitled to inherit, it makes provision for the order of succession and finally, it encompasses the administration of property.¹¹²

Accordingly, the law of succession has a function of allocating a person's patrimony. All succession law regime provides for a modus of acquisition that effects the transfer of property.¹¹³

The law of succession therefore is all about the transfer or devolution of property on the death of an owner to another, his heir, the law is the rule by which such devolution occurs.¹¹⁴

Succession law deals with how to distribute a deceased individual's property. A proper succession must determine which individual or groups are the appropriate heirs and summons them to the succession.¹¹⁵

For the purpose of this paper, this chapter will discuss the applicable laws of succession of Nigeria which include: Wills Act 1837 and Wills Act Amendment Act 1852, Wills Laws of various states, Administration of Estate Act 1925 and laws of various states and some customary law.

It will also include the laws of succession of the United Kingdom which include Wills Act 1837 and Wills Act Amendment Act 1852, Administration of Estate Act 1925, Succession Act 1964, the Inheritance (Provision for Family and Dependents) Act 1975.

¹¹² Inge Kroppenber, "Succession Law" available at < https://max-eup2012.mpipriv.de/index.php/succession_law > accessed 11 September 2023.

¹¹³ Ibid

¹¹⁴ Kerridge R Parry & Kerry, " *The Law of Succession*" (London swwet & Maxwell 12 ed) p.1

¹¹⁵ "Northern Succession" available at < <https://motun911.wordpress.com/2019/09/13/northern-succession> . > accessed 27 September 2023.

This chapter will examine the rules of succession in the Acts and Laws mentioned above.

3.1 Testate Succession Laws in Nigeria

The laws governing Wills in Nigeria are not uniform. However, there still exists a similarity between the various laws in terms of the form and contents of the will. Most differences lie in the restrictions of testamentary freedom and age of individual who can make a will.¹¹⁶

3.1.1 Wills Act 1837 and Wills Act Amendment Act 1852

Wills Act 1837:

Section 1, defines a will to mean testament, codicil, appointment by will or by writing in the nature of a will.

Section 3, provides all property may be disposed of by a will, every person can bequeath or dispose of by will all real estate and all personal estate which he/she is entitled to.

There are exceptions to this:

- Persons under legal disability by reason of either of infirmity of mind or want of age.
- A will made by a lunatic, a lunatic cannot make a will except it was made during a lucid interval.

Section 4, no person entitled to a real estate will only be entitled to the real estate except on payment of all stamp duties, fees or sums of money due

¹¹⁶ “ Overview of Wills Law in Nigeria” available at < <https://www.lexology.com/library/detail.aspx?g=a8acace8-4da0-49c4-bcb5-a39e7dedf211>. > accessed 12 September 2023

Section 7, no will of a person under age is valid. 21 years is the valid age for testamentary capacity.

Section 8, a will made by a married woman is invalid

Section 9, every will must be made in writing and signed or acknowledged by the testator in the presence of two witnesses who shall attest the will

Section 11, soldiers and mariners at sea can dispose of personal estate as they might have done before the Act, that is without the formalities listed in section 9 of the Act.

Section 13, there is no need for publication as long as it is properly attested.

Section 14, incompetence of a witness will not make a will invalid

Section 15, gifts to an attesting witness or his or her wife or husband is void

A person who is a beneficiary or a spouse of a beneficiary should not be a witness and the exceptions to section 15 are:

- An informal will made by a privileged testator
- Witness signs the will in some capacity
- Beneficiary marries an attesting witness after execution of the will.¹¹⁷

Section 16, a creditor can be a witness

Section 17, an executor can be a witness to prove the validity of the will

Section 18, a will is revoked by marriage, there are exceptions to it:

¹¹⁷ “ The 1837 Wills Act” available at < <https://collegewillwriting.co.uk/wp-content/uploads/2022/07/the-wills-act-1837-2.pdf>. > accessed 12 September 2023.

- Disposition in exercise of a power of appointment
- The testator was expecting to be married to a particular person named

Section 20, no will is revoked except by another will or codicil or by destruction and there must be intent.

The act of destruction may be burning, tearing or shredding. The testator may instruct another person to destroy his will but in his presence and his direction. Partial destruction is not sufficient for valid revocation.

Revocation by writing must be executed including attestation in the same manner as the will.

Section 22, no revoked will shall be revived otherwise than by re-execution or a codicil.

These provisions mentioned above provides for who can be a testator, how a will is to executed, requirements for making a valid will, people who can be witnesses, how attesting should take place, situations that invalidate wills, how wills can altered or revoked and in the case of change of heart, a revoked will can be revived.

Wills Act Amendment Act 1852:

This Act amends the Wills Act, 1837 with regard to the form of a Will, the extension of the application of provisions of the principal to existing will and the interpretation of will.¹¹⁸

Section 1 provides for the position of the testator's signature; Wills Act 1837 provided that the signature of the testator must be at the foot or end, but the Amendment Act provides that it can be anywhere provided it is apparent in the face of the Will.

¹¹⁸ “ Wills Amendment Act 1852” available at < <https://leap.unep.org/countries/to/national-legislation/wills-amendment-act-1852#> > accessed 12 September 2023.

3.1.2 Wills Law in Nigeria

Certain states have domesticated the Wills Act and though most provisions remain the same, there are differences.

Wills Law of Lagos State 1990;

Section 1 provides the power to dispose all estate except property testator had no power to dispose or is subject to customary law.

Section 2, provides that spouses and children may apply to the court in the case that the testator did not make reasonable financial provisions for them.

Section 3, provides that the required age for a testator is 18 years.

Section 4, provides for the requirement for a valid will, it should be in writing, signed by the testator, two witnesses attest to the will and no publication necessary.

Section 6, provides that seamen, mariner or crew of commercial airline being at sea or air can dispose his estate though under the age of eighteen years.

Section 7, a will is not void due to incompetency of attesting witness

Section 8, gifts to attesting witness or spouse of attesting witness is void

Section 9, creditor can attest a will

Section 10, executor can be a witness

Section 11, wills are revoked by marriage, the exceptions are;

- Made in exercise of a power of appointment, will expressed in contemplation of celebrating a marriage and names of the parties clearly stated.

Section 13, wills can be revoked by another will or codicil in writing and executed in a manner in which a will is required to be executed or by burning, tearing.

Section 14, alteration, obliteration, interlineation made after execution of a will is not valid unless it is executed in the manner as it is required.

Section 15, a will or codicil shall be revived by re-execution, codicil showing an intention to revive it.¹¹⁹

Wills Law of Cross River State

Section 1, a testator can dispose of his estate freely except property he had no power to dispose of by will or under customary law and was subject to Islamic law before his death

Section 2 provides that spouses, children, parents, siblings who were wholly or partly maintained may apply to court if reasonable financial provision was not made for them in the will.

Section 3, a will made by a person under the age of 18 is invalid

Section 4, provides for the requirement in execution of a will, it shall be in writing, signed by the testator or a representative in his presence and by his direction. Witnesses attest and subscribe the will in the presence of the testator.

¹¹⁹ “ Wills Law of Lagos State” available at < <https://law.lawnigeria.com/2019/05/08/wills-law-2/>. > accessed 12

Section 6, provides that seamen, mariners and crew of commercial airlines can dispose their estate under the age of 18 and do not need to have the formalities prescribed by law.

Section 7, a will is not void because a witness who attested is found to be incompetent

Section 8, gifts given or bequeathed to attesting witness or their spouse is void.

Section 9, a creditor can attest a will charging estate with debt

Section 10, executor can be admitted as witness.

Section 11, wills are revoked by marriage except it was made in exercise of a power of appointment, in contemplation of that marriage provided parties are clearly stated

Section 13, Wills may be revoked by another will or codicil executed in the required manner for executing a will or it be destroyed by burning or tearing.

Section 15, a revoked will can be revived by re-execution or by a codicil executed in the required manner and showing intent to revive it.¹²⁰

Wills Law Kaduna State

The Kaduna State has enacted its own Wills Law.

Section 1, the testator cannot dispose of any property he had no power to dispose of by Will under customary law and Islamic law

Section 4, he must make reasonable financial provisions for his family and dependants

¹²⁰ “ Cross River-Wills Law” available at < <https://laws.lawsnigeria.com/2018/04/16/wills-law> > accessed 13

Section 5, a marriage under the Marriage Act automatically revokes Wills made before then unless the Will was made in contemplation of the celebration of that marriage

Section 14, a testator cannot make a valid bequest to attesting witnesses or their spouses

It is apparent that the provisions of the Kaduna Wills Law have brought the provisions of the Wills Act to be more in tune with Islamic laws of testate Succession.¹²¹

The wills Law of Nigeria, have domesticated the provisions of the Wills Act 1837(as amended) and has made changes to accommodate provisions of customary law and Islamic Law.

The Wills Law of Nigeria are quite similar and made to resemble the Wills Act except for some provisions.

Administration of Estate Act 1925

The administration of Estate Act provides guidelines for the administration of the will made by a testator after his/her death. The provisions include:

Section 1, estate will devolve to his personal representative.

Section 4, the court has the power to summon any named executor in any will to prove or renounce probate of the will.

Section 5, where an executor survives the testator but does without taking probate or takes probate of the will but does not appear to the citation or renounces probate of the will, his right

¹²¹ Ahmadu Seidu Maliki, “ An examination of the nature and operations of Islamic and statutory laws of Testate Succession in Kaduna state, Nigeria” available at < <https://ejournal.org/index.php/esj/article/view/205/247>.

Accessed 13 September 2023

of executorship shall cease and representation of the testator and administration of his real and personal estate shall devolve as if that person had not been appointed

Section 18, the court shall have power to summon any person named as executor in a will to prove or renounce probate of the will

Section 19, probate shall not be granted to more than four persons

If there is only one personal representative, the court may grant administration on application another person in addition to the original personal representative

Section 20, where a trust corporation is a named executor in a will whether alone or jointly with another person, the probate can be granted to the corporation either solely or jointly

Section 24, where an infant is sole executor of a will, administration with the will annexed shall be granted to his guardian or to such person as the court thinks fit, until the infant attains the age of eighteen

Section 25, Administration with the will annexed shall be granted by the court where the executor died without proving the will

Where the executor renounced probate, where the executor failed to appear to a citation to accept or refuse probate or where the executor is not sui juris or under a disability.

Section 32 (1) the estate, whether legal or equitable of a deceased in pursuance of any general power disposes by will are assets for payment of debts, any disposition by will that is inconsistent with the enactment is void and the court will administer the property for the purpose of the payment of the debts and liabilities.

(2) The personal representatives shall pay all funeral, testamentary and administration expenses, debts and other liabilities and out of the residue, the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will of the deceased

(3) During the minority or mental incapacity of any beneficiary, the personal representative may invest the residue in any investment

Section 44, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from the death.¹²²

Administration of Estate Law, Lagos State

The administration of Estate law provides guidance on the order of priority of persons who are entitled to be granted letter of administration.

Section 20, an application for the grant or revocation of probate of administration may be made through the probate registry of the court.

Section 22, probate in respect of the real and personal estate may be granted either separately or together

Section 23, the court shall have the power to summon any named executor in a will to prove or renounce probate of the will

Section 24, probate shall not be granted to more than four persons in respect of the same property

- If there is a minority or a life interest arises under the will, be granted either to a corporation or not less than two individuals.

¹²² Administration of Estate Act 1925, s.1-44

(2) if there is only one personal representative, the court may on the application appoint one or more personal representatives in addition to the original personal representative in accordance with probate rules and orders

Section 25, the court may grant probate to a trust corporation named as an executor whether alone or jointly with another person

Section 29, where an infant is sole executor of a will, administration with the will annexed shall be granted to his guardian or other person the court thinks fit until the infant attains the age of twenty-one

Section 35, the real and personal estate, whether legal or equitable of a deceased person in pursuance of any general power disposed by his will are assets for payments of his debts and liabilities. Any disposition by will inconsistent with provision is void

Section 37, distribution or subsistence of any life interest can invest the residue in any investment authorized by statute

The income (net rents, profits after payment of rates, taxes, rent, cost of insurance, repairs and other outgoings properly attributable to incase may not be disposed of by will

Section 47, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from death.¹²³

Customary Wills

¹²³ Administration of Estate Law of Lagos state. Section 24-47. Available at

<https://lawnigeria.com/2018/02/26/administration-of-estate-law-of-lagos-state>. > accessed 26 September 2023.

It is the law that applies the norms, rules of behavior, values of a people, in Nigeria customary law may be divided in terms of nature into two classes; ethnic law and Islamic law. Ethnic law is indigenous and applies only to members of a particular ethnic group while Islamic law is religious law which is based on Muslim faith and applicable to members of the faith.¹²⁴

A customary will must be recognized by Native law and custom. It does not matter in which form it takes, whether oral or written.¹²⁵

Death bed declarations are also a means of disposing property under customary law by a testator, like in nuncupative wills, such declarations must be made in the presence of witnesses.¹²⁶

Person that chose to conduct their affairs under customary laws will have their estate dealt with under the customary law applicable to them if they die testate, their wills is validated and executed subject to the customary law applicable.¹²⁷

¹²⁴ Mathew Enya “ Customary Law, Social Development and Administration of Justice in Nigeria” available at < <https://www.scirp.org/journal/paperinformation.aspx?paperid73207> > accessed 6 September 2023.

¹²⁵ Jide Ogundimu “ Lecture Notes on Wills” available at < <https://jideogundimucosolicitors.co.uk/lecture-notes-on-wills> > accessed 13 September 2023.

¹²⁶ Olatunji Daniel, “ Practice and Procedure in the Application of Wills Under the Customary Law” available at < https://njigov.ng/wp-content/uploads/2021/12/practice-and-procedure-in-the-application-of-wills-under-the-customary-law-by-hon-justice-olatumji-daniel-PCCA_OYO.pdf > accessed 13 September 2023.

¹²⁷ Ibid

In *Egbe & Anor v Eigbe & Ors*¹²⁸ it was held that a person can make a will under customary law under the condition that it will not be inconsistent with the established customary law and it will be governed by relevant customary law.¹²⁹

Islamic Law

Islamic Law and custom provide that when a person is subject to Islamic law, he cannot will out more than 1/3 of his properties to persons other than his heirs. Section 2 of the Wills Law Kaduna State provides that a testator can freely devise properties in a will except the testator is subject to Islamic Law immediately before his death. This provision is also recognized in the Wills Laws of Oyo, Kwara, Jigawa, Plateau state.¹³⁰

In the case of *Ajibaiye v Ajibaiye*¹³¹, the court of Appeal upheld that the testator's will was void for being contrary to the dictates of the Islamic law of inheritance.¹³²

¹²⁸ [2013] LPELR 20292 (CA) Pg. 26-27.

¹²⁹ ¹²⁹ Olatunji Daniel, "Practice and Procedure in the Application of Wills Under the Customary Law" available at < https://njigov.ng/wp-content/uploads/2021/12/practice-and-procedure-in-the-application-of-wills-under-the-customary-law-by-hon-justice-olatumji-daniel-PCCA_OYO.pdf > accessed 13 September 2023.

¹³⁰ Oyetola Muyiwa, "The Administration of Wills Under The Islamic Law System in Nigeria" available at < <https://lawpavillion.com/blog/the-administration-of-wills-under-the-islamic-law-system-in-nigeria.>> accessed 12 September 2023.

¹³¹ [2007] 18 LRLR Vol8911

¹³² Oyetola Muyiwa, "The Administration of Wills Under The Islamic Law System in Nigeria" available at < <https://lawpavillion.com/blog/the-administration-of-wills-under-the-islamic-law-system-in-nigeria.>> accessed 12 September 2023.

A will executed according to Islamic Law of testate need not to be in writing nor in a particular form. Hence, “It can be made by writing, verbally or even by signs, so long as it is apparent that the intention of the testator is to make a disposition operative on his death.”¹³³

Regarding testamentary capacity, the testator is required to have full legal capacity, an underage, insane person cannot make a valid will.¹³⁴

As for limits to testamentary freedom, there are limitations to it:

First, the testator cannot validly bequeath more than one-third of his property unless it is consented by his legal heirs. Second the testator cannot make a valid will to a person who is a legal heir unless the other heirs consent to it after his death. Third, a bequest to a person who is Islamic law barred from inheriting the testator is invalid.¹³⁵

Islamic law does not require that the alteration of Wills take any particular form. It must however, be witnessed by at least two adult male Muslims. Also, when a beneficiary predeceases a testator, the gift to the beneficiary automatically lapses.¹³⁶

3.2 Intestate Succession Laws in Nigeria

¹³³ Ahmadu Seidu Maliki, “ An examination of the nature and operations of Islamic and statutory laws of Testate Succession in Kaduna state, Nigeria” available at < <https://ejournal.org/index.php/esj/article/view/205/247>. Accessed 13 September 2023.

¹³⁴ Ibid

¹³⁵ Ahmadu Seidu Maliki, “ An examination of the nature and operations of Islamic and statutory laws of Testate Succession in Kaduna state, Nigeria” available at < <https://ejournal.org/index.php/esj/article/view/205/247>. Accessed 13 September 2023.

¹³⁶ Ibid

The management and administration of a deceased's property is regulated by the Administration of Estate Act 1925 and Laws for states that have local legislation. This Act and Laws for states are made with the intent to forestall the properties left behind by deceased persons from falling into the hands of unscrupulous people and particularly those the deceased would not ordinarily wish to inherit his or her properties.¹³⁷

3.2.1 Administration of Estate Act 1925

Section 1 provides that property of the deceased will be devolved from time to time on the personal representatives of the deceased.

The rules of intestacy, the beneficiaries and the order of priority is set out in Section 46 of the Administration of Estate Act 1925¹³⁸

- If the deceased was married or in a civil partnership, the spouse or civil partner will inherit all property and possession.
- If there are children, the children will inherit half of the estate
- - if the deceased was single and had children, everything will be split equally between all children (including illegitimate/adopted children but not step-children)

¹³⁷ Taiwo Olatokun "Administration of Estate and Probate Issues and Challenges" available at < <https://nji.gov.ng/wp-content/uploads/2020/11/ADMINISTRATION-OF-ESTATE-AND-PROBATE-ISSUES-AND-CHALLENGES> > accessed 14 September 2023.

¹³⁸ "Rules of Intestacy Flowchart 2023" available at < https://www.titleresearch.com/news/rules-of-intestacy-flowchart?hs_amp= > accessed 14 September 2023.

- If the deceased was single with no children, any surviving parent(s) will inherit the estate
- Where there are no spouse, children or parents, any full sibling will inherit, half siblings will inherit if there are no full siblings. If the siblings predeceased the intestate, the children of the siblings or half-siblings can inherit the estate
- If there are no spouses, children, surviving parents, siblings, living grandparents are to inherit the estate
- Whole blood aunts and uncles get to inherit the estate where the deceased died with no spouse, children, surviving parents, siblings or grandparents. If the aunts and uncles predecease the intestate then their children if they have can inherit the estate.
- If there are no surviving family members, the deceased's estate will pass to the Crown.¹³⁹

3.2.2 Administration of Estate Laws in Nigeria

The management and administration of a deceased's property is regulated by the Administration of Estate Laws of various states in Nigeria. The Administration of Estate Laws provide a legal system of administration of the estate of the deceased person, which entails the verification of the claims of persons claiming to be entitled to the estate of the deceased persons and subsequently grant authority or power to administer the estate to the persons who have passed through the verification process.

Administration of Estate Law Lagos state

The administration of Estate Law of Lagos state provides for the administration, maintenance and distribution of the estate of an intestate who died under statutory law or contracted a

¹³⁹ Rules of Intestacy Flowchart 2023” available at < https://www.titleresearch.com/news/rules-of-intestacy-flowchart?hs_amp= > accessed 14 September 2023.

marriage under the Act before his death. In the case of *Salibu v Nwariaku*¹⁴⁰ the deceased died intestate survived by his wife whom he married under the Marriage Act. The supreme court held that the applicable law to the succession and distribution of estate was the Administration of Estate Laws.¹⁴¹ Statutory marriage takes over all forms of inheritance as held in the case of *Okon v A.G Cross River*.¹⁴²

Section 49 of the Administration of Estate Law of Lagos state provides the rules of intestacy, the beneficiaries/heirs and the order of priority for the distribution of the estate of an intestate.

- (1) Where there are no parents, brother or sister of whole blood or issue of a brother or sister of the whole blood, the estate will be given to the surviving husband or wife absolutely.
- (2) If the intestate leaves a child, the spouse will take personal chattels and then take one third whilst the surviving takes two-third.¹⁴³
- (3) If the deceased leaves one or more of the following; that it is to say, a parent, brother, sister of whole blood, issue of a brother or sister of the whole blood but has no issue, the surviving spouse will take the personal chattel, the remaining estate, the surviving spouse will take two-third and the remaining one-third will be shared amongst the list.¹⁴⁴

¹⁴⁰ [2003] 7NWLR (pt819) p.452.

¹⁴¹ Jide Bodede, "Intestate Succession in Nigeria under the Marriage Act". Available at <https://www.linkedin.com/pulse/intestate-succession-in-nigeria-under-the-marriage-act-jide-bodede>. Last accessed on the 15th of August 2023

¹⁴² [1991]6NWLR (Pt 248) p452.

¹⁴³ Unini Chioma " Administration of Estate Law" available at < <https://thenigerialawyer.com/administration-of-estate-law/>. > accessed 14 September 2023.

¹⁴⁴ Section 49, Administration of Estate Law of Lagos State 1990.

(4) If the intestate leaves no spouse, the children will inherit the estate, if they are minors, it will be held in trust. If the intestate leaves no spouse and no children, then the surviving parents will get the testate shared in equal parts absolutely in the case of one-parent, the residuary will be held for the surviving parent absolutely.¹⁴⁵

(5) If the intestate leaves no surviving spouse, parent or issue, the residuary estate will be held for the following persons living at the death of the intestate:

- Brothers and sisters of whole blood, then brothers and sisters of half- blood. Where there is none, the grandparents have the estate, then to uncles and aunts of the intestate, first to those of whole blood and if none, then those of half- blood.¹⁴⁶

If the intestate died without a survivor, the residuary estate of the intestate shall belong to state as bona vacantia and in lieu of any right to escheat.¹⁴⁷

3.2.3 Customary Intestate Succession in Nigeria

The Nigerian customary law can be said to “sui generis” system of law because it is a combination of several customs and traditions in the various states in Nigeria. This also means

¹⁴⁵ Unini Chioma “ Administration of Estate Law” available at < <https://thenigerialawyer.com/administration-of-estate-law/>. > accessed 14 September 2023.

¹⁴⁶ Ibid

¹⁴⁷ Unini Chioma “ Administration of Estate Law” available at < <https://thenigerialawyer.com/administration-of-estate-law/>. > accessed 14 September 2023.

that the customary law is not general but has several customs that guide the people associated with such customs.¹⁴⁸

Customary law is unwritten and there are several customary laws in Nigeria, each ethnic group having its separate systems of customary law.¹⁴⁹

Tobi¹⁵⁰ retired Supreme Court Judge defined customary law as “as law relating to custom or usage of a given community, it emerges from traditional usage or practice of a people in a given community which by common adaption and acquiescence on their part and by long and unvarying habit has acquired to some extent element of compulsion and force of law with reference to the community.”¹⁵¹

Factors that give rise to customary succession are:

- When the deceased was an indigenous Nigerian who did not contract a statutory marriage under the Act
- When the deceased had expressed the wish that he/she property be passed on to the beneficiaries in accordance with his custom and tradition

¹⁴⁸ O.M Atoyebi, “ The Administration of Wills under the Islamic Law System in Nigeria” available at < <https://omaplex.com.ng/the-administration-of-wills-under-the-islamic-law-system-in-Nigeria> > accessed 17 September 2023.

¹⁴⁹ Obilade AO, [1979:83] “ *The Nigerian Legal System*” (London, Sweet Maxwell): Donatus S.O, “ *Bini Customary Law of Inheritance: Shift in ‘Igiogbe’ as a case study*” (Masters thesis, Dalarna University 2012).

¹⁵⁰ Tobi Nicki [1996] “ *Sources of Nigerian Law*” (MIJ Professional Publishers Ltd, Lagos); Donatus S.O, “ *Bini Customary Law of Inheritance: Shift in ‘Igiogbe’ as a case study*” (Masters thesis, Dalarna University 2012).

¹⁵¹ Donatus S.O, “ *Bini Customary Law of Inheritance: Shift in ‘Igiogbe’ as a case study*” (Masters thesis, Dalarna University 2012).

- When the beneficiaries decide unanimously to share the deceased intestate properties in accordance with the practice of their custom and tradition.¹⁵²

It was generally accepted principle that a person carries his customary law with him. Therefore, it is not legally possible for a Nigerian to change his ethnic group and acquire another ethnic identity, irrespective of the number of years he must have spent in that foreign ethnic group.¹⁵³

According to Prof Itse Sagay (SAN) the factor determining the applicable laws to be applied in cases of intestate succession is the type of marriage contracted by the intestate person. In the case of Muslims, the religion practiced by the deceased is relevant.¹⁵⁴

Thus if a person contracts a Christian wedding outside Nigeria, the common law of England governs the distribution of his estate, if he contracts a statutory marriage in Nigeria, the administration of Estate law of the state will govern and if the intestate was an indigenous Nigerian and he did not contract a Christian or statutory marriage or even if he did and no issues

¹⁵² Vanessa C Ezumah, “Succession and Inheritance Under Customary Law: Practice & Procedure” available at < <https://nji.gov.ng/up-content/uploads/2022/05/succession-and-inheritance-1.pdf> > accessed 18 September 2023.

¹⁵³ Paul O. Itua, “Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725> . > accessed 28 September 2023.

¹⁵⁴ I.E Sagay, “*Nigerian Law of Succession Principles, Cases Statutes and Commentators*” 9 1st ed, 2006, Malhouse Press Limited at 73: Paul O. Itua, “Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725> . > accessed 28 September 2023.

or spouse of such marriage survived him , his estate will be distributed in accordance with the relevant customary law. If the intestate was a Muslim then Islamic law would govern.¹⁵⁵

In *Osuagwu v Soldier*¹⁵⁶ where the court was faced with the situation of whether to apply Islamic law which was the “lex situs and lex loci” or to apply the Igbo customary law, which was the personal law of the parties to the resolution of a dispute who were living in Kano. The court resolved in the interest of justice to apply the Igbo customary law.¹⁵⁷

Also, in *Yinusa v Adebusokon*¹⁵⁸ it was held that duration is immaterial whether a settler and his descendants have merged with the natives of the place of settlement.¹⁵⁹

Customary law in Nigeria comprises of Islamic Law and the various native laws of the ethnic groups in Nigeria.

¹⁵⁵ Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

¹⁵⁶ [1959] NRNL 39.

¹⁵⁷ I.E Sagay, “*Nigerian Law of Succession Principles, Cases Statutes and Commentators*” 9 1st ed, 2006, Malhouse Press Limited at 73: Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725> accessed 28 September 2023.

¹⁵⁸ [1968] NNLR 97

¹⁵⁹ I.E Sagay, “*Nigerian Law of Succession Principles, Cases Statutes and Commentators*” 9 1st ed, 2006, Malhouse Press Limited at 73: Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725> accessed 28 September 2023. s

The Hausa ethnic group is one of the largest ethnic group in Nigeria. According to an interview with Mr Hussein Ali¹⁶⁰ in Hausa land we follow Islamic method, God himself made the division we follow whatever is in the Quran, sometimes we do the division ourselves if its complex.¹⁶¹ In the North, Moslem rules of succession under the Maliki code have been largely absorbed into their indigenous system of property inheritance.¹⁶²

Islamic Intestate Succession

The Islamic law reflects not only the customs of the people but also gives special reverence to the Islamic religion. As most of these procedures are gotten from the Quran.¹⁶³ The rules of Islamic law for intestate succession are:

- (a) Where the husband dies leaving no child but his wife, his wife will get one-fourth of his estate, if he leaves a child or children with the wife, the wife would get one-eighth. In the case where there are more than one wives, the wives would share equally from the one-eighth¹⁶⁴.

¹⁶⁰ Interview with Hussein Ali (Staff, Nigeria Institute of Advanced Legal Studies): “Northern Succession” available at < <https://motun911.wordpress.com/2019/09/13/northern-succession>. > accessed 27 September 2023.

¹⁶¹ “Northern Succession” available at < <https://motun911.wordpress.com/2019/09/13/northern-succession>. > accessed 27 September 2023.

¹⁶² Ibid

¹⁶³ O.M Atoyebi, “ The Administration of Wills under the Islamic Law System in Nigeria” available at < <https://omaplex.com.ng/the-administration-of-wills-under-the-islamic-law-system-in-Nigeria> > accessed 17 September 2023.

¹⁶⁴ AL-Quran 422, O.M Atoyebi, “ The Administration of Wills under the Islamic Law System in Nigeria” available at < <https://omaplex.com.ng/the-administration-of-wills-under-the-islamic-law-system-in-Nigeria> > accessed 17 September 2023.

- (b) Where the deceased leaves behind sons and daughters, each daughter gets equal to half $\frac{1}{2}$ of the share of each son. If there are no sons, the daughter is entitled to half of the inheritance.¹⁶⁵
- (c) If the deceased leaves a child and his parents, each of the parents would inherit one-sixth, if the deceased leaves no children, siblings and the parents are the only heirs, the mother gets one-third and the father gets the remaining two-third.¹⁶⁶
- (d) If the deceased is not survived by parents and children but has siblings, each would get one-sixth and in the case of more brothers and sisters, they would share from one-third.¹⁶⁷

Other Northern Nigerian Succession laws

Markis: among the *Markis* group of the *Verbe* of Northern Nigeria, the rule of ultimogeniture applies whereby inheritance is by the youngest son, which applies to brother heirs of the deceased landowner. Ultimogeniture is considered appropriate especially in circumstances where the youngest child had been assigned the role of ‘keeping the hearth, taking care of the parents and continuing at home.’¹⁶⁸

¹⁶⁵ Ibid

¹⁶⁶ AL-Quran 4:11, O.M Atoyebi, “ The Administration of Wills under the Islamic Law System in Nigeria” available at < <https://omaplex.com.ng/the-administration-of-wills-under-the-islamic-law-system-in-Nigeria> > accessed 17 September 2023.

¹⁶⁷ AL-Quran 4:12, O.M Atoyebi, “ The Administration of Wills under the Islamic Law System in Nigeria” available at < <https://omaplex.com.ng/the-administration-of-wills-under-the-islamic-law-system-in-Nigeria> > accessed 17 September 2023.

¹⁶⁸ “Northern Succession” available at < <https://motun911.wordpress.com/2019/09/13/northern-succession.> > accessed 27 September 2023.

Nupe: under traditional conditions only men can hold or claim land. Lands were apportioned by the village head among the heads of families. The family head granted the right of occupancy to members of his family. Land cannot be sold, but it may be redistributed after the migration of the holder or the extinction.¹⁶⁹

The deceased's property is divided between the oldest son, other sons, full brothers and daughters in decreasing proportions. The daughters are most times allowed in the succession system when its divided in accordance to the Islam mode of Inheritance. Traditional religion was however practiced before the introduction of Islam.¹⁷⁰

The estate of the deceased woman would be shared into three, the husband takes one-third and the children take the rest. The daughter get half of what the son or sons inherit.¹⁷¹

Yoruba Customary Law of Intestate Succession

The Yoruba is one of the main ethnic groups of Nigeria located in the South-West, North-Central region. The rule of inheritance among the Yorubas are similar, the method of inheritance is dependent upon whether the property is a family property or personal property.¹⁷²

Family property is property that devolves on the descendants to be used for the benefit and enjoyment of the whole family as a corporate body, upon the death of the deceased, the

¹⁶⁹ Ibid

¹⁷⁰ "Northern Succession" available at < <https://motun911.wordpress.com/2019/09/13/northern-succession>. > accessed 27 September 2023.

¹⁷¹ Ibid

¹⁷² "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession>. > accessed 17 September 2023.

'Dawodu' who is the eldest surviving son succeeds as head of the family as seen in the case of *Lewis v Bankole*.¹⁷³

Family property is usually under the control of the head of the family who holds it for the beneficial interest of the members of the family, no member of the family can alienate or dispose of the family as also held in *Kadira v Fagbola*¹⁷⁴ Each member may be given an allotment of the family property for use.¹⁷⁵ On the death of the eldest surviving son, the next eldest surviving child of the founder whether male or female, is the proper person to succeed as the head of the family.¹⁷⁶

A deceased self-acquired property is distributed among his children upon his death. There are two methods of distributing the deceased's self-acquired property.¹⁷⁷ In the case of *Akinyele v Opere*¹⁷⁸ it was clearly elucidated by Ademola CJN, that the Yoruba customary law admits two methods of distribution of assets when the progeniture dies intestate. Distributions are usually

¹⁷³ [1906] 1 NLR 82, "Yoruba Law of Succession" available at <

<https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession>. > accessed 17 September 2023.

¹⁷⁴ [1932] 11 NLR 110

¹⁷⁵ "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession>. > accessed 17 September 2023.

¹⁷⁶ M.G Iwuna, 'AN APPRAISAL OF SELECTED NATIVE ESTATE LAWS AND CUSTOMS IN NIGERIA' available at <

<https://repos.unijos.edu.ng/jspui/bitstream/123456789/1792/1/an%20appraisal%20of%selective%20nature.pdf> >

accessed 17 September 2023.

¹⁷⁷ "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession>. > accessed 17 September 2023.

¹⁷⁸ [1968] ALL LR 65 at 67.

made by what the Yoruba call ‘*Idi-Igi*’ or ‘*Ori-Ojori*’, the court also attached some weight to the discretion of the family in choosing what mode to adopt in distributing the property of an intestate under Yoruba law.¹⁷⁹

It is the duty of *the Dawodu* as head of the family in Yoruba land upon assumption of office to decide which mode of distribution will apply to the distribution of the intestate’s estate.¹⁸⁰

Ori-Ojori: this is a direct distribution of the property among the children of the deceased equally. This method of distribution is usually used in monogamous families. Daughters have equal rights to inherit from their father’s property.¹⁸¹

Idi-Igi: in a situation where the deceased had more than one wife, the Idi-igi method is usually used. In the famous case of *Dawodu v Danmole*¹⁸², the supreme court held that a case where the deceased died and was survived by nine children from four wives, the estate should be

¹⁷⁹ M.G Iwuna, ‘ AN APPRAISAL OF SELECTED NATIVE ESTATE LAWS AND CUSTOMS IN NIGERIA’

available at <

<https://repos.unijos.edu.ng/jspui/bitstream/123456789/1792/1/an%20appraisal%20of%selective%20nature.pdf> >

accessed 17 September 2023.

¹⁸⁰ Ademola, Adekunbi, “Analysis of Law of Intestate Succession under the Yoruba Customary Law of SouthWest

Nigeria” available at < https://www.europeanjournalofsocialsciences.com/issues/PDF/EJSS_58-4-02.PDF >

accessed 17 September 2023.

¹⁸¹ “ Yoruba Law of Succession” available at < [https://motun911.wordpress.com/2019/09/13/yoruba-law-of-](https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession)

[succession](https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession). > accessed 17 September 2023

¹⁸² [1962] 1 WLR 1053.

distributed per capital which simply means it will be divided into four parts representing the number of wives.¹⁸³

The property will first be divided equally by the number of wives and then the share given to each wife will be sub-divided equally among her own children.¹⁸⁴

Where a woman dies, her husband inherits all her assets. However, immoveable property which she inherited from her family will at her death revert to her maiden family. Women cannot inherit her husband's property, if the deceased leaves no children, the estate devolves on his brothers and other blood relatives.¹⁸⁵

In the case of *Danmole v Dawodu*¹⁸⁶ the learned trial judge laid down the following principles of law in respect of the Yoruba rule of customary law of intestate succession:

- The Idi-Igi method of distribution is an integral part of the Yoruba native law and custom
- The Idi-Igi is still in force and it is the universal method of distribution except where there is a dispute among the descendants of the intestate as to the proportions into which the estate should be divided.

¹⁸³ "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession>. > accessed 17 September 2023.

¹⁸⁴ "What is Inheritance and Customary law in Nigeria" available at < <https://www.chamanlawfirm.com/what-is-inheritance-and-customarylaw-in-Nigeria>. > accessed 17 September 2023.

¹⁸⁵ Ademola, Adekunbi, "Analysis of Law of Intestate Succession under the Yoruba Customary Law of SouthWest Nigeria" available at < https://www.europeanjournalofsocialsciences.com/issues/PDF/EJSS_58-4-02.PDF > accessed 17 September 2023.

¹⁸⁶ [1962] 1 WLR 1053.

- Where there is a dispute, the head of the family is empowered to and should decide where the Ori-Ojori ought, in the particular case be adopted of Idi-Igi
- The Idi-Igi is not repugnant to natural justice, equity and good conscience.¹⁸⁷

The qualification for inheritance is generally traced or dependent on blood relationship. A person cannot qualify on any basis outside being of the same blood whether full nor half. The primary heirs to a man's estate are his children. In *Ogunbowal v Layiwola*¹⁸⁸, the court held that nothing by way of property devolves on the wife/wives of a Yoruba man under customary law.¹⁸⁹

In *Olulade v Oviolu*¹⁹⁰ it was confirmed that there is no issue of illegitimacy in Yoruba land once the father has accepted the paternity of the child.¹⁹¹

In the case of *Administrator General v Tuwase*¹⁹² it was established that the right of an adopted child is inferior to that of the legitimate child of the blood.¹⁹³

¹⁸⁷ Ademola, Adekunbi, "Analysis of Law of Intestate Succession under the Yoruba Customary Law of South West Nigeria" available at < https://www.europeanjournalofsocialsciences.com/issues/PDF/EJSS_58-4-02.PDF > accessed 17 September 2023.

¹⁸⁸ [1975] 3 CCHCJ/HC 327

¹⁸⁹ "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession> > accessed 17 September 2023

¹⁹⁰ Unreported High Court of Lagos state, Ikeja Division 27/11/1981 suit no M/133/81

¹⁹¹ "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession> > accessed 17 September 2023.

¹⁹² [1946] 18 NLR @ 88

¹⁹³ "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession> > accessed 17 September 2023.

Igbo Customary Law of Intestate Succession

The Igbo people can be found in the South-eastern part of Nigeria and are spread across states such as Enugu, Ebonyi, Anambra, Abia, Imo and Delta.¹⁹⁴

The general system of inheritance under the Igbo culture is the primogeniture, where the eldest son inherits to the exclusion of other children but for the benefit of the other children.¹⁹⁵

In the event a woman dies intestate all her properties which she acquired by her maiden family while property she acquired during the course of the marriage will be acquired by the husband.¹⁹⁶

The tradition of primogeniture entails the total non-negotiable handing over of the power of attorney over properties, titles and positions to the eldest son of a family. The eldest male child becomes the head of the family and he occupies the family house, holding same as trustee of the other children, male or female. The eldest son is expected to look after younger children.¹⁹⁷

¹⁹⁴ “ Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023

¹⁹⁵ Ibid

¹⁹⁶ Nwugege v Adigwe [1936] 11 NLR 134;267, “ Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023.

¹⁹⁷ “ Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023.

Both tangible and intangible things owned by the deceased are capable of being inherited such as landed property, money, cars, clothing and chieftaincy titles. The first son is known as ‘*Okpala*’, he is the chief administrator of his father’s property.¹⁹⁸

In *Ejimaike v Ejimaike*¹⁹⁹, the court held that the right of the eldest surviving son succeeding the headship of his father is automatic and cannot be taken away.²⁰⁰

The *Okpala* is responsible for his mother during her lifetime and he is also to cater for the needs of the younger ones all from the inherited property. The rationale behind the *Okpala* inheriting to the exclusion of every other person is to ensure that the *Okpala* continues to hold the house in order and keep the family as one.²⁰¹

The other sons of the deceased are not distributed from the estate but have their inheritance rights subject to that of the first son. In *Oru* of Imo state, the eldest son inherits the house and everything within the compound while the other sons are entitled to inherit and share the property outside the house. The other sons are entitled to share money.²⁰²

¹⁹⁸ Ibid

¹⁹⁹ [1972] 2 ENLR P.11

²⁰⁰ “ Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023.

²⁰¹ “ Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023

²⁰² Ibid

A widow is only entitled to possessory rights of her husband's house. The Supreme Court in the case of *Chinwere v Masi*²⁰³ held that, a wife has only a life interest in the property of her deceased husband.²⁰⁴

Children born out of wedlock are allowed to inherit only premised on the condition that they must have been acknowledged by the deceased before he died.²⁰⁵

It is pertinent to state that the only way to circumvent the primogeniture practice against female children is for the female child to practice “*Nrachi*” or “*Idigbe*” This is a practice by a daughter of a deceased who had a lot of properties to remain unmarried in order to raise male children in her father's house who will continue the lineage of her father and bear her deceased father's name.²⁰⁶

In *Nwugege v Adigwe&Ors*²⁰⁷ the court held that under Igbo Customary law, any property a woman acquired before marriage goes to her family, moveable property acquired before

²⁰³ [1998] 1 NWLR (PT97) 254,270

²⁰⁴ “ Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/> > accessed 18 September 2023

²⁰⁵ Ibid

²⁰⁶ Adesoji Kolawole, “ An appraisal of customary succession in the western and eastern part of Nigeria”. Available at < <https://thelawbridge.com/wp-content/uploads/2022/08/Adesoji-kolawole-adebayo-CLRJ.pdf> > accessed 18 September 2023.

²⁰⁷ [1934] ALL NLR 134

marriage and taken with her to her husband's house belongs to her husband or his family and the properties acquired after marriage goes to her husband upon her death.²⁰⁸

An adopted child is entitled to inherit in the case of *Aduba & Ors v Aduba*²⁰⁹ it was held that the adopted child was entitled to share and inherit the estate of his adoptive parents who treated the respondent like their son and a member of the family.²¹⁰

The act of discrimination against female children to inherit the deceased father's estate has been revisited by the Supreme Court in the cases of *Ukeje v Ukeje*²¹¹ and *Anekwe v Anekwe*²¹² where the Supreme Court categorically stated that a female child is entitled to inherit from her deceased father's property under Igbo customary law.²¹³

²⁰⁸ "Igbo Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023.

²⁰⁹ [2018] LPELR-45756 (CA)

²¹⁰ Adesoji Kolawole, "An appraisal of customary succession in the western and eastern part of Nigeria". Available at < <https://thelawbridge.com/wp-content/uploads/2022/08/Adesoji-kolawole-adebayo-CLRJ.pdf> > accessed 18 September 2023.

²¹¹ [2014] 11NWLR (Pt1418) 384;408

²¹² [2014] 9 NWLR (Pt 1412) 393:421-422

²¹³ Adesoji Kolawole, "An appraisal of customary succession in the western and eastern part of Nigeria". Available at < <https://thelawbridge.com/wp-content/uploads/2022/08/Adesoji-kolawole-adebayo-CLRJ.pdf> > accessed 18 September 2023.

Delta State Intestate Succession Laws

Isoko: this is a major tribe and area in Delta state. The mode of inheritance here is quite regular, everybody in a man's family, inherits from him whether son or daughter.²¹⁴

Where a man fails to pay the bride price of the woman, the children are considered illegitimate. They are called "*emowse*" and are not acknowledged by the family as such are not involved in the sharing of property.²¹⁵

Amongst the Isoko, the first son inherits exclusively, the Ughen (this is where the deceased father lived and died). The other siblings inherit the remaining assets of the deceased including the female children. In the case of real property, where the man is married to more than one wife and not to children. In respect to widows, they ordinarily are not allowed inheritance.²¹⁶

Ijaw: succession rights among the Ijaws depend on the type of marriage by the Iya (big marriage symbol) system, his estate devolves on his sons in gradation in the sense that the eldest son receives the largest share while the smallest share is given to the youngest son. If the deceased is not survived by any sons, his brothers of the full blood inherit.²¹⁷

²¹⁴ "Delta State Succession" available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

²¹⁵ Ibid

²¹⁶ "Delta State Succession" available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

²¹⁷ "Delta State Succession" available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

If the deceased had celebrated an “*Igwa*” (small marriage symbol) customary marriage, the inheritance of his estate will be similar to that in the matrilineal communities, the people inherit the estate of their matrilineal relatives.²¹⁸

The Itsekiri & Urhobo: in *Thompson Oke and others v Robison Oke and others*²¹⁹ the Supreme Court held that, with regard to succession, the Itsekiri customary law and that of the Urhobo are the same.²²⁰

The basic mode of inheritance here is primogeniture which involves the total non-negotiable handing over of power of attorney over properties, titles or position to the eldest son.²²¹

The right of the eldest son to inherit the house of his deceased father is his major right. Other personal effects are shared amongst the children. Those born out of wedlock all have equal rights. The legitimate however insist on a better share and where the property is small, higher consideration is given to the legitimate children. The eldest son can use the family land held in trust, he cannot alienate but can only sell part of the family land with the consent of all principal family members.²²²

Bini Customary Law of Intestate Succession

²¹⁸ Ibid

²¹⁹ [1964] 1 ALL NLR (Pt 1) 443.

²²⁰ “Delta State Succession” available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

²²¹ Ibid

²²² “Delta State Succession” available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

The Binis, an ethnic group in Nigeria are a people with uniquely rich culture and traditional heritage. When a Bini man dies, his eldest surviving male child succeeds him and inherits his *Igiogbe*.²²³

The *Igiogbe* inheritance existed since the founding of Bini kingdom. The *Igiogbe* is of utmost importance in Benin customary law. *Igiogbe* is the house the deceased lived, died and was buried. The Supreme Court in *Idehen v Idehen*²²⁴ defined *Igiogbe* as the principal dwelling house and family seat.²²⁵

In *Uwaifo v Uwaifo*²²⁶ the Court of Appeal defined ‘*Igiogbe*’ as the house where a deceased lived and died, automatically devolves on his eldest surviving male child under Bini customary law.²²⁷

²²³ Efe Sophia Osamuode, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

²²⁴ [1991] 4 NWLR (Pt198) 382

²²⁵ Donatus S.O “Bini customary law of Inheritance: shift in ‘*Igiogbe*’ as a case study” (Masters Thesis, Dalarna University 2012) available at < <https://du.diva-portal.org/smash/get/diva2:601048/FULLTEXT01>. > accessed 20 September 2023

²²⁶ [2004] JELR 45062 (CA)

²²⁷ Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: *Igiogbe* matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011)available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

In *Egharevba v Orounghae*²²⁸, the court held that Benin native law and custom on ‘*Igiogbe*’ is a custom of general application with Benin kingdom and it is judicially noticed as such.²²⁹

Igiogbe can therefore be defined as the house, where the deceased lived until his death and was buried and where the ancestral shrine is erected.²³⁰ It is believed to be a shrine for serving and communicating with the ancestors, the automatic transfer to the eldest son is not about enriching the legatee.²³¹

The *Igiogbe* automatically devolves on the eldest son. The eldest surviving son exclusively inherits the ancestral home of the deceased father. The eldest surviving son of the deceased inherits the *Igiogbe* after a second burial ceremony during which the family distributes the property of the deceased.²³²

The *Igiogbe* cannot be situated outside Benin, if the deceased person principally lived and died in a house outside Benin, that house cannot constitute *Igiogbe* even if it is situated in Nigeria. The

²²⁸ [2001] 11 NWLR (Pt 724) 318

²²⁹ Paul O. Itua, “Succession Under Benin Customary law in Nigeria: *Igiogbe* matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

²³⁰ Ibid

²³¹ “Nigeria: Supreme Court upholds Bini Customary Law System of Primogeniture’ available at < <https://www.loc.gov/item/global-legal-monitor/2013-04-24/nigeria-supreme-court-upholds-bini-customary-law-system-of-primogeniture/>. > accessed 28 September 2023.

²³² Chukwuma and Others, “*Igiogbe* custom as a mandatory norm in conflict of laws: an explanation of Nigeria Appellate Court Decision” (University of Manchester, Legal Research Paper 2023) available at < <https://deliverypdf.ssrn.com/delivery.php?ID=51310310300912500610911082>. > accessed 21 September 2023.

Igiogbe constitutes the ancestral home of a Bini man and such home cannot be situated outside their hometown.²³³

Under the Bini customary law of Inheritance, the eldest son of the deceased person does not inherit the deceased's property until after the completion of the second or secondary burial ceremonies. This ceremony is performed by the deceased's family for the eldest son. It is after the ceremony that the family distributes the property of the deceased.²³⁴

The *Igiogbe* according to Benin customary law of inheritance has always being the sole entitlement of the deceased after the performance of the second burial ceremonies, the Supreme Court in *Idehen v Idehen*²³⁵ held that the *Igiogbe* consist of more than one house. The principle of law enunciated in this case raised a lot of controversies among legal experts, academics and traditionalist.²³⁶

²³³ Ibid

²³⁴ *Idehen v Idehen*[1991] 4 NWLR (Pt198) 382: “ Nigeria: Supreme Court upholds Bini Customary Law System of Primogeniture’ available at < <https://www.loc.gov/item/global-legal-monitor/2013-04-24/nigeria-supreme-court-upholds-bini-customary-law-system-of-primogeniture/>. > accessed 28 September 2023.

²³⁵ [1991] 4 NWLR (Pt 198) 382

²³⁶ Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

Furthermore, in *Agidigbi v Agidigbi*²³⁷ the Supreme Court also adopted its earlier *Idehen*'s case, the eldest son of the deceased is entitled to inherit without question the house or houses known as the “*Igiogbe*” in which the deceased lived and died.²³⁸

However, the Oba of Benin Omo N’Oba Erediawa in fulfilment of his role as the repository of Benin native laws and customs took steps through the Benin Traditional Council to reinstate the custom on ‘*Igiogbe*’ and reject the Supreme Court decision on *Idehen v Idehen*²³⁹ that concept of two *Igiogbes* is unknown to Benin customary law.²⁴⁰

Inheriting the *Igiogbe* does not stop the eldest surviving son of the deceased from inheriting other properties of the deceased person by will or laws of intestacy. Other properties of the deceased person that are not *Igiogbe* can be disposed of by will or rules of intestacy to other persons other than the eldest surviving son.²⁴¹

²³⁷ [1996] 6 NWLR (Pt 454) 300.

²³⁸ Paul O. Itua, “Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

²³⁹ [1991] 4 NWLR (Pt 198) 382

²⁴⁰ Paul O. Itua, “Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

²⁴¹ Chukwuma and Others, “Igiogbe custom as a mandatory norm in conflict of laws: an explanation of Nigeria Appellate Court Decision” (University of Manchester, Legal Research Paper 2023) available at < <https://deliverypdf.ssrn.com/delivery.php?ID=51310310300912500610911082> > accessed 21 September 2023.

The *Igiogbe* rule can govern testate and intestate succession depending on the circumstances of the case. If the deceased died intestate and was subject to Bini customary law, it is without question that the customary rule of *Igiogbe* would apply. In the case of testate succession as it relates to a Bini man subject to Bini customary law, it will be seen that devising the properties in the will is subject to the *Igiogbe*.²⁴²

The Benin traditional council described it as “the house in which the deceased lived and died and usually though not always where he was buried. The *Igiogbe* concept is based ancestor worship.”²⁴³

In the *Idehen v Idehen*²⁴⁴ two houses lying some kilometers apart from each other were held to be the *Igiogbe* of the deceased. This decision brought about controversies if a man’s house closely apart can constitute as *Igiogbe*.²⁴⁵

The primogeniture rule creates room for neglect of the other children, as most-eldest surviving son abandons their brotherly duties to the other children left behind by the deceased man as a

²⁴² Ibid

²⁴³ Osaretin Aigbovo, “The Principal House in Benin Customary Law”(Lecturer, Department of Public Law, University of Benin) available at <
<https://nigerianlawguru.com/articles/customary%20law%and20procedure/THE%20PRICIPAL%20HOUSE%20IN%20BENIN%20CUSTOMARY%20LAW.PDF> > accessed 22 September 2023.

²⁴⁴ [1991] 4 NWLR (Pt 198) 382

²⁴⁵ Osaretin Aigbovo, “The Principal House in Benin Customary Law”(Lecturer, Department of Public Law, University of Benin) available at <
<https://nigerianlawguru.com/articles/customary%20law%and20procedure/THE%20PRICIPAL%20HOUSE%20IN%20BENIN%20CUSTOMARY%20LAW.PDF> > accessed 22 September 2023.

result there arose great dissatisfaction amongst the people and culture being dynamic, the ‘Urho system’ was developed as a mode of customary inheritance.²⁴⁶

The court decision in the case of *Idehen v Idehen*²⁴⁷ in which the court held that two houses of the deceased constitute his *Igiogbe*, the issue of *Igiogbe* has assumed new dimensions contrary to the Bini native laws and customs and inheritance thereof has become a matter of life and death.²⁴⁸

The *urho* system under the Benin customary law of inheritance is recognizing another child by different woman for the deceased Benin man. Urho simply means the sharing of the deceased properties according to the number of wives.²⁴⁹

In the case of *Lawal Osula v Lawal Osula*²⁵⁰ Chief Lawal Osula made a testamentary disposition of his property. In it he devised his *Igiogbe* to another child of his, while his eldest son was still alive. The court unanimously held; *Igiogbe* cannot be taken away from the eldest son who succeeds him.²⁵¹

²⁴⁶ Efe Sophia Osamuade, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

²⁴⁷ [1991] 4 NWLR (Pt198) 382

²⁴⁸ “ Why the Supreme Court must Review the Decision in *Idehen v Idehen*” published in Guardian Newspaper of Tuesday July 14 1998.

²⁴⁹ Interview with Chief Igbe and other Chiefs, June 2011 and January 2012, Benin city; ²⁴⁹ Donatus S.O “Bini customary law of Inheritance: shift in ‘Igiogbe’ as a case study” (Masters Thesis, Dalarna University 2012) available at < <https://du.diva-portal.org/smash/get/diva2:601048/FULLTEXT01>. > accessed 20 September 2023.

²⁵⁰ [1995] 9NWLR (Pt419) SC 259

²⁵¹ Efe Sophia Osamuade, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

Only a biological child of the deceased that has a right of inheritance. It is only when a deceased did not have a biological child of his own, a brother or a close member of the family who has blood ties with the deceased can inherit. The Bini native law forbids an adopted child who has no blood relationship with the deceased from inheriting the *Igiogbe* has to be an offspring within that particular family unit.²⁵²

The right of inheriting the *Igiogbe* resides absolutely in the eldest surviving son of the deceased. It does not matter whether the child is responsible, an imbecile or usurper. It cannot be given out as a gift inter vivos or through a will or declaration.²⁵³

Where a Bini man denies paternity of a supposedly eldest son, the customary law of succession has provided a means of accepting that eldest son. The mother of the alleged eldest surviving son of the deceased is expected to swear an oath of confirmation at the ancestral shrine of the man that the child is sincerely the issue of the deceased. Then it is followed with the traditional rule called “*Ikewu*” this is cooking in mould built cooker at the kitchen of the deceased man for members of the man’s family.²⁵⁴

A subsequent marriage under the act cannot deprive an eldest surviving son his right to inherit the *Igiogbe*, even if the matter of the eldest surviving son was not married properly to the

²⁵² Ibid

²⁵³ Efe Sophia Osamuade, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

²⁵⁴ Ibid

deceased. If there is a preponderance of evidence in favor of the child, the issue of paternity will be resolved in the interest of the supposedly rejected child.²⁵⁵

Also, *Okungbowa v Okungbo*²⁵⁶ the deceased gave out the main house where he lived and died to his eldest daughter who took care of him very well before he died, while the boys quarter was given to the eldest son. The court held that the eldest son cannot be deprived of the *Igiogbe* which is the main dwelling house.²⁵⁷

In *Arase v Arase*²⁵⁸ the court held “under Bini native law and custom, the eldest son of a deceased person or testator is entitled without question. The house or houses known as ‘*Igiogbe*’ in which the deceased/testator lived and died. Thus, a testator cannot validly dispose of the ‘*Igiogbe*’ by his will except to his eldest surviving male child. Any devise of the *Igiogbe* to any other person is void.”²⁵⁹

The eldest son may decide to sell the *Igiogbe* for reasons best known to him. In the case of *Mark Ugbo & Daniel Asemota v Sunday Asemota*²⁶⁰ the court held that the eldest son was free to sell the house.

²⁵⁵ Efe Sophia Osamuade, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

²⁵⁶ (unreported) Suit 8/493/87

²⁵⁷ Efe Sophia Osamuade, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023

²⁵⁸ [1981] N.S.C.C 101, 114.

²⁵⁹ “Nigeria: Supreme Court upholds Bini Customary Law System of Primogeniture” available at < <https://www.loc.gov/item/global-legal-monitor/2013-04-24/nigeria-supreme-court-upholds-bini-customary-law-system-of-primogeniture/>. > accessed 28 September 2023.

²⁶⁰ (Unreported) suit no 8/49/70

A woman cannot create an *Igiogbe* or *Igiogbe* cannot be centered on a woman, a woman can inherit as a mere house and upon her demise her child can inherit it as the mother's house because Bini customary law of succession is patriarch. When a Bini woman dies, her estate would devolve amongst her children according to seniority. Her house can be shared amongst her children without contending the issue of absolute ownership in the eldest son.²⁶¹

In conclusion, the Benin customary law of succession entails:

- The *Igiogbe* that is the house in which the deceased lived and died and usually not always buried automatically devolves on the eldest son
- Custom enjoins the eldest son to accommodate all his siblings until they move out or get married subject to good behavior
- Where the deceased had other properties, it will be distributed to his other children in order of seniority.²⁶²

3.3 Testate Succession Laws in the United Kingdom

3.3.1 Wills Act 1837 and Wills Act Amendment Act 1852

Wills Act 1837:

²⁶¹ Efe Sophia Osamuode, "Benin Customary Law of Succession" available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

²⁶² Paul O. Itua, " Succession Under Benin Customary law in Nigeria: Igiogbe matters arising" (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

Section 1, defines a will to mean testament, codicil, appointment by will or by writing in the nature of a will.

Section 3, provides all property may be disposed of by a will, every person can bequeath or dispose of by will all real estate and all personal estate which he/she is entitled to.

There are exceptions to this:

- Persons under legal disability by reason of either of infirmity of mind or want of age.
- A will made by a lunatic cannot make a will except it was made during a lucid interval.

Section 4, no person entitled to a real estate will only be entitled to the real estate except on payment of all stamp duties, fees or sums of money due

Section 7, no will of a person under age is valid. 21 years is the valid age for testamentary capacity.

Section 8, a will made by a married woman is invalid

Section 9, every will must be made in writing and signed or acknowledged by the testator in the presence of two witnesses who shall attest the will

Section 11, soldiers and mariners at sea can dispose of personal estate as they might have done before the Act, that is without the formalities listed in section 9 of the Act.

Section 13, there is no need for publication as long as it is properly attested.

Section 14, incompetence of a witness will not make a will invalid

Section 15, gifts to an attesting witness or his or her wife or husband is void

A person who is a beneficiary or a spouse of a beneficiary should not be a witness and the exceptions to section 15 are:

- An informal will made by a privileged testator
- Witness signs the will in some capacity
- Beneficiary marries an attesting witness after execution of the will.²⁶³

Section 16, a creditor can be a witness

Section 17, an executor can be a witness to prove the validity of the will

Section 18, a will is revoked by marriage, there are exceptions to it:

- Disposition in exercise of a power of appointment
- The testator was expecting to be married to a particular person named

Section 20, no will is revoked except by another will or codicil or by destruction and there must be intent.

The act of destruction may be burning, tearing or shredding. The testator may instruct another person to destroy his will but in his presence and his direction. Partial destruction is not sufficient for valid revocation.

Revocation by writing must be executed including attestation in the same manner as the will.

Section 22, no revoked will shall be revived otherwise than by re-execution or a codicil.

²⁶³ “ The 1837 Wills Act” available at < <https://collegewillwriting.co.uk/wp-content/uploads/2022/07/the-wills-act-1837-2.pdf>. > accessed 12 September 2023.

These provisions mentioned above provides for who can be a testator, how a will is to executed, requirements for making a valid will, people who can be witnesses, how attesting should take place, situations that invalidate wills, how wills can altered or revoked and in the case of change of heart, a revoked will can be revived.

Wills Act Amendment Act 1852:

This Act amends the Wills Act, 1837 with regard to the form of a Will, the extension of the application of provisions of the principal to existing will and the interpretation of will.²⁶⁴

Section 1 provides for the position of the testator's signature; Wills Act 1837 provided that the signature of the testator must be at the foot or end, but the Amendment Act provides that it can be anywhere provided it is apparent in the face of the Will.

Administration of Estate Act 1925

The administration of Estate Act provides guidelines for the administration of the will made by a testator after his/her death. The provisions include:

Section 1, estate will devolve to his personal representative.

Section 4, the court has the power to summon any named executor in any will to prove or renounce probate of the will.

Section 5, where an executor survives the testator but does without taking probate or takes probate of the will but does not appear to the citation or renounces probate of the will, his right

²⁶⁴ “ Wills Amendment Act 1852” available at < <https://leap.unep.org/countries/to/national-legislation/wills-amendment-act-1852#> > accessed 12 September 2023.

of executorship shall cease and representation of the testator and administration of his real and personal estate shall devolve as if that person had not been appointed

Section 18, the court shall have power to summon any person named as executor in a will to prove or renounce probate of the will

Section 19, probate shall not be granted to more than four persons

If there is only one personal representative, the court may grant administration on application another person in addition to the original personal representative

Section 20, where a trust corporation is a named executor in a will whether alone or jointly with another person, the probate can be granted to the corporation either solely or jointly

Section 24, where an infant is sole executor of a will, administration with the will annexed shall be granted to his situation or to such person as the court thinks fit, until the infant attains the age of eighteen

Section 25, Administration with the will annexed shall be granted by the court where the executor died without proving the will

Where the executor renounced probate, where the executor failed to appear to a citation to accept or refuse probate or where the executor is not sui juris or under a disability.

Section 32 (1) the estate, whether legal or equitable of a deceased in pursuance of any general power disposes by will are assets for payment of debts, any disposition by will that is inconsistent with the enactment is void and the court will administer the property for the purpose of the payment of the debts and liabilities.

(2) The personal representatives shall pay all funeral, testamentary and administration expenses, debts and other liabilities and out of the residue, the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will of the deceased

(3) During the minority or mental incapacity of any beneficiary, the personal representative may invest the residue in any investment

Section 44, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from the death.²⁶⁵

3.3.2 Inheritance (Provisions For Family and Dependents) Act 1975.

This Act empowers the court to make orders for the making out of the estate of a deceased person of provision for the spouse, former spouse, child, child of the family or dependant of that person and for matters connected therewith.²⁶⁶

1. Where a person dies domiciled in England and Wales and is survived by any of the following persons, spouse or civil partner, former spouse, former civil partner (but not one who has formed a subsequent marriage or civil partnership), a child of the deceased and any person immediately before the death of the deceased was being maintained either wholly or partly by the deceased. That person may apply to the court for an order on the ground that the disposition of the deceased's estate effected by his will and not such as to make reasonable financial provision.²⁶⁷

²⁶⁵ Administration of Estate Act 1925, s.1-44

²⁶⁶²⁶⁶ Inheritance (Provision for Family and Dependant) Act 1975, available at <
<https://www.legislation.gov.uk/ukpga/1975/63>. Accessed 15 September 2023.

²⁶⁷ Ibid

English courts have always been firm of the opinion that a testator can leave their wealth to anyone or anything they wish. However, there are some cases where someone who is or should have benefitted from a will is left in real need due to lack of reasonable provision.²⁶⁸

The power of the Court to grant relief under the Inheritance Act 1975 is limited to ordering only provision as is reasonably necessary for the maintenance of the applicant. This standard means the applicant should be able to live at neither a luxurious nor poverty-stricken level.²⁶⁹

If the applicant is a surviving spouse or civil partner of the deceased, they can claim at a higher maintenance standard that takes into account the standard of living enjoyed by the applicant before the testator died and considers what type of financial settlement the applicant would have received if the relationship had ended in divorce rather than death.²⁷⁰

Factors considered in deciding claims under the Inheritance Act 1975 are:

- Financial resources and financial needs which the applicant has or likely to have
- Financial needs of the applicant or is likely to have in the foreseeable future.
- Any obligations and responsibilities which the deceased had towards any applicant
- The size and nature of the net estate of the deceased
- Any physical or mental disability of any applicant

²⁶⁸ David Richards, “A Guide to claiming under the Inheritance Act 1975”. Available at < [https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975./](https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975/) > accessed 15 September 2023.

²⁶⁹ Ibid

²⁷⁰ David Richards, “A Guide to claiming under the Inheritance Act 1975”. Available at < [https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975./](https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975/) > accessed 15 September 2023.

- Any other matter, including the conduct of the applicant or any other person that the Court may consider relevant.²⁷¹

If the applicant is successful, the Court can make a range of awards, including a lump sum or periodic payment, transferring property or a lifetime right to live in a property with the property reverting to the estate upon the applicant's death.²⁷²

3.4 Intestate Succession Laws in the United Kingdom

3.4.1 Administration of Estate Act 1925

Section 1 provides that property of the deceased will be devolved from time to time on the personal representatives of the deceased.

The rules of intestacy, the beneficiaries and the order of priority is set out in Section 46 of the Administration of Estate Act 1925²⁷³

- If the deceased was married or in a civil partnership, the spouse or civil partner will inherit all property and possession.
- If there are children, the children will inherit half of the estate
- - if the deceased was single and had children, everything will be split equally between all children (including illegitimate/adopted children but not step-children)
- If the deceased was single with no children, any surviving parent(s) will inherit the estate

²⁷¹ Ibid

²⁷² David Richards, "A Guide to claiming under the Inheritance Act 1975". Available at < [https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975./](https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975/) > accessed 15 September 2023.

²⁷³ "Rules of Intestacy Flowchart 2023" available at < https://www.titleresearch.com/news/rules-of-intestacy-flowchart?hs_amp= > accessed 14 September 2023.

- Where there are no spouse, children or parents, any full sibling will inherit, half siblings will inherit if there are no full siblings. If the siblings predeceased the intestate, the children of the siblings or half-siblings can inherit the estate
- If there are no spouses, children, surviving parents, siblings, living grandparents are to inherit the estate

Whole blood aunts and uncles get to inherit the estate where the deceased died with no spouse, children, surviving parents, siblings or grandparents. If the aunts and uncles predecease the intestate then their children if they have can inherit the estate.

If there are no surviving family members, the deceased's estate will pass to the Crown.²⁷⁴

3.5.2 Succession (Scotland) Act 1964

The Succession (Scotland) Act 1964 was brought into force for deaths on or after 10 September 1964, the act prioritized inheritance by a widow or widower on intestacy and distributing the remainder of the estate.²⁷⁵

At the same time as prioritizing spouses, male preference in other relationships were also removed, with fathers and mothers, brothers and sisters sharing equally.²⁷⁶

Section 2, where an intestate is survived by children, they shall have the right to the whole estate.

²⁷⁴ Rules of Intestacy Flowchart 2023” available at < https://www.titleresearch.com/news/rules-of-intestacy-flowchart?hs_amp= > accessed 14 September 2023.

²⁷⁵ “the Changing times in Scottish Succession Law” available at < <https://www.lawscout.org.uk/news-and-events/blogs-opinions/platinum-blog-claire-e-macpherson>. > accessed 15 September 2023.

²⁷⁶ Ibid

(b) where the intestate is survived by either of both his parents and also survived by brothers or sisters and no other prior relative, the parent or parents shall have right to one half of the intestate estate and the surviving brothers and sisters to the other half.

(c) where the intestate is survived by brothers or sisters but prior relatives, the surviving brothers and sisters shall have the right to the whole estate.

(d) where the intestate is survived by either or both parents and no prior relative, the surviving parent or parents shall have the right to the whole estate.

(e) where the intestate is survived by a husband, wife or civil partner but is not survived by any prior relative, the surviving spouse or civil partner shall have right to the whole of the estate.

(f) where the intestate is survived by uncles or aunts but not survived by any prior relative, they shall have rights to the estate

(g) where the intestate is survived by a grandparent or grandparents but is not survived by any prior relative, the surviving grandparent or grandparents shall have right to the whole estate.

(h) where the intestate is survived by any prior relative, the ancestors of the intestate generation by generation successively without distinction between the paternal or maternal lines, shall have right to the whole of the estate.²⁷⁷

²⁷⁷ Succession (Scotland) Act 1964; section 2.

Chapter Four

Similarities and Differences between the Laws of Succession of Nigeria and the United Kingdom.

Succession denotes the transmission of rights and obligations of the deceased to his/her legal heirs. It does not only include the rights and obligations left by the deceased at the time of his or

her death but also includes new charges, rights and obligations that accrue to the existing ones after opening of the succession.²⁷⁸

Succession is the orderly passage of power, assets or other property from one entity to another. It can loosely mean inheritance, the right to inherit, the order to which inheritance is bequeathed and the conditions precedent under which one succeed another.²⁷⁹

The law of succession therefore is all about the transfer or devolution of property on the death of an owner to another, his heir, the law is the rule by which such devolution occurs.²⁸⁰

Succession laws generally create a preference hierarchy among the potential heirs of the decedent and will outline the order of priority for distribution of the decedent's estate.²⁸¹

The private law of succession regulates three separate legal issues, it achieves the transfer of the deceased's personal property to those who are entitled to inherit, it makes provision for the order of succession and finally it encompasses the administration of property.²⁸²

Succession may be testate or intestate. The laws that govern the forms of succession are quite different.

²⁷⁸ "Law of Succession Definition: Everything You Need To Know" available at < <https://www.upcounsel.com/law-of-succession-definition#~:text=and%20intestate%20succession.> > accessed 11 September 2023.

²⁷⁹ " An Overview of Estate Planning and Succession In Nigeria" available at < <https://www.patrelipartners.eu/estate-planning-and-succession-in-Nigeria.> > accessed 5 September 2023.

²⁸⁰ Kerry R Parry & Kerry, "*The Law of Succession*" (London, Swwet & Maxwell 12 Ed) Pg.1

²⁸¹ " Succession Laws" available at < <https://www.legalmatch.com/law-library/article/succession-laws.html.> > accessed 11 September 2023.

²⁸² Inge Kroppenber, " Succession Law" available at < <https://max-eup2012.mpioriu.de/index.php/succession-law/> > accessed 11 September 2023.

Testate succession which is the passing of rights or property by Will. In Nigeria, the key laws governing testate succession are the Administration of Estate Act 1925 and Laws of the various states, Wills Act, 1837, Wills Act Amendment Act, 1852 and the Wills Law of the various states, customary law which includes native and Islamic law also provide for wills.

The testate succession in the United Kingdom is governed by the Wills Act, 1837, the Wills Act Amendment Act, 1852 and the Administration of Estate Act, 1925.

These laws provide a guideline on how Wills are to be properly drafted, who can make a valid will, the requirements for the testator, who can be executors, the power of the executor and after the death of the testator, how the estate of the testator can be administered, maintained and distributed.

Intestate succession occurs when a person dies without having a will. A person is considered to have died intestate if he did not leave a will to dispose his estate or he left an invalid due to lacking testamentary capacity, undue influence or it does not comply with the provisions of the prevailing laws of where the estate is situated or the domicile of the deceased.

The laws that govern intestate succession in Nigeria are the Administration of Estate Act 1925, Administration of Estate Laws of the various state, customary law which includes native laws and Islamic law largely governs intestate succession in Nigeria.

These laws of intestate succession provide for how the estate of the intestate will be administered, those who can inherit the estate and in what order of priority should the estate be distributed to the provided beneficiaries.

Due to Nigeria's history with the United Kingdom, succession laws of Nigeria and the United Kingdom are quite similar, however there are some difference which will all be considered and discussed in this chapter.

4.1 Similarities between Testate Laws of Succession of Nigeria and the United Kingdom

The laws of testate succession are the Wills Act 1837, Wills Act Amendment Act 1852, Wills Laws of the various states in Nigeria, Administration of Estate Act 1925 and Administration of Estate Laws of Nigeria.

4.1.1 Wills Act 1837 and Wills Laws in Nigeria

The Wills Act 1837 is the major testate succession law used in the United Kingdom, the Wills Act 1837 is used in some northern and eastern parts of Nigeria. Some states however have enacted local legislations for wills called Wills Law. One of the major wills laws is the Wills Law of Lagos.

The various local legislations of Wills Law are quite similar to the Wills Act 1837 of the United Kingdom. The similarities in the provision are as follows:

(1) Requirement For A Valid Will

The Wills Act 1837 provides that a will must be made in writing, signed or signed on the behalf of the testator in his presence, two witnesses are to attest the will, the Wills Law of Lagos state also provides that for the same as the requirement for drafting a valid will.²⁸³

(2) Soldiers and Mariners

²⁸³ Section 9, Wills Act 1837, Section 4 Wills Law Lagos State.

Soldiers and Mariners at sea can dispose of personal estate without the formalities provided in the Act and Laws. It does not have to be in writing or have the certain number of witnesses.²⁸⁴

(3) Publication Of A Will

A will does not need to be published for it to be properly attested.²⁸⁵

(4) Witness Of A Will

- If a witness is found incompetent it would not render the will invalid²⁸⁶
- Gifts made to a witness attesting the will, the gift be void, if it is made/given to the spouse of any witness it will also be considered to be void.²⁸⁷

(5) Marriage

A will is revoked by a marriage except it was made in exercise of a power of appointment or the testator was expecting to be married to a particular person who must be named.²⁸⁸

(6) Revocation

- A will can only be revoked by making another will or codicil with the intention for the former will to be revoked, the revoking will or codicil must be executed in the same manner required for a will. It can also be revoked by destruction through burning, tearing,

²⁸⁴ Section 11, Wills Act 1837, Section 6 Wills Law Lagos State.

²⁸⁵ Section 13, Wills Act 1837, Section 4 Wills Law Lagos State.

²⁸⁶ Section 14, Wills Act 1837, Section 7 Wills Law Lagos State.

²⁸⁷ Section 15, Wills Act 1837, Section 8 Wills Law Lagos State.

²⁸⁸ Section 18, Wills Act 1837, Section 11 Wills Law Lagos State.

shredding, the testator can instruct another person to destroy it in the presence of the testator.²⁸⁹

- A revoked will can be revived by re-execution or a codicil²⁹⁰

(7) Creditor

A creditor can be called as a witness²⁹¹

4.1.2 Wills Act Amendment Act 1852

This Act provides that the position of the testator's signature must not be at the foot or end. This Act amends the Wills Act used in the United Kingdom and states in Nigeria which still uses the Wills Act.

4.1.3 Administration of Estate Act 1925 & Administration of Estate Laws.

The Administration of Estate Act 1925 which is used in the United Kingdom and laws of the various states in Nigeria make provision for the execution and distribution of a testator's estate in accordance to the will. The Administration of Estate Laws just like the Wills Act and Wills Law has similar provisions with the Administration of Estate Act. The similar provisions are as follows:

- (1) The estate will devolve to the testator's personal representatives.²⁹²
- (2) Executors

²⁸⁹ Section 20, Wills Act 1837, Section 13, Wills Laws of Lagos State.

²⁹⁰ Section 18, Wills Act 1837, Section 15, Wills Law of Lagos State.

²⁹¹ Section 16 Wills Act 1837, Section 9, Wills Law of Lagos State.

²⁹²Section 1 Administration of Estate Act 1925: Section 1,Administration of Estate Laws, Lagos State.

The court has the power to summon any named executor in a will to provoke or renounce a will.²⁹³

- The court may grant probate to a trust corporation named as executor whether alone or jointly.²⁹⁴
- Where an infant is a sole executor, the administration of the will is annexed to his guardian or any person the court thinks fit.²⁹⁵
- The executor can invest the residue of a testator's estate in any investment plan authorized by statute.²⁹⁶

(3) Probate shall not be granted to more than four persons.²⁹⁷

(4) Personal Representatives (Rights & Duties)

- A personal representative is not bound to distribute the estate of the deceased before the expiration of one year from death.²⁹⁸
- The personal representatives shall pay all funeral, testamentary and administration expenses, debts and other liabilities out of the estate before the residue can be distributed to the heirs & beneficiaries.²⁹⁹

²⁹³ Section 4 Administration of Estate Act 1925: Section 23, Administration of Estate Laws, Lagos State.

²⁹⁴ Section 20, Administration of Estate Act 1925: Section 25, Administration of Estate Laws, Lagos State.

²⁹⁵ Section 24, Administration of Estate Act 1925: Section 29 Administration of Estate Laws, Lagos State.

²⁹⁶ Section 32(3) Administration of Estate Act 1925: Section 37, Administration of Estate Laws, Lagos State.

²⁹⁷ Section 19, Administration of Estate Act 1925: Section 24, Administration of Estate Laws, Lagos State.

²⁹⁸ Section 44, Administration of Estate Act 1925: Section 47, Administration of Estate Laws, Lagos State.

²⁹⁹ Section 32(2), Administration of Estate Act 1925: Section 35, Administration of Estate Laws, Lagos State.

- The court may grant administration on application for addition of personal representative where there is only one personal representative.³⁰⁰

The Wills Act 1837 and Wills Laws in essence provides that requirement for a will to be in writing, it has to be attested by two witnesses, soldiers and mariners are exempted from the formalities. A will does not need to be published for it to be properly attested.

The incompetency of a witness does not invalidate a will, gifts made to a witness or their spouse is void. A creditor of the estate can also be called as a witness.

A will revoked by a marriage with the exception of exercise of power of appointment or the intended spouse specifically named, it can also be revoked by a will or codicil specifically revoking or an act of destruction which either burning, tearing or shredding. It can however be revived by a will or codicil executed in the same manner.

The Administration of Estate Act 1925 and Administration of Estate Laws in the administering and distribution of a testator's estate provides the court with powers to summon named executors in a will to prove or renounce a probate, grant probate to a trust corporation named as executor whether alone or jointly. The court can annex a will to an infant executor's guardian or anyone deemed fit.

It also grants personal representatives the power to invest the residue of the estate, the duties of personal representatives include payment of funeral expenses, testamentary and administrative expenses, debts and other liabilities.

³⁰⁰ Section 19, Administration of Estate Act 1925: Section 24 (2) ,Administration of Estate Laws, Lagos State.

The court can also make an addition to the number of personal representatives in the case of a sole personal representative on application.

4.2 Differences between Testate Succession Laws of Succession of Nigeria and the United Kingdom

Despite the seeming similarities considered between the testate succession laws of Nigeria and the United Kingdom, there are some conspicuous differences which will be discussed below.

4.2.1 Wills Act 1837 and Wills Laws of Nigeria

(1) Testamentary Freedom

The Wills Act 1837 provides that a testator may dispose by will all property owned by him while the Wills Law provides that a testator can only dispose his estate that is not subject to customary law. The Wills Law in Kaduna and Cross River provides disposition of estate with the exception of property subject to customary and Islamic law. Therefore, the Wills Act gives total testamentary freedom to the testator to dispose freely of their estate but the Wills Law restricts this freedom to only properties that are not subject to customary or Islamic law.³⁰¹

Islamic Law and custom provide that when a person is subject to Islamic law, he cannot will out more than 1/3 of his properties to persons other than his heirs. Section 2 of the Wills Law Kaduna State provides that a testator can freely devise properties in a will except the testator is

³⁰¹ Section 3, Wills Act 1837; Section 1 Wills Law of Lagos, Kaduna and Cross River.

subject to Islamic Law immediately before his death. This provision is also recognized in the Wills Laws of Oyo, Kwara, Jigawa, Plateau state.³⁰²

(2) Forced Heirs

The Wills Act does not impose forced heirs on the testator while the Wills Law though it does not impose forced heirs like the Wills Act, it provides that a testator must make reasonable provisions for his family and dependents and also spouses and children may apply to the court in the case that the testator did not make reasonable financial provisions for them.³⁰³

The wills law provides that estate subject to customary law has to be disposed by customary law, in cultures which practice primogeniture system, like the Bini native law, even though a man is allowed to have a will, he has to dispose the house he lived and died in to his first son.

In the case of *Lawal Osula v Lawal Osula*³⁰⁴ Chief Lawal Osula made a testamentary disposition of his property. In it he devised his Igiogbe to another child of his, while his eldest son was still alive. The court unanimously held; *Igiogbe* cannot be taken away from the eldest son who succeeds him.³⁰⁵

³⁰² Oyetola Muyiwa, “The Administration of Wills Under The Islamic Law System in Nigeria” available at < <https://lawpavillion.com/blog/the-administration-of-wills-under-the-islamic-law-system-in-nigeria>.> accessed 12 September 2023.

³⁰³ Section 1 Wills Law, Lagos State.

³⁰⁴ [1995] 9NWLR (Pt419) SC 259

³⁰⁵ Efe Sophia Osamuade, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

Also *Okungbowa v Okungbo*³⁰⁶ the deceased gave out main house where he lived and died to his eldest daughter who took care of him very well before he died, while the boys quarter was given to the eldest son. The court held that the eldest son cannot be deprived of the *Igiogbe* which is the main dwelling house.³⁰⁷

In *Arase v Arase*³⁰⁸ the court held “under Bini native law and custom, the eldest son of a deceased person or testator is entitled without question. The house or houses known as ‘*Igiogbe*’ in which the deceased/testator lived and died. Thus, a testator cannot validly dispose of the ‘*Igiogbe*’ by his will except to his eldest surviving male child. Any devise of the *Igiogbe* to any other person is void.”³⁰⁹

(3) Age Requirement

The Wills Act prescribes the age of twenty-one as the required age for a testator to have testamentary capacity in order to make a valid will. The Wills Law prescribes the age of eighteen as the required age for a testator in Nigeria.³¹⁰

4.3.2 Administration of Estate Act 1925 and Administration of Estate Laws of Nigeria.

³⁰⁶ (unreported) Suit 8/493/87

³⁰⁷ Efe Sophia Osamuade, “Benin Customary Law of Succession” available at < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023

³⁰⁸ [1981] N.S.C.C 101, 114.

³⁰⁹ “Nigeria: Supreme Court upholds Bini Customary Law System of Primogeniture” available at < <https://www.loc.gov/item/global-legal-monitor/2013-04-24/nigeria-supreme-court-upholds-bini-customary-law-system-of-primogeniture/>. > accessed 28 September 2023.

³¹⁰ Section 7 Wills Act 1837; Section 3 Wills Law, Lagos State.

the Administration of Estate, Lagos state prescribes the age of twenty-one for an executor, while the Administration of Estate Act 1925 prescribes the age of eighteen for an executor of a will.³¹¹

4.2.3 Customary Wills

The Nigerian succession laws is largely influenced by customary law which is 'sui generis' it consists of native laws and Islamic laws. Ethnic laws which are indigenous and applies only to members of a particular ethnic group while Islamic law is based on Muslim faith and applicable to members of the faith. Wills made based on the dictates of customary law is governed by it. Customary laws are mostly unwritten except for Sharia law which is codified in the Quran.

4.2.4 Writing Requirement

The Wills Act 1837 provides that all wills must in writing, the wills law also provide for the same requirement. However customary wills and Islamic wills do not have to be in writing for it to be valid.

A will executed according to Islamic Law of testate need not to be in writing nor in a particular form. Hence, "It can be made by writing, verbally or even by signs, so long as it is apparent that the intention of the testator is to make a disposition operative on his death."³¹²

³¹¹ Section 24, Administration of Estate Act 1925: Section 29, Administration of Estate Law, Lagos State.

³¹² Ahmadu Seidu Maliki, " An examination of the nature and operations of Islamic and statutory laws of Testate Succession in Kaduna state, Nigeria" available at < <https://eujournal.org/index.php/esj/article/view/205/247>.

Accessed 13 September 2023.

A customary will must be recognized by Native law and custom. It does not matter in which form it takes, whether oral or written.³¹³

Death bed declarations are also a means of disposing property under customary law by a testator, like in nuncupative wills, such declarations must be made in the presence of witnesses.³¹⁴

The United Kingdom's testate succession is governed by a codified law which is Wills Act, 1837 while the rules of testate succession in Nigeria are multiplied some codified like the Wills Laws, Administration of Estate Laws, Sharia law and the rest unwritten which is the ethnic laws.

The Wills Laws though very similar to the Wills Act has some peculiar provisions made to be more in tune with the way of life in Nigeria, the Wills Laws of Nigeria does not give complete testamentary freedom as estate subject to customary or Islamic law cannot be devised under the Act. The Wills Law also unlike the Wills Act makes reasonable provision for spouses, children and dependant and also empowers them to seek grants in court where none has been made.

The Wills Laws in deviation from the Wills Act prescribes the age of eighteen as the required age for a testator as opposed to the twenty-one years requirement by the Act.

The Administration of Estate Laws also prescribes the age of twenty-one as the requirement for an executor which is different from the eighteen years requirement by the Administration of Estate Act, 1925.

³¹³ Jide Ogundimu "Lecture Notes on Wills" available at < <https://jideogundimucosolicitors.co.uk/lecture-notes-on-wills> > accessed 13 September 2023.

³¹⁴ Olatunji Daniel, "Practice and Procedure in the Application of Wills Under the Customary Law" available at < https://njigov.ng/wp-content/uploads/2021/12/practice-and-procedure-in-the-application-of-wills-under-the-customary-law-by-hon-justice-olatumji-daniel-PCCA_OYO.pdf > accessed 13 September 2023.

Furthermore, Nigerian succession laws also consist of customary testate succession, a person who lived under customary law can execute a will in accordance to the native law he/she practices and for Muslims they can dispose their estate in accordance to the Islamic guidelines for wills.

The United Kingdom's testate succession is codified into the Wills Act and Administration of Estate while Nigeria's testate succession is governed by codified laws like the Wills Act, Wills Laws, Islamic law and unwritten laws of the indigenous native laws.

4.3 Similarities between the Intestate Succession Laws of Nigeria and the United Kingdom

The Administration of Estate Act provides the rules of intestacy in the United Kingdom, the Administration of Estate Law also provide the rules of intestacy in Nigeria for deceased intestate who lived under statutory law or contracted a marriage under the Act and is survived by a spouse or and children from the marriage.

4.3.1 Administration of Estate Act 1925 and Administration of Estate Laws

These laws provide the order of priority of persons who can benefit from the estate of an intestate;

- Husband or wife of the deceased
- Children
- Parent or parents
- Brothers and sisters of full blood and their children
- Brothers and sisters of half-blood and their children
- Grandparent or grandparents

- Uncles and Aunts of full blood and their children³¹⁵

The Administration of Estate Act, 1925 and Administration of Estate Laws of Nigeria provide the order of priority for intestacy succession, the spouse of the deceased is top with the children next, the surviving spouse gets to be the sole inheritor where the deceased is not survived by any child, the spouse and the children share the estate if the deceased is survived by a spouse and children, where there are no spouse and children, the next in line are the parents of the deceased, the brothers and sisters of full blood or half blood and their children can inherit, then grandparents and uncles and aunts. Where the deceased is not survived by any relative, the estate returns to the government of the intestate's domicile or where the property is situated.³¹⁶

4.4 Differences between the Intestate Succession Laws of Nigeria and the United Kingdom

The intestacy succession in the United Kingdom is primarily governed by the Administration of Estate Act 1925 while the intestacy succession in Nigeria is a fusion of statutory laws which are the Administration of Estate laws of the various states in Nigeria and customary law which is indigenous and also comprises of Islamic laws. This fusion provides differences in the method of intestacy succession between Nigeria and the United Kingdom.

4.4.1 Right of Spouse to Inherit

The rules of intestacy of the United Kingdom gives the spouse or civil partner great priority and where there are no children or relatives of the deceased, the spouse or civil partner gets

³¹⁵ Section 46, Administration of Estate 1925: Section 49, Administration of Estate Laws, Lagos State.

³¹⁶ Section 46, Administration of Estate 1925: Section 49, Administration of Estate Laws, Lagos State

to inherit the whole estate of the deceased, where there are children or other relatives, the spouse gets a share of the estate.³¹⁷

The Administration of Estate Laws also allows the spouse of the deceased intestate to inherit the whole estate of the deceased where there are no relatives or a part where there are other relatives like children, parents, grandparents, brothers and sisters of full blood or half blood and their children, aunts and uncles.³¹⁸

However, customary law intestate succession which differs from one another, majorly denies the spouse the right to inherit the estate of the deceased.

Women cannot inherit her husband's property, if the deceased leaves no children, the estate devolves on his brothers and other blood relatives.³¹⁹

In *Ogunbawal v Layiwola*³²⁰, the court held that nothing by way of property devolves on the wife/wives of a Yoruba man under customary law.³²¹

³¹⁷ Section 46, Administration of Estate Act 1925.

³¹⁸ Section 49, Administration of Estate Law, Lagos State.

³¹⁹ Ademola, Adekunbi, "Analysis of Law of Intestate Succession under the Yoruba Customary Law of SouthWest Nigeria" available at < https://www.europeanjournalofsocialsciences.com/issues/PDF/EJSS_58-4-02.PDF > accessed 17 September 2023.

³²⁰ [1975] 3 CCHCJ/HC 327

³²¹ "Yoruba Law of Succession" available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession> > accessed 17 September 2023

Under the Isoko culture in Delta state, in respect to widows, they ordinarily are not allowed inheritance.³²²

4.4.2 Right of Adopted Children

In the United Kingdom, if a person dies intestate then both biological children and adopted children of the deceased have the exact same right to inherit any share of the estate. However, this is dependent on whether the child was validly adopted under the law. If a child is adopted abroad and foreign adoption was not formalized under the UK law, then the adopted child cannot inherit the estate in the United Kingdom. Also, if the adoptive parent dies before the adoption is fully finalized, then the child would not gain automatic rights to inherit a share of the estate.³²³

In the United Kingdom, if an individual is formally adopted, they are treated to be the lawful child of their adoptive parents for inheritance purposes. The Adoption Act, 1976³²⁴ states that

³²² “Delta State Succession” available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

³²³ “A guide to the Inheritance Rights for Adopted Children” , available at <https://www.justwillsandlegalservices.co.uk/blog/-a-guide-to-the-inheritance-rights-for-adopted-children.> > accessed 13 October 2023.

³²⁴ Section 39, Adoption Act 1976.

once legally adopted, the same inheritance rules apply as they do for biological children. Adopted children have same rights as biological children when it comes to inheritance.³²⁵

Adoption of a child in Islam is allowed with the aim of helping the welfare of the child and providing protect without changing children's lineage. In Islam, the position of the adopted child is not equal with the biological children.³²⁶

In the compilation of Islamic Law, the adopted child is not part of the legal heirs, furthermore the adopted child is only entitled to receive a will that is related to the inheritance of his adopted parents. Distribution of the inheritance from parents to adopted child can be done by a grant or will.³²⁷

Therefore, the adopted child in Islam is not part of the children who gets to inherit the estate of a person who died intestate.

Under the Yoruba customary law of intestate succession, the qualification for inheritance is generally traced or dependent on blood relationship. A person cannot qualify on any basis outside being of the same blood whether full nor half. The primary heirs to a man's estate are his children.

³²⁵ Martin Laver, "Can an Adopted Child bring an Inheritance Claim." Available at < <https://www.tozers.co.uk/insights/can-an-adopted-child-bring-an-inheritance-Act-claim?> > accessed 13 October 2023.

³²⁶ Maharesi Trifo, Hanafi Tanawijaya; "Position of Adopted Children as Heir Based on The Compilation of Islamic Law(Case StudyNumber 2142/pdf.G/2017/PA.PLG)" available at < <https://www.atlantis-press.com/article/125973116.pdf>. > accessed 10 October 2023.

³²⁷ Ibid.

In the case of *Administrator General v Tuwase*³²⁸ it was established that the right of an adopted child is inferior to that of the legitimate child of the blood.³²⁹

Also, under the Bini customary law of intestate succession, only a biological child of the deceased that has a right of inheritance. It is only when a deceased did not have a biological child of his own, a brother or a close member of the family who has blood ties with the deceased can inherit. The Bini native law forbids an adopted child who has no blood relationship with the deceased from inheriting the *Igiogbe* has to be an offspring within that particular family unit.³³⁰

4.4.3 Method of Distributing Estate amongst Children

The Administration of Estate Act provides for equality for all children of the deceased. Children inherit in equal parts. All the children of the parent who has died intestate inherit equally from the estate. This also applies where a parent has children from different relationships.³³¹

A child whose parents are not married or have not registered a civil partnership can inherit from the estate of a parent who dies intestate. The children receive their inheritance when they reach the age of eighteen or marry or form a civil partnership.³³²

³²⁸ [1946] 18 NLR @ 88

³²⁹ “Yoruba Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession/> > accessed 17 September 2023.

³³⁰ Ibid

³³¹ “Who can Inherit if there is no will- the rules of intestacy.” Available at < <https://www.citizensadvice.org.uk/family/death-and-wills/who-can-inherit-if-there-is-no-will-the-rules-of-intestacy.1> > accessed 10 October 2023.

³³² Ibid

Under the Islamic Law of intestate inheritance, where the deceased leaves behind sons and daughters, each daughter gets equal to half $\frac{1}{2}$ of the share of each son. If there are no sons, the daughter is entitled to half of the inheritance.³³³

Among the *Markis* group of the *Verbe* of Northern Nigeria, the rule of ultimogeniture applies whereby inheritance is by the youngest son, which applies to brother heirs of the deceased landowner. Ultimogeniture is considered appropriate especially in circumstances where the youngest child had been assigned the role of ‘keeping the hearth, taking care of the parents and continuing at home.’³³⁴

The tradition of primogeniture entails the total non-negotiable handing over of the power of attorney over properties, titles and positions to the eldest son of a family. The eldest male child becomes the head of the family and he occupies the family house, holding same as trustee of the other children, male or female. The eldest son is expected to look after younger children.³³⁵

Both tangible and intangible things owned by the deceased are capable of being inherited such as landed property, money, cars, clothing and chieftaincy titles. The first son is known as ‘*Okpala*’, he is the chief administrator of his father’s property.³³⁶

³³³ Ibid

³³⁴ “Northern Succession” available at < <https://motun911.wordpress.com/2019/09/13/northern-succession>. > accessed 27 September 2023.

³³⁵ “Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023.

³³⁶ Ibid

In *Ejimaike v Ejimaike*³³⁷, the court held that the right of the eldest surviving son succeeding the headship of his father is automatic and cannot be taken away.³³⁸

Amongst the Isoko, the first son inherits exclusively, the Ughen (this is where the deceased father lived and died). The other siblings inherit the remaining assets of the deceased including the female children.

The Itsekiri & Urhobo: in *Thompson Oke and others v Robison Oke and others*³³⁹ the Supreme Court held that, with regard to succession, the Itsekiri customary law and that of the Urhobo are the same.³⁴⁰

The basic mode of inheritance here is primogeniture which involves the total non-negotiable handing over of power of attorney over properties, titles or position to the eldest son.³⁴¹

The right of the eldest son to inherit the house of his deceased father is his major right. Other personal effects are shared amongst the children.³⁴²

³³⁷ [1972] 2 ENLR P.11

³³⁸ “Igbo Law of Succession” available at < <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>. > accessed 18 September 2023.

³³⁹ [1964] 1 ALL NLR (Pt 1) 443.

³⁴⁰ “Delta State Succession” available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

³⁴¹ Ibid

³⁴² “Delta State Succession” available at < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

The *Igiogbe* inheritance existed since the founding of Bini kingdom. The *Igiogbe* is of utmost importance in Benin customary law. *Igiogbe* is the house the deceased lived, died and was buried. The Supreme Court in *Idehen v Idehen*³⁴³ defined *Igiogbe* as the principal dwelling house and family seat.³⁴⁴

In *Uwaifo v Uwaifo*³⁴⁵ the Court of Appeal defined ‘*Igiogbe*’ as the house where a deceased lived and died, automatically devolves on his eldest surviving male child under Bini customary law.³⁴⁶

In *Egharevba v Orounghae*³⁴⁷, the court held that Benin native law and custom on ‘*Igiogbe*’ is a custom of general application with Benin kingdom and it is judicially noticed as such.³⁴⁸

Igiogbe can therefore be defined as the house, where the deceased lived until his death and was buried and where the ancestral shrine is erected.³⁴⁹ It is believed to be a shrine for serving and

³⁴³ [1991] 4 NWLR (Pt198) 382

³⁴⁴ Donatus S.O “Bini customary law of inheritance: shift in ‘*Igiogbe*’ as a case study” (Masters Thesis, Dalarna University 2012) available at < <https://du.diva-portal.org/smash/get/diva2:601048/FULLTEXT01>. > accessed 20 September 2023

³⁴⁵ [2004] JELR 45062 (CA)

³⁴⁶ Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: *Igiogbe* matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

³⁴⁷ [2001] 11 NWLR (Pt 724) 318

³⁴⁸ Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: *Igiogbe* matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) available at < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

³⁴⁹ Ibid

communicating with the ancestors, the automatic transfer to the eldest son is not about enriching the legatee.³⁵⁰

The *Igiogbe* automatically devolves on the eldest son. The eldest surviving son exclusively inherits the ancestral home of the deceased father. The eldest surviving son of the deceased inherits the *Igiogbe* after a second burial ceremony during which the family distributes the property of the deceased.³⁵¹

The intestate succession in the United Kingdom is primarily governed by the Administration of Estate Act 1925 while for the Nigerian Intestate succession is a fusion of Administration of Estate Laws various state which almost an exact replica of the Administration of Estate Act 1925.

Under the laws of intestate succession in the United Kingdom, the spouse or civil partner of the deceased who died intestate can inherit the estate either wholly where there are no surviving relatives or partly where there are surviving relatives like children, parents, grandparents and siblings, while the Administration of Estate Laws in Nigeria also allows that, some customary laws forbid that. The Yoruba culture does not allow for wives to inherit her husband's estate. Also, the Isoko culture in Delta state, the wives are not allowed inheritance.

³⁵⁰ “Nigeria: Supreme Court upholds Bini Customary Law System of Primogeniture” available at < <https://www.loc.gov/item/global-legal-monitor/2013-04-24/nigeria-supreme-court-upholds-bini-customary-law-system-of-primogeniture/>. > accessed 28 September 2023.

³⁵¹ Chukwuma and Others, “Igiogbe custom as a mandatory norm in conflict of laws: an explanation of Nigeria Appellate Court Decision” (University of Manchester, Legal Research Paper 2023) available at < <https://deliverypdf.ssrn.com/delivery.php?ID=51310310300912500610911082>. > accessed 21 September 2023.

Also, for adopted children, the United Kingdom, a properly adopted child who have been validly adopted under the law and adoption is finalized before the death is intestate has the same right as a biological child, the adopted child can inherit property of his/her adoptive parents.

Adoption in Islam however, does not give the adopted child the same right as a biological child, the adopted child can only inherit through a grant or will but not under intestacy. Also, under the Yoruba customary law, the qualification for inheritance is generally traced or dependent on blood relationship, the right of an adopted child is inferior to that of a biological child.

The Bini culture for intestate succession, only a biological child of the deceased that has a right of inheritance, only a person who has blood ties with the deceased can inherit. An adopted child who has no blood relationship with the deceased cannot inherit the intestate's estate wholly or partly.

Furthermore, the law of intestate succession in the United Kingdom provides that children of the deceased inherit in equal parts. The children of the deceased inherit in equal parts. The children get to inherit equally from the estate. Children from unmarried parents or unregistered civil partnership can also inherit in equal parts, either together with other children from married partner or civil partner or on their own. Islamic law does not provide for sharing of the estate equally amongst children of the deceased, the daughters get half of whatever the sons inherited.

Other cultures practice either ultimogeniture system where the youngest son inherits the estate of the parents or the primogeniture system which entails inheritance by the eldest son. The Igbo culture practices the primogeniture culture, the eldest male child becomes the head of the family, he occupies the family house, the Isoko, Itsekiri and Urhobo culture in Delta state grants the eldest son the right to inherit exclusively.

The Bini native culture which practices the *Igiogbe* culture, grants the eldest male child the right to exclusively inherit the house the deceased lived and died in.

These customary laws are what makes the distinction between the intestate succession laws of Nigeria and the United Kingdom.

4.5 Challenges of the Laws of Succession

- Lack of uniformity of the laws of succession in Nigeria, instances where a Muslim man contracts a marriage under the Act, there will be clashes as to what law of succession is to be applied in the instance or what customary law should be applied where the customary law of the deceased is different from the customary law of his place and domicile.

The process of applying for grant of Probate or Letters of Administration can be cumbersome, even though the High Court allows persons to personally apply for a grant, most people need professional assistance as they do not know how to go about the process.³⁵²

- Several court officials do not adhere to the time-frame allotted for certain stages, there is always delay with the interview of sureties, return of bank applications by applicants.³⁵³

-Lack of complete testamentary freedom, testators in Nigeria cannot dispose their estate that is subject to the customary law or cannot dispose his estate that is contrary to the dictates of Islamic law if the testator was a Muslim. Though United Kingdom provides for complete testamentary

³⁵² Taiwo Olatokun, "Administration of Estate and Probate: Issues and Challenges." Available at <
<https://nji.gov.ng/wp-content/uploads/2020/11/ADMINISTRATION-OF-ESTATES-AND-PROBATE-Issues-and-Challenges.pdf>. > accessed 26 September 2023.

³⁵³ Ibid

freedom, spouses, children and dependants left out in the provisions of the will can contest it and request for provision out of the estate of the deceased in court.

Do Not Copy, Lead City University, Nigeria

Chapter Five

Summary, Conclusion and Recommendations

5.1 Summary of Findings

Succession is the orderly passage of power, assets or other property from one entity to another. Corporate and government structures also typically create rules of succession to ensure orderly transfer of power under a variety of circumstances.³⁵⁴ Succession basically means the devolution of the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death.³⁵⁵

It deals primarily with the distribution of a deceased person's estate to his heirs and successors. It deals with the rules governing the administration of the estate by the personal representatives of the deceased including state participation in respect of the real estate situate within its territory and personal estate of the deceased person subject to its jurisdiction.³⁵⁶ It suffices to say that succession may either be testate or intestate.

In Nigeria, succession can be testate or intestate. Where a deceased person made a will, he is said to have died testate. The testate succession is the passing of rights or property through a will³⁵⁷. Will is a written document that allows individuals to direct the way their inheritance would be

³⁵⁴ Patrelipartners Legal Practitioners, "Estate Planning and Succession in Nigeria" available at <https://www.patrelipartners.com/estate-planning-and-succession-nigeria> accessed on the 3rd of July 2023

³⁵⁵ Law Insider, "Succession definition" available at <https://www.lawinsider.com/dictionary/succession> accessed on the 3rd of July 2023

³⁵⁶ Animashaun & Oyeniyan "Law of Succession, wills and probate in Nigeria.;" MIJ Professional Publishers.P.3

³⁵⁷ B.A Garner, Blacks Law Dictionary (10th ed) p.1660

maintained and divided after their demise³⁵⁸ The intestacy succession is where a deceased person dies without writing a will or a valid will that fails to dispose all his assets or a leaving a document purportedly to be a will but does not comply with the formalities of a will.

The United Kingdom is a multi-unit state which consists of England, Wales, Scotland and Northern Ireland. Different rules regulate both moveable and immoveable property. The intestacy in the United Kingdom is statutorily regulated while that testacy is governed by the will of the testator.³⁵⁹

In Nigeria, testate succession is primarily governed by Wills Act, 1837 and applicable Wills Law of various states, Wills Law of Lagos, 1990, Wills Law of old Bendel State, 1976, the Wills (Soldiers and Sailors) Act, 1918, Wills Amendment Act, 1852 and Administration of Estate Laws of the various states, customary will and Islamic wills are also governed by various ethnic laws and Islamic laws. These laws govern testate succession in Nigeria and states how wills should be drafted and executor, the power and duties of executors and administrators and rights of beneficiaries and heirs.

For testate succession in the United Kingdom, the drafting and execution of wills is regulated by the Wills Act, 1837, Wills Act Amendment Act, 1852 and Administration of Estate Act, 1925. The Inheritance (Provision for Family and Dependants) Act, 1975 allows certain people to claim

³⁵⁸ Economic Times, 'What is Will' available at <https://m.economictimes.com/definition/will/amp>. Accessed on the 4th of July 2023

³⁵⁹ Michael, Miebeka; Succession and Inheritance of Propert under Nigerian Laws;A comparative analysis. European Journal of Social Sciences available at <https://europeanjournalofscialsciences.com/issues/PDF/EJSS-62-2-05.pdf> Last accessed on the 14th of August 2023

financial provision from a deceased person's estate where the will or the operation of the statutory rules which apply on intestacy fail to make reasonable provision for them.³⁶⁰

The Wills Act, 1837 and Wills Laws in essence provides that requirement for a will to be in writing, it has to be attested by two witnesses, soldiers and mariners are exempted from the formalities. A will does not need to be published for it to be properly attested.

The incompetency of a witness does not invalidate a will, gifts made to a witness or their spouse is void. A creditor of the estate can also be called as a witness.

A will revoked by a marriage with the exception of exercise of power of appointment or the intended spouse specifically named, it can also be revoked by a will or codicil specifically revoking or an act of destruction which either burning, tearing or shredding. It can however be revived by a will or codicil executed in the same manner.

The Administration of Estate Act, 1925 and Administration of Estate Laws in the administering and distribution of a testator's estate provides the court with powers to summon named executors in a will to prove or renounce a probate, grant probate to a trust corporation named as executor.

whether alone or jointly. The court can annex a will to an infant executor's guardian or anyone deemed fit.

It also grants personal representatives the power to invest the residue of the estate, the duties of personal representatives include payment of funeral expenses, testamentary and administrative expenses, debts and other liabilities.

³⁶⁰ "What is the Inheritance (Provision for Family and Dependants) Act 197?" available at < <https://www.thegazette.co.uk/wills-and-probate/content/104007>. > accessed 8 September 2023.

The court can also make an addition to the number of personal representatives in the case of a sole personal representative on application.

Despite the seeming similarities considered between the testate succession laws of Nigeria and the United Kingdom, there are some conspicuous differences. The Wills Laws though very similar to the Wills Act has some peculiar provisions made to be more in tune with the way of life in Nigeria, the Wills Laws of Nigeria does not give complete testamentary freedom as estate subject to customary or Islamic law cannot be devised under the Act. The Wills Law also unlike the Wills Act makes reasonable provision for spouses, children and dependant and also empowers them to seek grants in court where none has been made.

The Wills Laws in deviation from the Wills Act prescribes the age of eighteen as the required age for a testator as opposed to the twenty-one years requirement by the Act.

The Administration of Estate Laws also prescribes the age of twenty-one as the requirement for an executor which is different from the eighteen years requirement by the Administration of Estate Act 1925.

Furthermore, Nigerian succession laws also consist of customary testate succession, a person who lived under customary law can execute a will in accordance to the native law he/she practices and for Muslims they can dispose their estate in accordance to the Islamic guidelines for wills.

The United Kingdom's testate succession is codified into the Wills Act and Administration of Estate while Nigeria's testate succession is governed by codified laws like the Wills Act, Wills Laws, Islamic law and unwritten laws of the indigenous native laws.

For intestate succession; it is divided into two, statutory and customary law. Administration of Estate Laws of the various state applies and where there is no local enactment, the Administration of Estate Act 1925 applies.

In Islam law which governs the Hausa tribe's succession process, the rules of inheritance can be found in Chapter 4 verses 7, 11 and 12 of the Quran. Basically, the Quran is the law of succession for the Hausa customary law.³⁶¹

Where the property is subject to customary law or deceased was married under customary law or was subject to native law, customary law applies.³⁶²

In case of intestacy, the Administration of Estate Act 1925 (as amended) sets out the rules of intestacy in England and Wales. The Succession Act 1964 regulates intestate inheritance in Scotland and Northern Ireland.

The Administration of Estate Act 1925 and Administration of Estate Laws of Nigeria provide the order of priority for intestacy succession, the spouse of the deceased is top with the children next, the surviving spouse gets to be the sole inheritor where the deceased is not survived by any child, the spouse and the children share the estate if the deceased is survived by a spouse and children, where there are no spouse and children, the next in line are the parents of the deceased , the brothers and sisters of full blood or half blood and their children can inherit, then grandparents

³⁶¹ “ Northern Succession” available at < <https://motun911.wordpress.com/2019/09/13/northern-succession> > accessed 8 September 2023.

³⁶² Anthony Diala “ Reform of Customary law of inheritance in Nigeria: Lessons from South Africa(2014)” available at < <https://www.saflii.org/za/journal/AHRJ/2014/31.PDF> > accessed 7 September 2023.

and uncles and aunts. Where the deceased is not survived by any relative, the estate returns to the government of the intestate's domicile or where the property is situated.³⁶³

The intestate succession in the United Kingdom is primarily governed by the Administration of Estate Act, 1925, while for the Nigerian Intestate succession is a fusion of Administration of Estate Laws various state which almost an exact replica of the Administration of Estate Act, 1925.

Under the laws of intestate succession in the United Kingdom, the spouse or civil partner of the deceased who died intestate can inherit the estate either wholly where there are no surviving relatives or partly where there are surviving relatives like children, parents, grandparents and siblings, while the Administration of Estate Laws in Nigeria also allows that, some customary laws forbid that. The Yoruba culture does not allow for wives to inherit her husband's estate. Also, the Isoko culture in Delta state, the wives are not allowed inheritance.

Also, for adopted children, the United Kingdom, a properly adopted child who have been validly adopted under the law and adoption is finalized before the death is intestate has the same right as a biological child, the adopted child can inherit property of his/her adoptive parents.

Adoption in Islam however, does not give the adopted child the same right as a biological child, the adopted child can only inherit through a grant or will but not under intestacy. Also, under the Yoruba customary law, the qualification for inheritance is generally traced or dependent on blood relationship, the right of an adopted child is inferior to that of a biological child.

The Bini culture for intestate succession, only a biological child of the deceased that has a right of inheritance, only a person who has blood ties with the deceased can inherit. An adopted child

³⁶³ Section 46, Administration of Estate 1925: Section 49, Administration of Estate Laws, Lagos State

who has no blood relationship with the deceased cannot inherit the intestate's estate wholly or partly.

Furthermore, the law of intestate succession in the United Kingdom provides that children of the deceased inherit in equal parts. The children of the deceased inherit in equal parts. The children get to inherit equally from the estate. Children from unmarried parents or unregistered civil partnership can also inherit in equal parts, either together with other children from married partner or civil partner or on their own. Islamic law does not provide for sharing of the estate equally amongst children of the deceased, the daughters get half of whatever the sons inherited.

Other cultures practice either ultimogeniture system where the youngest son inherits the estate of the parents or the primogeniture system which entails inheritance by the eldest son. The Igbo culture practices the primogeniture culture, the eldest male child becomes the head of the family, he occupies the family house, the Isoko, Itsekiri and Urhobo culture in Delta state grants the eldest son the right to inherit exclusively.

The Bini native culture which practices the *Igiogbe* culture, grants the eldest male child the right to exclusively inherit the house the deceased lived and died in.

These customary laws are what makes the distinction between the intestate succession laws of Nigeria and the United Kingdom.

5.2 Conclusion

The Nigerian Legal System developed from the British legal system as Nigeria was a British colony until independence in 1960. Therefore even after colonization, Nigeria still retained some of the English laws by receiving of English laws consisting of statutes of general application till the year 1900.

Succession basically means the devolution of the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death.³⁶⁴

It deals primarily with the distribution of a deceased person's estate to his heirs and successors. It deals with the rules governing the administration of the estate by the personal representatives of the deceased including state participation in respect of the real estate situate within its territory and personal estate of the deceased person subject to its jurisdiction.³⁶⁵ It suffices to say that succession may either be testate or intestate.

Testate succession is the passing of rights or property by will.³⁶⁶ The deceased's properties is usually administered and distributed according to the content of the will. For wills, a man can bequeath all his assets to total strangers.³⁶⁷

Intestate succession occurs when a person dies without leaving a will. A person is considered intestate if he did not leave a will to dispose his estate or he left a will which was successfully challenged and held to be invalid due to lacking testamentary capacity, undue influence or the will does not comply with the provisions of the prevailing laws for a valid will where the estate is situate or the domicile of the deceased.

Nigeria's law of succession is a fusion of statutory law and customary law which itself is a combination of ethnic indigenous laws and Islamic law. The key laws governing succession are: Marriage Act, 2004, the English Wills Act, 1837, Administration of Estate Act, 1925, the Wills

³⁶⁴ Law Insider, "Succession definition" available at <https://www.lawinsider.com/dictionary/succession> accessed on the 3rd of July 2023

³⁶⁵ Animashaun & Oyeniya "Law of Succession, wills and probate in Nigeria.;" MIJ Professional Publishers.P.3

³⁶⁶ B.A Garner, Black's Law Dictionary(10th ed) p.1660.

³⁶⁷ *Modern Nigeria Land Law* (Evans Brothers) 1989 p.153.

(Soldiers and Sailors) Act, 1918, Succession Law Edict, 1989, Wills Law of various states and customary law and Islamic law which is according to the dictates of the Quran.

The laws of succession in the United Kingdom are quite simpler than that of Nigeria, the laws are codified, the drafting and execution of wills is regulated by the Wills Act 1837, Wills Act Amendment Act 1852.

In case of intestacy, the Administration of Estate Act 1925 (as amended) sets out the rules of intestacy in England and Wales. The Succession Act 1964 regulates intestate inheritance in Scotland and Northern Ireland.

The Inheritance (Provision for Family and Dependents) Act 1975 allows certain people to claim financial provision from a deceased person's estate where the will or the operation of the statutory rules which apply on intestacy fail to make reasonable provision for them.³⁶⁸

The Laws of Succession tries to fulfill the wishes of the deceased by allowing or giving him/her the right to direct devolution of estate after death in a manner that pleases him/her. It tries to provide a fair way to distribute a person's estate after death so that dependants and family are not cheated out of the deceased's estate. It also provides for aggrieved parties to find remedy or justice in situations where there is injustice or discrimination in the devolution of the deceased's estate. It acts as a check to ensure that wills and other testamentary documents are the wishes of the deceased by providing testamentary capacity tests and tests for fraud or duress.

³⁶⁸ "What is the Inheritance (Provision for Family and Dependents) Act 1975?" available at <
<https://www.thegazette.co.uk/wills-and-probate/content/104007>. > accessed 8 September 2023.

For testate succession, the laws spell out the requirements for the wills for it to be considered valid after the death of the testator. The laws of testate succession give the testator the power to distribute his estate to what extent and to whom it can be given.

The wills are to be in writing, the testator must have testamentary capacity; that is he must be of sound mind and up to testamentary age, the number of witness required, if the witnesses can receive gifts from the testator, how a marriage affects a will, how a will can be properly revoked and amended and how it can be revived.

It also grants power to personal representatives and executors named in the will of the testator to prove or renounce probate, invest the residue and payment of funeral expenses, debts and other liabilities.

Also, it gives the court power to annex a will where there the executor is an infant or make an addition to the number of executor or personal representatives on application.

For intestate succession, the laws provide for who can inherit the estate where there is no will to offer guidance on that. It lists out the beneficiaries of the estate, in what order do they get to inherit and in what proportions.

The laws of succession in Nigeria and the United Kingdom, are similar as a result of the colonial history between the two countries, the laws in Nigeria way made to resemble the laws in the United Kingdom.

The Wills Act and Wills Laws are similar in their provisions for writing, attestation by two witnesses, soldiers and mariners being exempted from the formalities, no need for it to be published, gifts to witnesses or their spouses are void, a will is revoked by marriage with some exceptions to an act of exercise of power of appointment or named of the parties specifically

named, then also by tearing, shredding and burning either by the testator or by someone instructed by the testator in his presence. A revoked will can be revived by re-execution. The Wills Act Amendment Act amends the position of the signature of the testator.

The laws vary in the age requirement, one prescribes the age of twenty-one for a testator and the other eighteen years. While the Wills Act grants total testamentary freedom to the testator to dispose of his estate to whomever he/she wishes, the Wills Laws restrict the freedom to only properties that are not subject to customary or Islamic law and also compelling the testator to make reasonable provisions for his/her family and dependants.

The Administration of Estate Act 1925 and the Administration of Estate Laws are so similar in their provision for distribution and administration of a testator's estate after death. The powers of the executors and personal representatives to prove or renounce a probate, invest the estate and pay for expenses after the death of the testator. The court's powers to annex a will to an infant's guardian or anyone fit and also add to the number of personal representatives of a testator's estate.

The Administration of Estate Act and Laws also spell who can inherit from a person who dies intestate's estate and the order of distribution. The spouse and issues of the marriage are usually top priority, (whether adopted or out of wedlock) then closely followed by parents, siblings and their issues whether half blood or full blood, grandparents and then finally uncles and aunts, their issues of either full blood or half blood.

However, the differences are the prescribed age for an executor, while one prescribes the age of twenty-one for an executor, the other prescribes eighteen.

There are however additions to the laws of succession in Nigeria, Nigeria includes customary law which is a combination of indigenous ethnic laws and Islamic laws. Ethnic laws are largely unwritten while for Islamic laws the rules are contained in the Quran.

The ethnic laws and the Islamic laws vary from the statutory laws, some of the ethnic laws deny the spouses the right to inherit from the estate of the deceased intestate, the wives mostly only get life possessory rights to the house they lived with the deceased which end when they die or remarry.

Furthermore, the Islamic law does not grant adopted children same right as biological children, they can only inherit from a grant or will. Ethnic laws like the Yoruba and Bini customary law, also do not allow adopted children to inherit from their deceased adoptive parents who died intestate. The method of distributing the estate amongst the children is also different from the method provided by the statutory laws. As opposed to the children getting the estate in equal parts, the Islamic laws grant the daughters half of what the sons get while ethnic laws sometimes grant the entire estate to the sons of the family or a particular son either younger or older. The *Markis* in the northern part of Nigeria grants the youngest son the inheritance while the Igbo and Bini culture grants it to the eldest son of the deceased.

These laws of succession are not perfect, there are challenges to it; lack of uniformity of the laws of succession in Nigeria, instances where a Muslim man contracts a marriage under the Act, there will be clashes as to what law of succession is to be applied in the instance or what customary law should be applied where the customary law of the deceased is different from the customary law of his place and domicile.

The process of applying for grant of Probate or Letters of Administration can be cumbersome, even though the High Court allows persons to personally apply for a grant, most people need professional assistance as they do not know how to go about the process.³⁶⁹

Several court officials do not adhere to the time-frame allotted for certain stages, there is always delay with the interview of sureties, return of bank applications by applicants.³⁷⁰

Lack of complete testamentary freedom, testators in Nigeria cannot dispose their estate that is subject to the customary law or cannot dispose his estate that is contrary to the dictates of Islamic law if the testator was a Muslim. Though United Kingdom provides for complete testamentary freedom, spouses, children and dependants left out in the provisions of the will can contest it and request for provision out of the estate of the deceased in court.

Nigeria can however learn and try to amend its laws of succession and method of succession by taking some features of the United Kingdom's succession laws by having a codified system for the laws in Nigeria which will make it a simpler process for the professionals and members of the public. Having guiding principles also help to curb barbaric and unfair practices practiced by the various cultures in the country and curb confusing and conflicting decisions by the courts.

5.3 Recommendations

³⁶⁹ Taiwo Olatokun, "Administration of Estate and Probate: Issues and Challenges." Available at <
<https://nji.gov.ng/wp-content/uploads/2020/11/ADMINISTRATION-OF-ESTATES-AND-PROBATE-Issues-and-Challenges.pdf>. > accessed 26 September 2023.

³⁷⁰ Ibid

The United Kingdom practices a codified system for the laws of succession, which is arranged laws into a systematic code, this helps identify inconsistent, duplicate and ambiguous laws. It creates a uniform source that is easy to access for both professionals and the public.

A codified system that is accessible in libraries and on the internet makes it easier for members of the public to make informed decisions about the type of marriage, they contract will affect their estate is administered and distributed.

There should be a single codified law for customary succession in Nigeria, the public will know how the marriage they contract will affect their estate administration and distribution and also how having a will and not having one affects the people or loved ones that survive the deceased.

A codified system also makes it easier for courts to resolve succession suits and actions, due to the so many laws of succession in Nigeria, it brings about confusion on what laws to apply in the situation. For example, the Marriage Act³⁷¹ provides that where a man contracts a marriage under statutory law, where the spouse or issues of the marriage survive the intestate, the method of administering and distributing will be in accordance to the rules set out in the Administration of Estate Laws of the state the intestate was domiciled or where the estate is situated.

In the case of *Salibu v Nwariaku*³⁷² the deceased died intestate survived by his wife whom he married under the Marriage Act. The supreme court held that the applicable law to the succession

³⁷¹ Section 36, Marriage Act

³⁷² [2003] 7NWLR (pt819) p.452

and distribution of estate was the Administration of Estate Laws.³⁷³ Statutory marriage takes over all forms of inheritance as held in the case of *Okon v A.G Cross River*.³⁷⁴

However, what happens when an Islamic man contracts a marriage under the act or there are instances where even a marriage under the Act does not guarantee administration and distribution of estate according to the Administration of Estate Laws.

A subsequent marriage under the act cannot deprive an eldest surviving son his right to inherit the *Igiogbe*, even if the matter of the eldest surviving son was not married properly to the deceased.³⁷⁵

Therefore, a codified system will reduce instances of conflict of laws when deciding a method for administration and distribution of estate. Codification of the customary law will bring about certainty. A society's law commands respect and obedience where the individual knows the governing law. A codification will weed out all relevant areas and uncertainties in the law. It is essential for a reliable legal system, where the law is adequately enshrined, it tackles injustice and unfair practices. It will also bring about a unification of customary laws eliminating

³⁷³ Jide Bodede; Intestate Succession in Nigeria under the Marriage Act. Available at

<https://www.linkedin.com/pulse/intestate-succession-in-nigeria-under-the-marriage-act-jide-bodede>. Last accessed on the 15th of August 2023

³⁷⁴ [1991]6NWLR (Pt 248) p452

³⁷⁵ Efe Sophia Osamuode, "Benin Customary Law of Succession" < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

the problems of uncertainty and inconsistency that multiple sets of law impose. Harmonization of the laws system has been successfully implemented in Ghana.³⁷⁶

Customary laws will be harmonized with the principles of natural justice just like the common law and equity, customary law and principles of natural justice, can be codified into a single legal system and be applied side by side where necessary.

Also not have beneficiaries and dependants of a deceased in the mercy of customary laws which can be barbaric and unfair, as the laws provide that state subject to customary laws or marriages contracted under ethnic or Islamic laws will be administered and distributed by the laws. There should be a guideline on who are the beneficiaries, who can be considered as dependants, the rights of the beneficiaries and dependants. Any customary law (ethnic and Islamic laws) contrary or inconsistent with the guideline should not be followed or appointed in a court of law.

These guidelines will also reduce confusing decisions made by the court just like the case of *Idehen v Idehen*³⁷⁷ two houses lying some kilometers apart from each other were held to be the *Igiogbe* of the deceased. This decision brought about controversies if a man's house closely apart can constitute as *Igiogbe*.³⁷⁸

³⁷⁶ Reginald Onuoha, "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue." (2020) Nigerian Law Guru available at < <https://nigerianlawguru.com/article>. > accessed 1 November 2023.

³⁷⁷ [1991] 4 NWLR (Pt 198) 382

³⁷⁸ Osaretin Aigbovo, "The Principal House in Benin Customary Law"(Lecturer, Department of Public Law, University of Benin) available at < <https://nigerianlawguru.com/articles/customary%20law%and20procedure/THE%20PRICIPAL%20HOUSE%20IN%20BENIN%20CUSTOMARY%20LAW.PDF> > accessed 22 September 2023.

The laws of succession affects every individual in the society, the law must be reformed to redress the loopholes, the inadequacies and the harsh consequences of some customary law applications. Amendments allows laws and policies to be refined over time. It is necessary as the society keeps evolving over time and laws have to implement these changes and make room for advancement. The United Kingdom have made amendments to their laws over time. One example of the reforms of their succession laws is the Inheritance (Provision for Family and Dependants) Act 1975, which allows a person to have total testamentary freedom to dispose his/her estate as he/she pleases and not neglecting family members and people who depend wholly or partly on the testator at the time of their death.

Nigeria has to be open to amendments of the succession laws in order to be progressive like the United Kingdom. One of the major amendments to the laws is to give a testator complete freedom so testator's can distribute their estate as they please and to the right beneficiaries that way estates do not have to devolve on a fixed heir whether he is an interloper, irresponsible or unfair, Nigeria can amend its law and only provide for Family and Dependants only what is necessary or the standard while giving the estate to a heir or beneficiary that is deserving or is deemed fit according to the testator who would know better.

This amendment will also help in the discrimination against women in regards to inheritance. This way responsible and well deserving beneficiaries get to inherit the estate whether male or female.

On an ending note, while laws are made by the legislative arm of government, the judiciary interpret and uphold the laws in court. The judiciary has to do better in the enforcement of the laws of succession and determination of how the law applies to individual scenarios and whether or not laws are constitutionally valid. The judiciary should uphold the laws which protect the

heirs and beneficiaries of the deceased's estate and reject laws that conflict constitutional standards like in cases of *Anekwe v Anekwe*³⁷⁹ and *Ukeje v Ukeje*³⁸⁰ where the Supreme Court in a unanimous decision confirmed that the Igbo customary law of inheritance, which excludes female children from inheriting their deceased fathers was unconstitutional.

Due to the plurality nature of the laws of succession in Nigeria, the courts are now saddled with the responsibility of weaving out the laws which are fair and just and won't result in injustice to any person.

5.4 Contribution to Knowledge

This research has carried out a comparative analysis of the laws of succession in Nigeria and the United Kingdom, providing knowledge on how the laws are similar to one another and in what way they differ. This will help students studying the law of succession, legal practitioners when administering and distributing the estate, and also when consulting clients on what form of succession will be best for their estate after their demise in different jurisdictions.

It has also provided knowledge for the court on how to administer and distribute the estate of a deceased, where there is a conflict of laws.

Also, the family members of the general public can be educated on how their estate will be administered and distributed after their demise, based on the type of succession, the marriage they contracted while alive, where they resided and where the estate is situated in accordance to the various laws applicable.

³⁷⁹ [2014] 9 NWLR (Pt418) 393:421

³⁸⁰ [2014] 11 NWLR (Pt 418) 384:408

Additionally, this research offers solution on how to go about the various customary law practices, which are discriminatory towards women and children and provides opportunity for interlopers to come take what does not belong to them.

Furthermore, it provides the solution of codification of customary laws, Therefore, a codified system will reduce instances of conflict of laws when deciding a method for administration and distribution of estate. Codification of the customary will bring about certainty. A society's law commands respect and obedience where the individual knows the governing law. A codification will weed out all relevant areas and uncertainties in the law. It is essential for a reliable legal system, where the law is adequately enshrined, it tackles injustice and unfair practices. It will also bring about a unification of customary laws eliminating the problems.

This research has contributed to knowledge on succession, the laws applicable per jurisdiction, how they are similar and in what way they differ, for better understanding and use while also providing ways to mitigate problems.

5.5 Areas for Further Study

The areas for further study, are the other laws of succession in the United Kingdom that were not discussed in this thesis. The Inheritance & Trustees Power Act, 2014 and the Cohabitation Rights Bill 2017 which goes beyond succession to spouses and relatives only, the Cohabitation Rights Bill 2017-19, could also affect unmarried couples living together in the future. With the Cohabitation Rights Bill 2017-19 unmarried partners get to inherit the property of their partners.

Another area for further study is the alternative to succession, which allows individuals to devolve their estate while still alive in order to guarantee immediate transfer of estate to beneficiaries of their choosing. This method is gift inter vivos.

Gift inter vivos as contemplated in the law of succession, are such that the owner of the property or assets donates it to another without expectation of death. In case of inter vivos the gift must go into immediate and absolute effect. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts.³⁸¹

In *Pellington & Anor v Waine & Ors*³⁸², The court emphasized that “An Inter Vivos gift exists if the donor, while alive, intends to transfer unconditionally legal title to property and either transfers possession of the property to the donee or some other document evidencing an intention to make a gift and the donee accepts the gift”³⁸³

Gift inter vivos offers flexibility and control over asset distribution. For testamentary gifting, the donor has to be dead before property is passed, at that time the testator will not have control over the estate distribution and there is no guarantee, the property will pass to the desired benefactor, as the will can be contested by unsatisfied heirs leading to legal disputes.

³⁸¹ Goodwill Kileyen, “The Conundrum of Gifts Inter Vivos and Bringing Property to the HotchPot” available at <https://www.linkedin.com/pulse>. Accessed on the 5th of December 2022.

³⁸² [2000] ALL ER.

³⁸³ Goodwill Kileyen, “The Conundrum of Gifts Inter Vivos and Bringing Property to the HotchPot” available at <https://www.linkedin.com/pulse>. Accessed on the 5th of December 2022.

Bibliography

Books

Animashaun & Oyenyin “*Law of Succession, wills and probate in Nigeria.*; MIJ Professional Publishers. 6th edn 2019.

Garner B.A, *Blacks Law Dictionary* (11th ed) 2019 P.1660

Oni B.A “The Law of Succession in Nigeria” 5th edn, lagos university press and bookshop ltd 2019

Kerridge R Parry & Kerry, “The Law of Succession” (London swwet & Maxwell 12 ed) p.1.

Tobi Nicki [1996] “Sources of Nigerian Law” (MIJ Professional Publishers Ltd, Lagos);

Donatus S.O, “Bini Customary Law of Inheritance: Shift in ‘Igiogbe’ as a case study” (Masters thesis, Dalarna University 2012.

Journal Article

Jide Bodede; “Intestate Succession in Nigeria under the Marriage Act” WhiteFields Legal Vol 2 2020. Pp.50

Michael, Miebeka, Succession and Inheritance of Propert under Nigerian Laws; A comparative analysis. European Journal of Social Sciences. Vol 62, 2021, pp50-63

Oriakhoba 0.B “Statutory Limitations to Testamentary Freedom in Nigeria: A Comparative Analysis” Nnamdi Azikwe University Journal of International Law and Jurisprudence. Vol 4, 2023 pp 60-83.

Adebayo T.O “Legal Threshold of a Valid Will in Nigeria” Afridi&Angell publishers. Vol 5 2023.

Ayotebi O, “The Administration of Wills Under the Islamic Law System in Nigeria” NIALS Journal of Public Law, Vol 3, 2021.

Ngwu, E.S, “Probate Registry and Administration of Estates in Nigeria” National Judicial Institute Law Journal, Vol 17 2021.

Paul O.I “Succession Under Benin Customary Law in Nigeria: Igiogbe matters arising” Journal of Law and Conflict Resolution, Vol 3 2011 pp117-129.

Ademola, A “Analysis of Law of Intestate Succession under the Yoruba Customary Law of South West” European Journal of Social Science Vol 58 2019, pp 277-286.

Adebayo. A “An Appraisal of Customary Succession in The Western and Eastern Part of Nigeria” Common Wealth Law Review Journal, Vol 8 2022.

The Internet

Patrelipartners Legal Practitioners, Estate Planning and Succession in Nigeria. <https://www.patrelipartners.com/estate-planning-and-succession-nigeria> accessed on the 3rd of July 2023

Law Insider, Succession definition <https://www.lawinsider.com/dictionary/succession> accessed on the 3rd of July 2023

Moses Bello, Principles and Practice under Customary Law. <https://nji.gov.ng/images/workshop-paper/2017/refresher-judges-and-kadis/s4.pdf> accessed on the 3rd of July 2023

Economic Times, What is Will <https://m.economictimes.com/definition/will/amp>. Accessed on the 4th of July 2023

Jide Bodede; Intestate Succession in Nigeria under the Marriage Act. <https://www.linkedin.com/pulse/intestate-succession-in-nigeria-under-the-marriage-act-jide-bodede>. Last accessed on the 15th of August 2023

Michael, Miebeka; Succession and Inheritance of Property under Nigerian Laws; A comparative analysis. <https://europeanjournalofsocialsciences.com/issues/PDF/EJSS-62-2-05.pdf>. Last accessed on the 24th of August 2023

Saliku Muhammad, Principles and Practices of Succession under Islamic Law. <https://nji.gov.ng/images/workshop.papers/2017/refreshed> last accessed on the 24th of August 2023

Donatus Sunday, Bini customary law of inheritance, shift in Igiogbe as a case study June 2012 <https://du.diva-portal.org/smash> last accessed on the 28th of August 2023

The Economic Times, What is Will <https://m.economictimes.com/definition/will/amp>. Accessed on the 4th of July 2023.

“Law of Succession” UOLLB First Class Law Notes(2023) < <https://www.uolb.com/blog/law/law-of-succession> > accessed 5 September 2023.

“Introduction to law” < <https://www.toppr.com/guide/business-law/cs/introduction-to-law>. > accessed 5 September 2023.

“Meaning, Nature and Function of Law” < <https://law.uok.edu.in/files/5ce6c765-1013-446c-bbac> > accessed on 5 September 2023.

13. Legal Practitioners “an overview of estate planning and succession in Nigeria.” < <https://www.patrelipartners.com/estate-planning-and-succession-in-nigeria> > accessed 5 September 2023.

Britannica dictionary “inheritance” < <https://www.britannica.com/topic/inheritance-law> > accessed 5 September 2023.

“Inheritance and customary law in Nigeria” (2018) < <https://www.leadwaycapital.com/inheritance-and-customary-law-nigeria> > accessed 5 September 2023.

Law District “Estate” < <https://www.lawdistrict.com/legal-dictionary/estate/amp> > accessed 5 September 2023

Julia Kagan “what is a beneficiary? How they work, types and examples”(august2022) < <https://www.investopedia.com/terms/b/beneficiary.asp> > accessed 5 September 2023.

“Customary law” < <https://www.learnnigerianlaw.com/learn/legal-system/customarylaw> > accessed 6 September 2023.

Mathew Enya “ Customary Law, Social Development and Administration of Justice in Nigeria” < <https://www.scirp.org/journal/paperinformation.aspx?paperid73207> > accessed 6 September 2023.

“What Is The Difference between Testate and Intestate?” < <https://www.dicksonlegal.com/what-are-the-differences-between-testate-and-intestate/>. > accessed 5 September 2023.

Patrick Hicks “Everything You Need to Know About the Role of a Testator of a will” < <https://trustandwill.com/learn/testator> > accessed 5 September 2023.

The Gazette “what is testamentary capacity” < <https://www.thegazette.co.uk/all-notices/content/100844> > accessed 5 September 2023.

Dayo Audu and Esther Randle, “The Concept of Wills: Law and Importance”(august 2022) < <https://www.mondaq.com/nigeria/wills-intestacy-estate-planning> > accessed 5 September 2023.

Julia Kagan, “what is an executor? Definition and responsibilities” (July 2022) < <https://www.investopedia.com/terms/e/executor.asp> > accessed 5 September 2023.

“What is a Deed of Assent in Nigeria” < <https://chamanlawfirm.com/what-is-a-deed-of-assent-in-nigeria> > accessed 5 September 2023.

“intestate succession” < <https://www.cornell.edu/wex/intestate-succession> > accessed 6 September 2023.

PenningtonCoope“theintestacyrules”<

<https://www.penningtonslaw.com/expertise/individuals/contentious-probate-and-trust-dispute> > accessed 6 September 2023.

“What is an administrator of estate?” < <https://www.freewill.com/learn/administrator-of-estate/>. > accessed 6 September 2023.

“ Wills and Probate in England and Wales” < <https://worldwidelawyers.co.uk/wp/wp-content/uploads/2014/16/willprobatecouncil-england.pdf> > accessed 7 September 2023.

.McDermott Will and Emery “ Succession law in United Kingdom(England and Wales) < <https://www.lexology.com/library/detail.aspx/g=f6b1994c-b5eb-4da7-b4b6-1236ofb7160b> >

accessed 7 September 2023.

“ What is Inheritance and Customary Law in Nigeria” < <https://chamanlawfirm.com/what-is-inheritance-and-customary-law-in-nigeria> > accessed 7 September 2023

Moses Bello “ Principles and Practice of Succession Under Customary Law” < <https://nji.gov.ng/images/workshop-papers/2017/refreshed-judges-and-kadis/s4.pdf> > accessed 7

September 2023

“Who can Inherit if there is no will-the rules of intestacy” <
<https://www.citizensadvice.org.uk/family/death-and-wills/who-can-inherit-if-there-is-no-will-the-rules-of-intestacy> > accessed 7 September 2023

Anthony Diala “ Reform of Customary law of inheritance in Nigeria: Lessons from South Africa(2014)” < <https://www.saflii.org/za/journal/AHRJ/2014/31.PDF> > accessed 7 September 2023.

“ Northern Succession” < <https://motun911.wordpress.com/2019/09/13/northern-succession> > accessed 8 September 2023.

“What is the Inheritance (Provision for Family and Dependants) Act 197?” <
<https://www.thegazette.co.uk/wills-and-probate/content/104007>. > accessed 8 September 2023.

Taiwo Olatokun, “Administration of Estate and Probate: Issues and Challenges.” <
<https://nji.gov.ng/wp-content/uploads/2020/11/ADMINISTRATION-OF-ESTATES-AND-PROBATE-Issues-and-Challenges.pdf>. > accessed 26 September 2023.

Timor Leste and others, “The Law of Succession” (2018) < <https://law.standitural.edu.wp-content/uploads/2018/04/timor-leste-inheritance-law.pdf>. > accessed 29 September 2023.

Abubakari and others, “Plural Inheritance Laws, Practices and Emergent Types of Property-Implications for Updating the Land Register” (2019),11,6007. <
<https://doi.org/10.3390/su112/6087>. > accessed 29 September 2023.

True Tamplin, “What is Estate Administration?” < <https://www.financestrategists.com/estate-planning-lawyer/estate-administration/>.> accessed 29 September 2023.

Muya Kihumba, “Testae Succession” (June 2018) <
<https://www.slideshare.net/MUYAKIHUMBA/testate-succession>. > accessed 29 September 2023.

Femi Atoyebi, “ An Overview of the Law of Succession in Nigeria.” (November 2019) < <https://femiatoyebi.com.ng/an-overview-of-the-law-of-succession-in-Nigeria>. > accessed 29 September 2023.

“What is the role of the executor of a Will?” < <https://www.shine.com.au/resources/wills-and-estate/role-of-executor-of-a-will/>. > accessed 29 September 2023.

.James Chen, “Administration: What It Is, Duties, Example” (July 2022) < <https://www.investopedia.com/terms/a/administrator.asp>. > accessed 29 September 2023.

Vanessa C Ezumah, “Succession and Inheritance Under Customary Law: Practice and Procedure” (May 2023) < <https://nji.gov.ng/wp-content/uploads/2022/05/succession-and-inheritance-1.pdf>. > accessed 29 September 2023.

Vaishali N, “ Muslim law of Inheritance” (July 2023) < <https://blog.ipleaders.in/muslim-law-of-inheritance/>. > accessed 29 September 2023.

“The rules of Intestacy explained.” < <https://www.co-oplegalservices.co.uk/probate-solicitors/rules-of-intestacy-explained/>. > accessed 30 September 2023.

“Law of Succession Definition: Everything You Need to Know” < <https://www.upcounsel.com/law-of-succession-definition#:~:text=and%20intestate%20succession> > accessed 11 September 2023.

Inge,Kroppenberg, “SuccessionLaw” < https://max-eup2012.mpipriv.de/index.php/succession_law > accessed 11 September 2023.

“Law of Succession Definition: Everything You Need to Know” < <https://www.upcounsel.com/law-of-succession-definition#:~:text=and%20intestate%20succession> > accessed 11 September 2023.

Succession Laws” < <https://www.legalmatch.com/law-library/article/succession-laws.html>. > accessed 11 September 2023.

“Overview of Wills Law in Nigeria” < <https://www.lexology.com/library/detail.aspx?g=a8acaace8-4da0-49c4-bcb5-a39e7dedf211>. > accessed 12 September 2023

“ The 1837 Wills Act” < <https://collegewillwriting.co.uk/wp-content/uploads/2022/07/the-wills-act-1837-2.pdf>. > accessed 12 September 2023.

“Wills Amendment Act 1852” < <https://leap.unep.org/countries/to/national-legislation/wills-amendment-act-1852#> > accessed 12 September 2023.

Wills Law of Lagos State” < <https://law.lawnigeria.com/2019/05/08/wills-law-2/>. > accessed 12 September 2023

“Wills Law of Lagos State” < <https://law.lawnigeria.com/2019/05/08/wills-law-2/>. > accessed 12 September 2023

Ahmadu Seidu Maliki, “ An examination of the nature and operations of Islamic and statutory laws of Testate Succession in Kaduna state, Nigeria” < <https://eujournal.org/index.php/esj/article/view/205/247>. Accessed 13 September 2023

Administration of Estate Law of Lagos state. Section 24-47. <https://lawnigeria.com/2018/02/26/administration-of-estate-law-of-lagos-state>. > accessed 26 September 2023

Mathew Enya “ Customary Law, Social Development and Administration of Justice in Nigeria” < <https://www.scirp.org/journal/paperinformation.aspx?paperid73207> > accessed 6 September 2023.

Jide Ogundimu “ Lecture Notes on Wills” < <https://jideogundimucosolicitors.co.uk/lecture-notes-on-wills> > accessed 13 September 2023.

Olatunji Daniel, “ Practice and Procedure in the Application of Wills Under the Customary Law” < https://njigov.ng/wp-content/uploads/2021/12/practice-and-procedure-in-the-application-of-wills-under-the-customary-law-by-hon-justice-olatumji-daniel-PCCA_OYO.pdf > accessed 13 September 2023.

Oyetola Muyiwa, “The Administration of Wills Under The Islamic Law System in Nigeria” < <https://lawpavillion.com/blog/the-administration-of-wills-under-the-islamic-law-system-in-nigeria.>> accessed 12 September 2023.

Taiwo Olatokun “Administration of Estate and Probate Issues and Challenges” < <https://nji.gov.ng/wp-content/uploads/2020/11/ADMINISTRATION-OF-ESTATE-AND-PROBATE-ISSUES-AND-CHALLENGES> > accessed 14 September 2023.

“Rules of Intestacy Flowchart 2023” < https://www.titleresearch.com/news/rules-of-intestacy-flowchart?hs_amp= > accessed 14 September 2023.

Unini Chioma “ Administration of Estate Law” < <https://thenigerialawyer.com/administration-of-estate-law/>. > accessed 14 September 2023.

O.M Atoyebi, “ The Administration of Wills under the Islamic Law System in Nigeria” < <https://omaplex.com.ng/the-administration-of-wills-under-the-islamic-law-system-in-Nigeria> > accessed 17 September 2023.

Donatus S.O, “ Bini Customary Law of Inheritance: Shift in ‘Igiogbe’ as a case study” (Masters thesis, Dalarna University 2012).

Vanessa C Ezumah, “ Succession and Inheritance Under Customary Law: Practice & Procedure” < <https://nji.gov.ng/up-content/uploads/2022/05/succession-and-inheritance-1.pdf> > accessed 18 September 2023.

Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

I.E Sagay, “Nigerian Law of Succession Principles, Cases Statutes and Commentators” 9 1st ed, 2006, Malhouse Press Limited at 73: Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023

“Yoruba Law of Succession” < <https://motun911.wordpress.com/2019/09/13/yoruba-law-of-succession>. > accessed 17 September 2023.

M.G Iwuna, ‘ AN APPRAISAL OF SELECTED NATIVE ESTATE LAWS AND CUSTOMS IN NIGERIA’ < <https://repos.unijos.edu.ng/jspui/bitstream/123456789/1792/1/an%20appraisal%20of%selective%20nature.pdf> > accessed 17 September 2023.

Ademola, Adekunbi, “Analysis of Law of Intestate Succession under the Yoruba Customary Law of South West Nigeria” < https://www.europeanjournalofsocialsciences.com/issues/PDF/EJSS_58-4-02.PDF > accessed 17 September 2023.

Adesoji Kolawole, “ An appraisal of customary succession in the western and eastern part of Nigeria”. < <https://thelawbridge.com/wp-content/uploads/2022/08/Adesoji-kolawole-adebayo-CLRJ.pdf>> accessed 18 September 2023.

“Delta State Succession” < <https://motun911.wordpress.com/2019/09/13/delta-state-succession/>. > accessed 27 September 2023.

“ Nigeria: Supreme Court upholds Bini Customary Law System of Primogeniture’ < <https://www.loc.gov/item/global-legal-monitor/2013-04-24/nigeria-supreme-court-upholds-bini-customary-law-system-of-primogeniture/>. > accessed 28 September 2023.

Chukwuma and Others, “Igiogbe custom as a mandatory norm in conflict of laws: an explanation of Nigeria Appellate Court Decision” (University of Manchester, Legal Research Paper 2023) < <https://deliverypdf.ssrn.com/delivery.php?ID=51310310300912500610911082>. > accessed 21 September 2023.

Idehen v Idehen[1991] 4 NWLR (Pt198) 382: “Nigeria: Supreme Court upholds Bini Customary Law System of Primogeniture’ < <https://www.loc.gov/item/global-legal-monitor/2013-04-24/nigeria-supreme-court-upholds-bini-customary-law-system-of-primogeniture/>. > accessed 28 September 2023.

Paul O. Itua, “ Succession Under Benin Customary law in Nigeria: Igiogbe matters arising” (Faculty of Law, Ambrose Ali University, Ekpoma Nigeria, 2011) < <https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>. > accessed 28 September 2023.

Osaretin Aigbovo, “The Principal House in Benin Customary Law”(Lecturer, Department of Public Law, University of Benin) < [https://nigerianlawguru.com/articles/customary%20law%and20procedure/THE%20PRICIPAL%](https://nigerianlawguru.com/articles/customary%20law%and20procedure/THE%20PRICIPAL%20HOUSE%20IN%20BENIN%20CUSTOMARY%20LAW)

[20HOUSE%20IN%20BENIN%20CUSTOMARY%20LAW.PDF](#) > accessed 22 September 2023.

David Richards, “A Guide to claiming under the Inheritance Act 1975”. < [https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975./](https://www.brethertone.co.uk/site/blog/claiming-under-the-inheritance-act-1975/) > accessed 15 September 2023.

“Law of Succession Definition: Everything You Need To Know” < <https://www.upcounsel.com/law-of-succession-definition#~:text=and%20intestate%20succession.> > accessed 11 September 2023.

“An Overview of Estate Planning and Succession In Nigeria” < <https://www.patrelipartners.eu/estate-planning-and-succession-in-Nigeria.> > accessed 5 September 2023.

84. “A guide to the Inheritance Rights for Adopted Children” , <https://www.justwillsandlegalservices.co.uk/blog/-a-guide-to-the-inheritance-rights-for-adopted-children.> > accessed 13 October 2023.

Martin Laver, “ Can an Adopted Child bring an Inheritance Claim.” < <https://www.tozers.co.uk/insights/can-an-adopted-child-bring-an-inheritance-Act-claim?> > accessed 13 October 2023.

Maharesi Trifo, Hanafi Tanawijaya; “Position of Adopted Children as Heir Based on The Compilation of Islamic Law(Case StudyNumber 2142/pdf.G/2017/PA.PLG)” < <https://www.atlantis-press.com/article/125973116.pdf.> > accessed 10 October 2023.

Schmidt Law, “ Freedom of disposition” available at < <https://www.lawcornell.edu/wex/freedom-of-disposition.> > accessed 8 November 2023.

Sara Zeigher “Feminist Theory” available at < <https://mtsu.edu/first-amendment/article/1255/feminist-theory>. > accessed 8 November 2023.

Biodata

A. Personal Data

Full Name: Ishaku Sarah Bamro

Address: No. 6 Besei Road, Army Barracks road, Jimeta-Yola, Adamawa State

Date and Place of Birth: 30th January 2000, Jimeta-Yola, Adamawa State.

Nationality: Nigerian

B. Name and Address of Next of Kin: Florence Ishaku. No. 6 Besei Road, Army Barracks road, Jimeta-Yola, Adamawa State

C. Educational Background

Educational Institution Attended with Dates and Qualification

Lead City University Ibadan, Oyo State (Master of Laws, LLM) In View

Lead City University Ibadan, Oyo State (Bachelor of Law, LLB) 2016-2021

Lutheran Junior Seminary, Mbamba, Adamawa State 2010-2016

Abti International Nursery & Primary School, Adamawa State 2006-2010

D. Working Experience With Dates

Ministry of Justice (NYSC) Oyo State 2021-2022

Afe Babalola Chambers (Internship)

2021

E. Award and Fellowship :

Nil

F. Membership of Academic Professional Bodies:

Nil

G. Publication (if any):

Nil

Do Not Copy, Lead City University, Nigeria

The University Compliance Certificate

This is to certify that this Thesis written by: Ishaku Sarah Bamro with Matric No: LCU/PG/003081 in the Department of Private and Business Law, Faculty of Law, Lead City University, Ibadan Oyo State Nigeria is in full compliance with the approved university format and style.

.....

.....

Signature

Date

Do Not Copy, Lead City University, Nigeria