BINI CUSTOMARY LAW OF INHERITANCE
Shift in “Igiogbe” as a Case Study

A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts in History (African Studies)

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Abstract

Igiogbe cultural heritage has existed since the founding of Bini kingdom without any controversy; however since the Supreme Court decision in Idehen v Idehen the issue of Igiogbe has assumed new dimensions. Igiogbe - the house in which a Benin man lived and died devolves on his first son absolutely; but since the beginning of 20th century litigation as to the real meaning of Igiogbe and who is entitled to inheritance thereof began to increase.

Controversies and increase in litigation over Igiogbe has occasioned a shift in the practice, the Bini’s are not conscious of some of these changes, most of them (Bini’s) still claim Igiogbe practices is rigidly adhered to. This study on Igiogbe inheritance in Bini kingdom is therefore carried out with a view to bringing out the changes in Igiogbe cultural practice using legal and anthropological tools to examine the changes.

While laying the foundation for the discussion on the main research object the researcher examined the origin and status of customary law in Nigeria. There after I examined Igiogbe inheritance in Bini kingdom. Igiogbe and the issue of first son were critically analyzed with the aid of the research questions bringing out the changes in Igiogbe concept from traditional practice to modern practice. Study shows Igiogbe practice is still relevant in modern Bini kingdom, however, the shift and changes in practice of this cultural milieu has lead me to ask some fundamental questions which I intend to answer in the broader research work in future.
Acknowledgment

I am indebted to many people for this work. First and foremost I thank God almighty who made my academic surgery to Sweden possible and crowning it with success. Secondly, I wish to thank my employer Nigerian Air Force (NAF) for releasing me to study abroad. My gratitude also goes to my family especially my mother, my sister Mrs Ajoke Franca Ayo-Duvbiama and my brother Emmanuel Denis Ohikhueme for their prayers, moral and financial support throughout my study, not forgetting my friends Gracelena Adams and Lisa Brooks for their prayers also. Many thank to my numerous friends’ world over who called me on phone to encourage me during my studies. I also thank my good friend Leila Tajbakhsh who helped with the initial typing of this work.

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Now to the special one my wife and jewel (Olubunmi Oluya) words are not enough to express my appreciation, I say thank you for your support, prayers, patience and condoning my absence, for playing the role of a father and mother in the life of our children while I was away, for been the best wife, for all the nights you sang with a lonely voice “when will I see you again, it’s been such a long time…darling please come back and be my very own” I thank you for been my fortress of love. To my crown Prince and Princesses (Destiny, Marvelous and Efeomo) who called every now and then to ask Daddy when are you coming back? I say sorry for not been there when you needed me most. This study is dedicated to my wife and children for the pains my absence caused them.
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<table>
<thead>
<tr>
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<th>Description</th>
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<tr>
<td>AC</td>
<td>Appeal Cases</td>
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<td>ALL NLR</td>
<td>ALL Nigerian Law Report</td>
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<tr>
<td>Igiogbe</td>
<td>Ancestral house</td>
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<tr>
<td>NMLR</td>
<td>Nigeria Monthly Law Report</td>
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<td>NLR</td>
<td>Nigeria Law Report</td>
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<td>NWLR</td>
<td>Nigeria Weekly Law Report</td>
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<tr>
<td>Oba</td>
<td>King</td>
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<td>Okaegbe</td>
<td>Head of the family</td>
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<td>Ors</td>
<td>Others</td>
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<td>Pt</td>
<td>Part</td>
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<td>SC</td>
<td>Supreme Court (Nigeria)</td>
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<td>Ukhure</td>
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CHAPTER 1

INTRODUCTION

Background
Many versions to the origin of Bini kingdom exist, one of such accounts as relate by the Omo N’Oba N’Edo, Uku Akpolokpolo¹, state as follows:

“According to our traditional history that evolved out of our ritualistic beliefs, this land of Edo is the origin of the world. It was founded by the first Oba of Benin who was the youngest son of the Supreme God. When the Supreme God decided to send his children to the world, He gave an option to each of them to choose what to take away. At that time (as the Holy Book came to confirm at a much later age) the universe was all water and no land. One of the children chose sign for wealth; the one took wisdom (or knowledge), another one chose medicine (mystical knowledge). When it came to the turn of the youngest child there was apparently nothing left for him to choose; but after looking around the whole place, he saw a snail shell which his senior brother had overlooked because it was very dirty. He took that, broke it open to find that it contained ordinary sand. The father commended him for his intuition and told him that on getting to the world he should empty the shell in any place of his choice and the place would be his. He emptied it in the area that is now Edo (Benin) and the whole place became land. His brothers who had been hovering around for somewhere

¹ The present reigning Oba of Benin
to rest then came around to request for a portion of land to settle on.

These other brothers represent the three shades of “ebo” or “white men”-as we call them- who occupy the rest of the world. That is why one of the attributes of the Oba is that he owns land up to “evbo-ebo”, meaning European country…”

However, I prefer the account of Egharevba³, according to him, “many many years ago; the Bini’s came all the way from Egypt to found secure shelter in the present day Benin kingdom after a short stay in Sudan and Ile Ife”.

Map of Edo state. The down blue part is Benin kingdom showing the seven local council areas.

Benin is the present day capital of Edo state in the South-South Zone of Nigeria, formerly the headquarters of the then mid-western region. The Benin speaking people occupy seven local Government Areas in Edo state, namely Oredo, Ikpoba-Okha, Egor, Orhiowon, Uhuunmwode,

³ Egharevba J.U (2005:1) A Short History of Benin (Fifth edition). Fortune and Temperance Publishing Co. Benin City. I prefer this account because it sound logical and more convincing when compared to the Oba’s account that base his argument on ritualistic beliefs.
Ovia North-East and Ovia South-West; of these seven Area Council Oredo, Ikpoba-Okha and Egor make up Benin City which had a total of 1,086,882 inhabitants.4

Benin City is the traditional headquarters of Benin kingdom with Oba of Benin as the traditional head. The traditional name is Edo; they speak Edo (Bini) as their native language and English as second language. Nigeria Pidgin English is mostly spoken by all. Edo and Benin mean the same thing. According to Osemwowa, “Benin is Edo and Edo is Benin”5

According to Chief Sam Igbe, Benin is famous for handicrafts in bronze, ivory, and wood, apart from being famous for handicrafts, a visit to Benin reveal their cultural identity; everything about the Binis is culture. The Binis are married to their culture and culture is part of the Binis life, when compared to other ethnic groups in Nigeria the Binis are more attached to their culture6.

As in other parts of Nigeria the Binis have multiple customs and traditions (customary law), examples of these are Bini customary law of marriage, Bini customary land Tenure system and Bini customary law of inheritance and succession. Under Bini customary law of inheritance and succession the “Igiogbe” that is the house where a Benin man lived and died has gained prominence and notoriety. Some will say complex customs, however, according to Per Belgore, JSC, the Bini native laws and custom relating to hereditary chief and Igiogbe is not complex as some people appear to view it7

**Problem Statement**

*Igiogbe* is the house in which the deceased lived and died and usually, though not always, where he was buried which automatically devolves on the eldest surviving son. *Igiogbe* cannot be disposed of by a will8. This aspect of Bini customary law has been in existence and practice for centuries without any problem of concept and what constitute *Igiogbe*, and who is entitled to inheritance thereof- no dispute or controversies over *Igiogbe* and its inheritance. The pattern and purpose of building houses in ancient Bini kingdom can be greatly responsible for lack of dispute and controversies over the inheritance of *Igiogbe* as at then. However, from early 20\textsuperscript{th} century

6 Interview with Chief Sam Igbe, “the Iyase of Benin kingdom” (Benin Traditional Prime Minister). June 2011, at Benin city
7 Per Belgore, JSC. In Lawal-Osula v Lawal-Osula(1995) 9 NWLR pt 419:259 at 274
8 See section 3 (1) wills law of Bendel state, applicable in Edo and Delta state
with modernity people began to build more than one house and make a will- giving Igiogbe to persons other than the first son or the eldest surviving son9, complaints of what constitute Igiogbe and who is entitle to its inheritance began to go to the Oba for interpretation and settlement. The Oba of Benin in consultation with his chiefs settled these complaints but dissatisfied litigants went to the regular court to seek redress and judicial interpretation.

Igiogbe inheritance existed since the founding of Bini kingdom, however since the Supreme Court judgment in the case of Idehen v Idehen10 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 custom, and inheritance thereof has become a matter of life and death11. Many first sons now lay claims to their father’s entire estate claiming all constitute Igiogbe and they are entitle to inheritance thereof12.

The Binis have argued that the Supreme Court decision in Idehen v Idehen supra was given per incuriam as it does not represent the true position of their customary law. In many cases that followed the court have rather than distinguishing the cases from Idehen’s case relied on it to give judgment13. This has led to more controversies and litigations. What this research aspires to do therefore is to look at the inherent problems associated with the Benin customary law of inheritance as it concerns Igiogbe. The researcher will specifically look at the evolution of Igiogbe overtime, the shift from traditional to modern concept and the relevance of such practice in modern time.

**Objectives of the study**
The main objective of the study is to examine Igiogbe inheritance in Bini kingdom. The specific objectives are to:

i. To look at the traditional concept of Igiogbe inheritance and the modern practices

ii. To look at the changes - shift and problems associated with Igiogbe

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10 (1991) 4 NWLR (pt. 198) 382
11 “Why the Supreme Court must Review the Decision in Idehen v Idehen” published in Guardian (Nigeria) of Tuesday, July 14 and Tuesday, July 21, 1998
12 Egharevba v Oruonghaye (2001) 11 NWLR (pt. 724) 318
13 See generally, Eghobamien, SI (2008)"Igiogbe and Miscellany in Benin Jurisprudence” seevon prints Benin city
Research questions

i. What is igiogbe and what constitute Igiogbe?

ii. What is the concept of Igiogbe?

iii. Why the eldest son?

iv. Can more than one house constitute Igiogbe?

v. Can Igiogbe be disposed of by a Will? Or Does Benin native law and customs take away the testamentary capacity of a Benin man?

vi. Can a man during his lifetime sell or make a gift of his Igiogbe or the one he inherits from his father?

vii. Can the eldest son renounce his claim to the Igiogbe in preference for another property?

viii. Can a daughter inherit her deceased father Igiogbe?

ix. What is the effect of Christianity/modernity on Igiogbe?

x. What is the relevance of igiogbe in present day Bini kingdom?

Research methodology

This study is carried out in the framework of a greater research project. In this research the researcher used Qualitative Research Methodology. An essential part of my research were the discussion I had with a great number of Traditional Rulers (High Chiefs), the curator of Benin cultural heritage and director/producer of Benin cultural movies, my professional colleagues in the Barr and the academia’s (lawyers), and the ordinary Benin people.
Methodology; During my field work I adopted what Bernard Russel called the meat and potatoes of field work, which is watching and listening\textsuperscript{14}. I took analytical notes of what I found out about the culture during my fieldwork interviews.

Discussions during interview were generally conducted in English because all my informants are well educated and speak English, as stated in the introductory paragraph almost everybody in Benin speaks Nigerian Pigin English (NPE) which I also speak and understands, hence there was no need for the services of an interpreter. In the earlier part of my interview discussions were electronically recorded but I quickly changed when I noticed that my informants try as much as possible to impress the anticipated audience even when I told them that the interview is for study research purpose and it was not to be aired on TV or radio. I stopped electronic recording, and an attempt to record the interview manually by writing also failed because it was taking too much time.

From then on I usually prepared a number of key questions before I met with an interlocutor and on one occasion I sent the questions to my interlocutor before meeting with him. I usually asked for permission to take note of names or any other important information that need to be noted immediately. After concluding a discussion I immediately recorded the talk from my memory so as not to forget anything. Whenever I encountered any difficulties in remembering some of the discussions or wanted to clear up ambiguities or contradictions I arranged for further discussion. This further discussion was made possible with the aid of telephone. Thus I found that my interlocutors were usually more forthcoming and relaxed in informal talks (without tape recorder) than in formal interviews.

Before any discussion I usually informed my informants exhaustively about my project of research, my position, and my methods and they were quiet prepared to offer an account of their ideas and knowledge of the subject matter. All my interlocutors are male as my research topic is said to be a male issue.

**Source material**

Work on this study started with a preliminary visit to Benin in December 2010 and included 3 visits to Benin City in December 2010, June 2011 and January 2012, and telephone calls to clear some ambiguities. Aside from the ordinary Bini people interviewed, I interviewed eight prominent Bini elders. The first on the list was Mr. Onions Edionwe (The curator of Benin cultural heritage/producer and director of Benin cultural movies), who is in charge of Bini cultural archival books, movies and sculpture at the Oba Palace in Benin City, he has over the years granted interview to international electronic Medias, local print and electronic media. I chose this informant because he has been working on Benin customs and traditions and he has a vast knowledge of the topic. My next informant is Barrister Osaretin Aigbovo, a senior Law lecturer at the department of Public Law University of Benin; the choice of this informant was based on the fact that he wrote an article on igiogbe\(^\text{15}\), also because he is from the academia and had lectured on related topics for long. Next is Barrister D.O Onaghise, a Benin based private legal practitioner who is from Benin and has practiced law for more than ten years in Benin. The researcher chooses Onighise because he wanted to hear the view of a practicing lawyer on igiogbe. One of the big expect/authority I interviewed is Chief Sam Igbe, “the Iyase of Benin kingdom” (Benin traditional prime minister). A retired police officer, Chief Igbe is a member of Benin traditional council; he is directly responsible for giving the Oba of Benin feedback on council meetings and discussions. He has presided over many cases involving “igiogbe” inheritance in council meetings. The choice of chief Igbe is informed by his experience and position in Benin kingdom. I have relied on him in this research because wherever I go to in Benin people always refer me to him because according to them (Binis) he is an authority in Benin customs and traditions and the subject matter in particular. I interviewed another High chief who is the spokes person of Benin kingdom, well known among the Benin’s, without this man any traditional ceremony in Benin kingdom which begin from the Oba palace cannot go on unless he perform some certain rituals. Also interviewed are two hereditary title chiefs and a public relation officer in Oba palace who himself is a career civil servant all four prefer to remain anonymous. The choice of this four is based entirely on their knowledge of Benin customs and traditions.

\(^{15}\) Aigbovo, O, The principal house in Benin Customary law, published in University of Benin Law Journal. Cite as (2005) 8 (1) UBLJ
Choice of informants
The first point of call during my field work was the Oba palace where I made known my research intent to the secretary Benin traditional council, after much discussion seven names were handed to me as people who could assist me in my research. After my initial contacts with the seven I decided to choose six of them as my informants based on their knowledge in the subject matter. I choose these six persons because they are respected traditional chiefs and persons knowledgeable, vast and competent enough to help in actualizing my research objectives. The two lawyers which make the numbers eight I choose myself because one is a lecturer and has written an article on igiogbe and the other because I wanted to hear the view of a practicing lawyer on the issue of igiogbe.

Limitation
This study faced some limitations during interview, the researcher set out to interview at least one of the judges who had presided over dispute involving igiogbe either at the High Court, Appellate Court or at the Supreme Court but unfortunately this researcher could not reach any of the judges as it was very difficult in Nigeria to get a judge to comment on case or cases they had sat on before. However, in spite of this limitation the researcher make good use of court cases and analyze the reasons why judges arrived at the decisions. Also, the researcher wanted to hear the view of persons involved in the dispute over igiogbe but as hard as the researcher tried he could not reach the two people suggested to him (due to financial constraint because this research is self sponsored) as they live outside Benin City.
**State of research**

A lot of scholarly works have been carried out on the history of Benin kingdom\(^\text{16}\), and books have been written on customary laws of the Benin but none of these authors have given any particular attention to the issue of *Igiogbe* rather *Igiogbe* is mentioned occasionally in their books. Osemwowa\(^\text{17}\), in his book the customary law of the Binis only treated *Igiogbe* as a sub-heading in two pages (pgs 37-38) while referring to the cases concerning *Igiogbe*. Okeaya-Inneh\(^\text{18}\), in his book Benin native law and custom at a glance treated igiogbe in not more than 3 pages.

Recently Eghobamien\(^\text{19}\), published a book *“Igiogbe (And Miscellany) in Benin Jurisprudence”* The author argued that Supreme Court judgment in *Idehen v Idehen* supra in which the court held that two houses of the deceased constitute his *Igiogbe* was given *per incuriam*. However, the author failed to aver his mind to the pleadings in the proceedings where both plaintiffs and defendants agreed that the two houses in issue constitute their late father’s *Igiogbe*. Eghobamien a Benin man and a lawyer submitted that the supreme court should revisit the question of more than one *Igiogbe* if and when the opportunity arises in order to rest the controversies generated by the judgment.

One of my interlocutors Aigbovo\(^\text{20}\), a law lecturer at the University of Benin and also a Benin man while towing the line of Eghobamien concluded that more judicial pronouncement will make the issue of *Igiogbe* clearer. This conclusion seems to suggest that the court determines what the people’s customs and traditions are and not the other way round.

Apart from Eghobamien’s book and Aigbovo’s article there are no other research work carried out on *Igiogbe* this is so because since the founding of Benin kingdom and the existence of *Igiogbe* forthwith there have been little or no controversy concerning its inheritance, on the death of a man his *Igiogbe* devolves on the eldest son automatically without any other person contesting or claiming inheritance thereof until recently when people began to build more than

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one house and make a will. The making of will open the flood gate of litigation on Igiogbe, most especially after Supreme Court judgment in Idehen v Idehen supra.

Some hours before submission of this paper my attention was drawn to a recent article on Igiogbe by Paul Itua in which the author a lecturer at the Ambrose Ali University Ekpoma, Nigeria, also a Benin man towed the line of his learned brothers, according to Itua,

“the Supreme Court (in Idehen v Idehen) modified the definition of the Igiogbe under Benin customary law by introducing the concept of multiple Igiogbes, which was totally at variance with the hitherto acknowledged customary law definition. The decision has caused a lot of anxiety and confusion within the traditional society. This paper therefore seeks to address the legal consequences of that decision against the backdrop of the traditionally held view, and also discuss the steps taken by the Oba of Benin to remedy the effect of the decision on the custom of the Benin people”21.

Again, like his brothers Itua’s article is based on the decision in Idehen v Idehen’s case.

The few known works on Igiogbe seems to concentrate on judicial pronouncement. None of these works have examined the origin of Igiogbe, the traditional concept and modern practices, the evolution of Igiogbe over time, and the problems associated with Igiogbe, even where one or two aforementioned issue is mentioned they are not examined in details. What this research seeks to do therefore is to look beyond judicial pronouncement on Igiogbe by digging into the origin and concept of Igiogbe, examine its inheritance, and look at the problems, changes and the shift in Igiogbe. The researcher intends to accomplish this task with the aid of the research questions.

A review of the existing literature on Benin customs and traditions, Benin customary laws, and igiojbe to be specific shows there was no research done on the origin of Igiogbe, the changes from traditional concept to modern practices, the evolution of Igiogbe over time, and the shift. This research work is thus new and it opens a new area of research on the shift in Igiogbe.

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Suffice to say here that the bulk of materials on *Igiogbe* are in law reports because cases concerning *Igiogbe* inheritance have gone up to Supreme Court
CHAPTER 2

Status of Customary Law in Nigeria

Nigerian Legal System; Brief introduction
Nigerian legal system is based on the English common law legal system and tradition by virtue of colonialism and the attendant incidence of reception of English law through the process of legal transplant otherwise called statute of general application. It must be noted that English law has a tremendous influence on Nigeria legal system. However Nigeria legal system is not restricted to English law alone but as noted above the later form the bulk of Nigerian law.

Sources of Nigerian law include; - English law, the Nigerian Constitution, Nigerian Legislation, Case law and precedents, Islamic law, and customary law. It is the customary law aspect of Nigerian sources of law that is of particular interest to us in this research.

Customary Law
Before the advent of Europeans, there existed principles, notions, norms, rules, agency and institution of law in the various geo-culture groups that made up what is now known as Nigeria. There was indigenous law, customary law.22 Customary law is unwritten and there are several such customary laws in Nigeria, each ethnic group having its own separate systems of customary law.23 For example: the customary law system of a town in Enugu state may be different from the customary law system of a neighboring town in the state even though the indigenous people of both towns are Ibo, same applies in Ondo, Oyo and Ekiti states. It is this diversity of customary law systems that act as a major obstacle to uniformity of customary law systems in each state of the Federation and Nigeria at large.

Meaning of Customary Law
Customary Law has been defined differently by scholars and given different interpretation by Judges. Allot,\textsuperscript{24} gave a holistic description of customary law when he puts it thus:

“…. Law and customary law in particular may have different meanings that is maybe viewed and handled differently by different categories of persons professionally concerned with it. To the anthropologist, it is part of the mechanism of social contract or a segment of what he may call “jural phenomena”. To the judge of the high court, to the legal practitioner advising a client, to the academic lawyer conducting a field investigation the problem of customary law in its general sense and the ascertainment and status of a rule of customary law in particular may be approached in various ways. It is important to make note of and if possible reconcile those varying approaches, otherwise undesirable misunderstandings and even conflicts may develop between these different investigations and handlers of customary law”.

According to Obilade\textsuperscript{25}, “Customary Law consists of customs accepted by members of a community as binding among them”. Evidence Act\textsuperscript{26} defines custom as “a rule which, in a particular district, has from long usage, obtained the force of law”. Oyewo and Olaoba\textsuperscript{27}, define customary law as the “unwritten law or rules which are recognized and applied by the community as governing its transaction and code of behavior in any particular manners. In Alfa & Omega v Arepo\textsuperscript{28}, the court defined customary law as an “ancient rules of law binding on a particular community and which rules do change with times and the rapid development of social and economic conditions”. Bairamian, F.J, in Owoniyin v Omotosho\textsuperscript{29} described customary law

\textsuperscript{25} Obilade, AO,(1979:83) \textit{The Nigerian legal system, London}, sweet Maxwell.
\textsuperscript{26} Section 2 (1) of Evidence Act, \textit{Cap. 112, Laws of Federation of Nigeria 1990}
\textsuperscript{27} Oyewo and Olaoba,(1999:94) \textit{A survey of Africa law and custom with particular reference to the Yoruba speaking people Nigeria. Jafor publishers}
\textsuperscript{28} (1963) \textit{ALL NLR 95}
\textsuperscript{29} (1961) \textit{I All NLR, 304}
as “a mirror of accepted usage”. The Supreme Court adopted the above definition in the case of Kimdey & Ors v Military Governor of Gongola state & Ors\textsuperscript{30}.

Tobi,\textsuperscript{31} being a retired Supreme Court Judge gave a long description of customary law before he condensed it into a definition as a “law relating to custom or usage of a given community. Customary law emerges from the traditional usage or practice of a people in a given community which by common adoption 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 community. And because of the element of compulsion which it has acquired over the years by constant, consistent and community usage, it attracts sanctions of different kinds and is enforceable.” “Putting it in a more simplistic form, the custom, rules and traditions which govern the relationship of members of a community are regarded as customary laws of the people”. Mwalinu\textsuperscript{32}, says most social life in Africa is structured under customary laws.

From above definitions it is clear that customary law is the accepted customs and culture of a given people or community which after a long usage acquire a legal backing. Suffice it to say that one major characteristics of customary law is its acceptability, before a custom can become a law it must be generally accepted by the people as a rule governing them. Arising from the definitions also is the flexible nature of customary law, because customary law is unwritten, it is flexible and can easily adapt to changing situations without necessarily losing its content and concept. On the flexible nature of customary law Osborne, C.J, in Lewis v Bankole\textsuperscript{33} has this to say; “…indeed one of the most striking features of West Africa native custom, to my mind, is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its individualistic characteristics”.

Some scholars’ distinguish customary law from Islamic law, saying customary laws are indigenous laws while Islamic law is received religious law\textsuperscript{34}. It is my view that Islamic law is

\textsuperscript{30} (1988) 2 NWLR (pt.77) 445  
\textsuperscript{31} Tobi,Niki(1996:103-104) sources of Nigerian law, MIJ professional publishers Ltd, Lagos  
\textsuperscript{32} Mwalinu, Charles(2005:78) Nigerian legal system vol 1 public law Peter Lay publishing inc, New york  
\textsuperscript{33} (1908)1 NLR, 81. From Tobi,Niki(1996:109) sources of Nigerian law, MIJ professional publishers Ltd, Lagos  
\textsuperscript{34} See generally, Mwalinu, Charles(2005)Nigerian legal system vol 1 public law Peter Lay publishing inc, New york and Obilade, AO,(1979) the Nigerian legal system, London, sweet Maxwell
not indigenous it is received and introduced into the Country as part of Islam. However, Islamic law (Islamic personal law) applied to northern Muslims as customary law to the south. Of special note here is the role of the British in the amalgamation of Northern and Southern protectorate of Nigeria in 1914, and introduction of indirect rule system into both differently, the British administered north through Islamic law and the south through their customary law, this make Islamic law to be deeply rooted in Northern Nigeria hence the misconception that Islamic law is indigenous to northern Nigeria. Islamic law is in written form, religious-based and is reflected in a codified form in the Quran and other sources like the Suna, this form of law is generally and commonly referred to as Sharia law.

It should be noted that though customary law is largely unwritten, this unwritten attribute is gradually fading away. Some communities in Nigeria have taken steps to reduce some of their customs, traditions and usages into written forms. This is as a result of conflicts and dispute arising from customary law practices.

**Establishing Customary Law**

A law need not be proved before a court; it is a question of fact that need be proved. In Nigeria, the received English law: Rules of common law, doctrine of equity and provisions of statutes need no proof before being accepted by court. This is so because judges are deemed to know the law and judicial notice is taken of them. Regrettably, rules of customary laws do not enjoy the same treatment as the received English laws.

The courts in Nigeria treat customary law as a question of fact and evidence that must be proved. Two reasons can be adduced for this position; the first is that judges were originally not trained in customary laws. Secondly, customary laws are largely unwritten and vary from culture to culture. Customary law can be established in two ways: one, by proof, and the other by judicial notice.

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35 Rotibi V Savage (1944) 17 NLR 77  
36 See for example, Benin traditional council, (1994) a handbook on some Benin customs and usages.  
37 See cases on Igiogbe- Osula V Osula, Idehen V Idehen and ors.  
38 Section 14 (1) of Evidence Act, *cap 112 Laws of the Federation of Nigeria* 1990.
Proof of Customary Law

Section 14 (1) the Evidence Act\(^{39}\) provides;

“A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. The Burden of proving a custom shall lie upon the person alleging its existence”

The import of the above provision is that if a custom is judicially noticed then its existence need not be proved, however, if a custom has not attained notoriety to be judicially noticed then it existence must be proved by the person alleging its existence by evidence.

Modes of proof:-

Customary law can be proved by adducing oral evidence, expert opinion, non-expert opinion, assessors, use of textbooks and manuscripts.\(^{40}\)

Judicial Notice

The second method of ascertaining customary law is by taking judicial notice of such custom.

Section 14 (2) of Evidence Act\(^{41}\) provides as follows:-

“A custom may be judicially noticed by the court if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to the extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to those under consideration”

The word “may” as used in the above provision implies the discretionary power of the court. Judicial discretion is vested in the court to determine whether to judicially notice a custom or not.

\(^{39}\) Evidence Act, cap 112 Laws of the Federation of Nigeria 1990.

\(^{40}\) See generally section 14(3), s.57(1), s.59 and s.75 of the Evidence Act cap 112, Laws of the Federation of Nigeria 1990.

\(^{41}\) Evidence Act, cap 112 Laws of the Federation of Nigeria 1990.
This I think is a problem hindering the development of customary law in Nigeria because the court may decide to use the discretionary power adversely by calling on the plaintiff to prove the existence of a custom which had already been proven before.

When certain facts and matters are so clearly established before a court there is no need to give formal evidence of their existence. Thus if certain rules and institutions of customary law becomes obvious to the courts they need not be proved. The courts take judicial notice of them and they become matters of law and not fact. For example Igiogbe, Ori Ojori and Idi- Igi customary inheritance in Benin and Yoruba land respectively has attained that status of notoriety that the courts in Nigeria (not the court in area were this customs are practiced) are aware of the existence and had taken judicial notice of them.

**Validity of Customary Law in Nigeria**

When the British came to Nigeria they recognized the customary laws of the people, but did not leave them intact all through the period of colonization. They enacted ordinances which abolished or abrogate some of the customary laws which they regarded as barbaric, primitive and uncouth.\(^42\) As part of colonial agenda the British government superimposed English laws on the indigenous laws of the various Nigerian culture groups, and christened it customary laws which were not to be applicable in all situations.\(^43\) The notion of customary law itself is seen as an ideology of colonial domination.

Nigerian indigenous laws were to be screened before they can attain the status of customary law. Before a court could observe and enforce the observance of a rule of customary law, such rule must pass the repugnancy test, that is it must not be repugnant to natural justice, equity and good conscience, and it must also pass the incompatibility test, meaning that it must not be incompatible with any law for the time being in force. These provisions have its root in the Supreme Court of Lagos established in 1876 as a Supreme Court of record by virtue of Supreme Court Ordinance No 4 of 1876. The court was empowered to administer the common law, the doctrine of equity and status of general application in force in England as at July 24, 1874. With respect to customary law section 19 of the ordinance provides:-

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\(^42\) Tobi,Niki(1996:111) *sources of Nigerian law*, MIJ professional publishers Ltd, Lagos  
\(^43\) Badaiki BA (1997:27) *Development of customary law*, Tiken publishers, Musin, Lagos
“Nothing in this ordinance shall derive the supreme court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any law or custom existing in the said colony and territories subject to its jurisdiction, such law or custom not being repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any enactment of the colonial legislature”\textsuperscript{44}.

Similar provision was enacted in 1900. Section 13 of the Supreme Court Ordinance 1900 provides,

“Nothing in this proclamation shall deprive the supreme court of right to observe and enforce the observance, or shall deprive any person of the benefit of any law or custom existing in the protectorate such law and custom not being repugnant to natural justice equity and good conscience”\textsuperscript{45}

The above doctrine was given judicial recognition in 1944 in the case of Laoye v Oyetunde\textsuperscript{46} where Lord Wright expressed the view that the clause was intended to invalidate “barbarous custom”.

In the last quoted paragraph the incompatibility doctrine is missing, however, in subsequent enactments preceding independence another test was added to the two mentioned above, that is the public policy test, which says a court cannot and will not enforced any custom that is contrary to public policy.

Since the above enactment which makes customary laws inferior to imperial laws, every subsequent enactment after independence till date has similar provision that before a court can observe and enforce the observance of a rule of customary law, such must pass repugnancy, public policy and incompatibility test.

\textsuperscript{44} From Badaikie BA (1997:28) Development of customary law, Tiken publishers, mushin, Lagos

\textsuperscript{45} From Tobi, Nikki (1996:111) Sources of Nigerian law, MiJ professor al publishers Ltd.

\textsuperscript{46} (1944) A.C.170
Current Enactments Embodying Repugnancy and Public Policy Test

Throughout colonial period customary law was subjected to repugnancy tests and this position continued after independence. Each region had been empowered to administer customary law. Evidence Act Cap 62 Laws of the Federation of Nigeria gave effect to this provision. The high court laws also gave effect to the recognition of customary law. The current enactment on the repugnancy and public policy test can be traced to Evidence Act Section14(3)\(^\text{47}\) which provides, “In case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience”.

There are several enactments currently embodying the repugnancy doctrine and its allied provisions. The list of these statutes include the High Court of Northern Nigeria\(^\text{48}\), and of Eastern Nigeria still applicable in some states in the country, high court laws of Bendel\(^\text{49}\), Lagos\(^\text{50}\), Oyo, Ogun and Ondo states; and the customary and or Area court laws and Edicts\(^\text{51}\), in force in the various states of the federation.

It is pertinent to note that the court has not been able to come out with the clear meaning of the phrase public policy, hence Burrough J. in Richardson v Mellish,\(^\text{52}\), described it as “a very unruly horse and when once you get astride it you never know where it will carry you” in effect there is no precise meaning, definition and explanation for it, rather it depends on the circumstances of each case.

It will be recalled that Nigeria got her independence from British in 1960, after independence the received or imposed English laws were retained, in our laws by provisions of the Evidence Act of the Federation and Evidence laws of the states, the various High Court laws of the states as well as magistrate and customary/Area courts laws of the relevant states as mentioned above. The Supreme Court Act also contains these doctrines.

\(^{47}\) Evidence Act, Cap 112 Laws of the Federation of Nigeria 1990
\(^{48}\) The northern Nigeria high court law cap .49,s.34(1) and Laws of Eastern Nigeria 61, S.22(1) (1963)
\(^{49}\) The high court law cap. 65,s.13(1) Laws of Bended state (1976) (now Edo and Delta state).
\(^{50}\) The high court law cap 52,s. 26(1)Laws of Lagos state(1973)
\(^{51}\) The customary court edict no.2 of 1984, S.24(a)Bendel state (now Edo and Delta state)
\(^{52}\) (1824)2 Bing 258
Section 26 of High court of Lagos Act\(^\text{53}\), make provision for repugnancy and incompatibility test. The section provides:

“The High Court shall observe and enforce the observance of customary law which is applicable and is not repugnant to natural justice, equity and good conscience, nor incompatibility either directly or indirectly with any law for the time being in force, and nothing in this Act shall deprive any person of the benefit of any such native law or custom.”

As regards the observance and enforcement of the observance of customary law which I had earlier mentioned section 7 of the Supreme Court Act\(^\text{54}\) provides as follows:

“With respect to the exercise of the original jurisdiction conferred upon the Supreme Court by subsection (1) of section 212 of the constitution or which may be conferred upon it in pursuance of section 212(2) of the constitution\(^\text{55}\), the following provisions shall apply… (e) the supreme court shall observe and enforce the observance of customary law to the same extent as such law is observed and enforced in Nigeria courts”.

Looking at the provision of section 26 of the High court of Lagos Act, it is clear that the intention of the drafter of the statute is for customary law to exit side by side with received or imposed English law so to say provided the custom which because of usage overtime has acquired the status of customary law is not repugnant to natural justice, equity and good conscience and is not incompatible directly or indirectly with any law for the time being in force. However, it seems to me that these clauses are invented as calculated attempt by the originator of the phrase\(^\text{56}\) to perpetually subject the native customs and tradition to inferior law when compared to the imposed English laws.

This research work do not intend to go into the meaning of the phrase “not repugnant to natural justices, equity and good conscience, nor incompatible either directly or indirectly with any law

\(^{53}\) Cap. 60 laws of Lagos state 1994, formerly s.27(1) cap. 80, laws of the federation and Lagos.

\(^{54}\) Nigeria (supreme court Act)

\(^{55}\) Now section 232(1)&(2) of 1999 constitution of the federal republic of Nigeria

\(^{56}\) The British colonial administrator
for the time being in force”, what I am concerned with is how this phrase affect the status of customary law in Nigeria. Some writers have argued that this phraseology and the need to proof the existence of customary law in court is a hindrance to the growth of customary law in Nigeria.

To sum up the status of customary law in Nigeria, it is pertinent to note that customary law exist side by side with the received English law which form the bulk of Nigeria statute today, in so far the former conform with repugnancy, public policy and incompatibility doctrine.

57 For detailed meaning of these clauses see Tobi, Niki (1996:111-124) sources of Nigerian law, MIJ professional publishers Ltd, Lagos. See also Obilade, AO (1979:83-100) the Nigerian legal system, London, sweet Maxwell
CHAPTER 3

Bini Customary Law of Inheritance

Inheritance & Succession
Sucession under customary law in Africa is basically two systems, namely patrilineal and matrilineal. However, the system of patrilineal is mostly practice in Nigeria. The system of primogeniture in which the eldest son ascends to the throne of his deceased father, and also inherits his properties absolutely governs inheritance in Bini kingdom. Under the Benin native laws and customs the system of primogeniture is rigidly adhered to \( ^{59} \) two variants of this system are recognized. The first is hereditary title and second non-hereditary title.

Hereditary Traditional Title Holders (Chiefs)
On the death of a holder of a hereditary title, the principal actor in the burial ceremony is the eldest surviving son, though the other children may make contribution to help their eldest brother. It is the eldest son who performs all the ceremonies. After the eldest son has performed the final burial ceremony, which of course will end with \( ukomwen \) \( ^{60} \), he succeeds to all his father title and he inherits the entire estate exclusively. According to Benin traditional council \( ^{61} \), “Benin Customary Law is not “an ass” like the English law is said to be” hence custom expects the eldest son, morally, to make gifts out of the estate to some of his brothers and sisters next to him in seniority. Again, custom expects him to accommodate his other brothers and sisters (subject, of course, to their good behavior to him).

Where there is no male child to succeed to the hereditary title, a brother or any other male paternal relation of the deceased succeed to the title after due confirmation by the Oba, but the deceased properties are shared among his female children.

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\(^{59}\) Osemwowa, Usi (2000:36) the customary law of the Binis, Myke commercial press, Benin city

\(^{60}\) Ukomwen means establishing an altar for his deceased father. In Bini kingdom the final burial ceremony ends with the establishment of altar for the deceased, this altar is called the ancestral altar or shrine.

\(^{61}\) Benin traditional council(1994:15) a hand book on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin
If a person be he title holder or not, made a grant of a gift to any of his children or other person while alive, such property ceases to be part of the estate of the person upon his death, and is excluded from those to be shared.\footnote{\textit{Benin traditional council}(1994:15) a hand book on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin}

There are traditional offices and institutions that are hereditary in Benin at the top is the Oba of Benin. Apart from the Obaship there are other hereditary titles in Benin, these titles are categorize into two, the kingmakers and non-kingmakers.

The kingmakers are: Oliha, Ezomo, Ero, Edohen, Oloton, Eholonire and Edaiken- called the Uzamas. The non-kingmakers are Arala, Ahiobi and recently the Obasaki.

It is pertinent to note that the Oba and the Benin kingmakers all have their separate palaces while the hereditary chiefs are not entitled to palaces.

As regards inheritance outside the Obaship, after the eldest son has performed the final burial ceremony, which of course, will end with the establishment of an altar for his deceased father, he succeeds to his fathers’ title and inherits the entire estate exclusively.\footnote{\textit{Benin traditional council}(1994:15) a hand book on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin}
Hereditary title holders and kingmakers

Non-hereditary Traditional Title Holders and Ordinary Persons

As noted earlier inheritance in Benin Kingdom is based on primogeniture system. Soon after the death of a Benin man, the inventory of the deceased properties is taken by the Okaegbe or his representative in the presence of the deceased eldest son and any of the other children who may be present, the inventory is kept by the Okaegbe who has responsibility to ensure their safe keeping pending the completion of the burial ceremonies by the children. In the olden days all the movable properties were kept physically in the Okaegbe’s possession while all immovable properties were identified.

On completion of the final burial ceremonies by the eldest son, this means in Benin custom “Orere-Okoe”, the Okaegbe who preside over the burial ceremonies, with other senior members of the extended family, if considered necessary, meet with the children of the deceased and share the deceased person properties among the children.

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63 Interview with Onions Edionwe, and chief Igbe June 2011 in Benin city
64 Okaegbe is the family elder.
65 Benin traditional council(1994:12) a hand book on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin
66 In Benin custom “orere-okoe” means completion of the final burial ceremonies. In other words it means the first son has establish an altar for worshiping his departed father.
Benin traditional council office complex in Oba palace

In sharing the deceased properties the house in which the deceased lived and died which is otherwise referred to as his Igiogbe automatically devolves on the eldest surviving son. However, custom enjoins the eldest son to accommodate his brothers and sisters (subject to their good behavior) until they are able to build their own houses and move out (if women) until they get married.67

Benin custom stipulates where the deceased has other landed properties apart from his Igiogbe these properties are distributed to the other children according to “Urho”68 and all other movable properties are similarly distributed among all the children starting with the eldest son69.

Urho system- (per stripes)
As in other part of Africa and Nigeria, Benin men indulge in polygamy. This practice somehow has been posing problems especially after the demise of the head of the family, as regards the distribution of his estate, more especially if the deceased had more than his dwelling house

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67 Benin traditional council (1994:13) A handbook on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin
68 Urho under Benin customary laws means the sharing of deceased properties according to the numbers of wives.
69 Interview with my informants June 2011, Benin city
which is the *Igiogbe*. In other to remedy the problem caused by polygamous practice, *urho* system of property distribution among the deceased children was invoked.

*Urho* system under the Benin customary law of inheritance is recognizing another child by a different woman for the deceased Benin man. *Urho* simply means the sharing of the deceased properties according to the numbers of wives\(^{70}\)

### Burial Ceremony

On the death of Benin man, it is the eldest surviving son with his brothers and sisters, who performs the funeral rites of the deceased parent for the family. “For the family” means that all the funeral ceremonies end before the family elder, the “*Okaegbe*”. Funeral rites are in two parts: first and second burial ceremonies. First ceremony includes all rituals performed that end with the actual interment of the deceased. The second ceremony which may follow immediately after the first or at a later date depending on the preparedness of the son, includes all rituals performed that end with *Ukomwen*. The “*Okaegbe n’okhua*”\(^{71}\) normally delegates *Okaegbe irorinmwin*\(^{72}\) to officiate and guide the children to conclude all the funeral rites, at the end of which the *Okaegbe irorinmwin* with the children presents his report with all items used to the *Okaegbe n’okhua*.

Custom imposes all the responsibility on the eldest son, including carrying his brothers and sisters along with him and the customary responsibility of the family elders especially the *Okaegbe* if they are honest and sincere, is to guide the eldest son\(^{73}\).

The eldest son has the customary discretion after due consultation with his brothers and sisters to determine what date to commence the performance of the funeral rites of his deceased father\(^{74}\). The funeral rites most especially the second ceremony is condition precedent to inheritance in Benin kingdom\(^{75}\).

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\(^{70}\) Interview with chief Igbe and the other chiefs, June 2011 and January 2012, Benin City

\(^{71}\) *Okaegbe n’okhua* is the oldest male of the family.

\(^{72}\) *Okaegbe irorinmwin* is the personal representative to *Okaegbe n’okhua*.

\(^{73}\) Benin traditional council (1994:13) A handbook on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin

\(^{74}\) Interview with informants, all informants seems to agree on this

\(^{75}\) There is disparity on this issue while some of my informants claim this is the position others differ that commitment on the side on side of the first son is enough for him to inherit pending when he is rich enough to perform the second burial. However on strict application of customs the second burial must be completed before
CHAPTER 4

Igiogbe and the first son

Definitions and what constitute Igiogbe

The “Igiogbe” is of utmost importance in Benin customary law. This is due to the incidents attached to it under the customary law of inheritance, the most important being that the Igiogbe is always inherited by the first son of a deceased person absolutely notwithstanding any instruction, disposition in a will or family arrangement to the contrary.

Majority of my informant defined Igiogbe as the house where the deceased lived and died, others defined it as the house where the deceased lived, died and was buried. The Supreme Court in Idehen v Idehen defined Igiogbe as the principal dwelling house, and family seat. The Benin traditional council described Igiogbe as the house in which the deceased lived and died usually though not always where he was buried.

Eghobamien described Igiogbe as the house were the Ukhure is. Osemwowa, defined Igiogbe as the “ancestral house”. Aigbovo, defined it as the residence of the deceased in his lifetime. The Iyase of Benin defined Igiogbe as the house in which a Benin Odafen lived and died. According to Onions Edionwe he described Igiogbe as the house where a Benin man lived and died. Going further he added Igiogbe is where the head of the family resides and where the ancestral shrine is erected. He further explained that Igiogbe involves taking care of the

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77 Aigboighi v Agidighi (1996) 6 NWLR (pt .454) 300
78 (1991) 6 NWLR (pt.198) 382
79 Benin traditional council (1994:12) A handbook on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin
80 Eghobamien, Sl (2008:103)"Igiogbe and Miscellany in Benin Jurisprudence” seevon prints Benin city
82 Aigbovo, O, (“The principal house in Benin Customary law” in University of Benin Law Journal (2005:16) 8 (1) UBLJ.
83 Interview with Chief Sam Igbe “the Iyase of Benin kingdom” (Traditional Prime Minister of Benin kingdom) June 2011, Benin City
84 Odafen is a Benin gentleman. It could also mean an ordinary Benin man who is not a titled chief
85 Interview with Onions Edionwe, June 2011, Benin City
deceased house, shrine or altar, deceased grave; inherit deceased wife or wives and other duties that the deceased is saddled with while alive.

Igiogbe can therefore be defined as the house where the deceased lived until his death and was buried, and where the ancestral shrine\(^{86}\) is or erected - which serves as a medium of worship between the ancestors and their living descendants\(^{87}\). The Igiogbe automatically devolves on the eldest son. For a property to qualify as Igiogbe it must have ancestral shrine erected in it, however, as will be shown later in the study this position has changed.

The deceased may not necessarily died or be buried in the house as deceased may have died in the hospital or in an accident, he may also be buried in the family cemetery or church cemetery. However, in most cases a deceased Benin man is buried at home not for the purpose of Igiogbe but for “other reasons”\(^{88}\)

For the house to qualify as the deceased Igiogbe the house must be located in the deceased traditional home town. Thus in Eghareba v Oruonghae\(^{89}\), the court held that the deceased house at Sapele was not the testator’s Igiogbe, rather the Igiogbe is the house at 3 Idahosa Lane Benin City. The fact of the case is that the deceased left a will giving his house in Sapele to his wife for life and to his eldest son his house in Benin City. The son challenged the will that his father did not have the capacity to devise the Sapele property to anybody other than himself, because by Benin customary law, the house where the deceased lived and died is his Igiogbe and Igiogbe must devolve compulsorily on the eldest son of the deceased.

Of interest to us here is the issue of whether Igiogbe can be located outside the deceased’s traditional base? The court rejects this notion and held as follows:

“I agree with learned trial judge who held that a Bini man having an Igiogbe outside Bini is novel custom. It is settled that custom is a question of fact which should be proved in cases where it has not assumed sufficient notoriety or judicially noticed. It is not enough

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\(^{86}\) Ancestral shrine or altar is erected in a special place in the house, it could be in a room, a corner in the big open space in the house or in the living room, depending on where the originator or inheritor want it.

\(^{87}\) Ancestral worship in Benin kingdom is usually led by the Okaegbe or the eldest son who step into the shoes of his deceased father, that is the son who inherits the Igiogbe

\(^{88}\) Most Benin men belong to different “societies” hence they are buried at home so that their members can attend the funeral and perform the necessary burial rites which ordinarily they cannot perform in public if the person was to be buried in public cemetery

\(^{89}\) (2001) 11 NWLR pt 724, 318
that the evidence of an isolated case that a Bini man’s Igiogbe can exist outside Benin kingdom has assumed the required notoriety. There is need for more cogent and convincing evidence that the custom of Igiogbe has extra-territorial application outside Benin kingdom. The appellant failed to adduce such evidence in order to satisfy the court on his assertion”

The import of this is that a deceased Benin man cannot have his Igiogbe outside his traditional home. Thus Igiogbe it must be located within the deceased traditional base (Bini kingdom).

**What is the concept of Igiogbe? (Traditional concept)**

Having defined Igiogbe and what constitute Igiogbe, the next question we seek to find out is the motive behind Igiogbe practice or why Bini ancestors designed such tradition. Igiogbe is an ancestral home or family seat where all the children of the deceased seeking to communicate with his spirit or the family ancestors would go to do so. The ceremony involves sacrifices to the spirit of the departed father or family ancestors. Research revealed that the Igiogbe itself or as a whole does not serve as medium of communication between the living and the departed ancestors rather the ancestral altar or shrine and ukhure (otherwise referred to as the ancestor staff) thus serve this purpose. The ritual is performed in the shrine with the ukhure being placed there. Igiogbe was therefore designed to keep the family tradition, family unity and maintain orderly continuity of ancestor worship.

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90 Eghareba v Oruonghae (2001) 11 NWLR pt 724, 318
92 Interview with chief Sam Igbe June 2011, Benin City
93 Ukhure is a wooden staff, a symbol of authority taken by the eldest son on the conclusion of his deceased father burial ceremonies.
94 This was what I found out during my field work. Also the Supreme Court emphasized it in Idehen v Idehen (1991) 6 NWLR (pt.198) 382, and Lawal Osula v Lawal Osula (1995) 9 NWLR (Pt. 419) 259
Modern concept/practice

Research revealed that modernity has affected all sphere of life and Bini custom is not spared. This has affected the rituals associated with Igiogbe, some Bini’s have embraced other religions mainly Christianity and Islam which do not recognize ancestor’s worship peculiar to African traditional religions. This has resorted to some Bini’s declining the keeping of ukhure and the usual sacrifices associated with ancestor’s worship. This notwithstanding the law still gives legal backing to Benin native laws and customs most especially Igiogbe inheritance95. The practice nowadays is that not all Igiogbe have ukhure, the erection of the family or ancestral altar is now optional depending on the religious believe of the founder or the inheritor of Igiogbe. A house is still regarded as Igiogbe with or without ukhure or ancestral altar. These days’ people don’t bother about the paraphernalia that goes with Igiogbe rather they are concerned with the property itself96.

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95 Section 3(1)wills law of Bendel state now Edo state
The First Son - Historical Origin of the First Son
The origin of the first son could be traced to the foundation of the Benin Empire. According to Agharevba, “Many, many years ago the Bini’s came all the way from Egypt stayed shortly in Sudan and Ile-Ife before settling in the present day Benin kingdom”97. Upon arrival and final settlement in what is today known as the present day Benin kingdom, for over a century the management of the affairs of the Benin kingdom was carried out by different leaders. At that time the rulers or king were commonly called Ogiso, one of the prominent leaders, Igodo, was made Ogiso. Igodo, the first Ogiso reigned around 12th century and wielded much influence and gained popularity as a good ruler. He died after a long reign and was succeeded by Ere, his eldest son.98 This marked the beginning of eldest son hereditary institution in Bini kingdom. However, after this there were still controversies on who succeed to the hereditary titles especially to the throne of the Oba of Benin at his demise. The controversy was finally settled with the creation of the title of Edaiken N’ Uselu99 by Oba Ewuare.

The Edaiken N’ Uselu who is usually the first son or the eldest surviving son of the reigning Oba succeeds automatically to the Benin throne at the demise of his father after performing the Ukomwen. The practice now is that the Edaiken N’ Uselu is installed during the lifetime of his father, the Oba of Benin. Usually, there is no problem in installing an Edaiken who takes over or inherit his father throne as the Oba of Benin at the demise of his father, however, problems, dispute and challenges are likely to erupt when an Oba dies without a child or male child, in that case since the throne is hereditary, it is likely one of the Oba’s brother or male paternal relation of his succeed him100.

Why the first son?
Research revealed that the first son is preferred to any other child for a number of reasons. The life and position of a Benin first or eldest son is all important to the father and the community at large, hence

99 The Crown Prince of Benin, the heir apparent to the Benin throne.
100 Interview with chief Sam Igbie (the Iyase of Benin kingdom) on June 2011 and January 2012
special care and attention is accorded the eldest son. The position, life and attention accorded the eldest son in Benin kingdom is best caption by Eghobamien\textsuperscript{101}. According to him;

“At all relevant times in the history of the Benin people, the eldest son was always very close to his father. When the time came for initiation into various age groups, his father ensured that this was done. He took him usually with him to visit elder members of the family. He told him the history of the family; the dos and don’ts of the family and what his rights and responsibilities are in the family – his own immediate family and the extended family. He ensured he got a wife early at maturity and was very interested in the first son having his son to perpetuate the family and traditions. These male heirs, when they take long to come in procreation, are given names like Ogbeide, Ogbemudia, Ogboroide Ogbemwengbide\textsuperscript{102}.”

The eldest son goes through these processes because he is being prepared for the task ahead of him that is taking over the responsibilities of the head of the family at the demised of his father.

The girl child upbringing is totally different from the male child who at all relevant time is very close to his father if he is the eldest son. It is generally believed that a female child stays in the family briefly because in those days she was give away in marriage at infancy hence there was no future plan for her in the family.

On the other hand, the eldest son of the family received leadership training (as discussed above) from his parents and other family members because he is being prepared for the task (ahead) of looking after the estate of his father-wives and other children, sons and daughters who are still infants until they were old enough to care for themselves for the males, or get married for the females.

Some refers to the new role of the eldest son as acting as a trustee. And I ask the question if the new role of the eldest son is to act in his deceased father’s stead or to act as a trustee (i.e.) to hold the deceased father properties including the Igiogbe on trust for the benefit of his brothers and sisters, why then did customs and traditions stipulate that the Igiogbe is exclusively his own?

Research revealed the eldest son inherits his deceased father Igiogbe because ancestor worship is the reason for the existence of the Igiogbe, for the Igiogbe is a religious concept and in traditional Benin society a woman is not allowed to take on the responsibility of leading the family in ancestral worship\textsuperscript{103}.

\textsuperscript{101} Eghobamien S1 (2008:53)Igiogbe and Miscellany in Benin jurisprudence, seevon prints Benin city, Edo state.
\textsuperscript{102} The meanings of the names are the same, it means my heritage and lineage have come to stay.
\textsuperscript{103} All my informants, Benin City
Thus the eldest son is preferred; hence the tutelage he received over the years from his father and the initiation into various family cult and traditional worship.

Some scholars have argued that it is not every first son that can inherit Igiogbe. According to Eghobamien, “the son of a woman that is not properly married cannot inherit his deceased father Igiogbe”\textsuperscript{104}. His argument run contrary to the view expressed by most of the informants in this research, according to Chief Igbe, custom stipulate that “every first or eldest surviving son recognized by his father while alive as his son is entitled to inherit Igiogbe it is immaterial whether the mother was properly married or not\textsuperscript{105}”. Again Eghobamien’s argument offends the provision of Section 42(2) of the 1999 Constitution of the Federal Republic of Nigeria which states that “no citizen of Nigeria shall be subject to any disability or deprivation merely by reason of the circumstances of his birth”. What this means with regards to Igiogbe is that a child cannot be deprived of his inheritance simply because his mother was not properly married to his father.

**Can more than one house constitute Igiogbe?**

This question is asked against the backdrop of Supreme Court decision in Idehen v Idehen supra where it was held that two houses of Joshua Iserhienrhien Idehen (deceased) situate at and known as No.62 Akpakpava street and No.1 Oregbeni Ikpoba Hill, Benin City constitute his Igiogbe and consequently, Joseph Osemwegie Idehen, deceased eldest surviving son is entitled to inherit both houses absolutely. The fact of the case was that the deceased left a Will in which he made several devises and bequests. In the will he devised to his eldest son Dr Humphry Idemudia Idehen two houses in Benin. Unfortunately Dr Humphrey Idehen predeceased his father and consequently Joseph Osemwegie Idehen, the 1\textsuperscript{st} plaintiff/respondent, became the eldest son of the deceased.

Under Bini customary law when a man dies, his Igiogbe is inherited by his eldest son. Joseph Idehen then claimed under Bini customary law the properties in which the testator lived during his life time, known as the Igiogbe, as well as substantially all the properties comprised in the estate of the testator. The 1\textsuperscript{st} defendant/appellant (late Dr Humphrey Idehen’s son) comprising others, some other children of the testator and the executors of the will, rejected the claims of the 1\textsuperscript{st} plaintiff/respondent. Subsequently, he with the support of his brother instituted an action in the high court against the defendants/appellants and finally to the Supreme Court.

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\textsuperscript{104} Eghobamien S1 (2008:70)Igiogbe and Miscellany in Benin jurisprudence, seevon prints Benin city
\textsuperscript{105} Interview with Chief Sam Igbe, June2011 Benin City
The issue for determination among others was who is entitled to inherit the deceased Igiogbe, is it the eldest surviving son of the deceased or the first son who predeceased his father? The Supreme Court held that “in accordance with Bini Customary Law of succession, the 1st plaintiff as the eldest surviving son of the Iserhienrhien (deceased) succeeds exclusively to the houses and/or properties lying and situate at and known as No.62 Akpakpava street and No.1 Oregbeni Ikpoba Hill, Benin City.

The Supreme Court was right when it held that the eldest surviving son of the deceased succeeds exclusively to the Igiogbe. However, the second leg of the judgment that declares the two houses as Igiogbe was publicly criticized by the Bini’s on the ground that the decision did not represent their customs and tradition because according to Benin native law and customs two houses cannot constitute Igiogbe. The decision would have been applauded but for the fact that two houses were held to be the deceased Igiogbe.

It must be pointed out that the two parties in this case agreed in their pleadings that both houses constitute the deceased Igiogbe as he lived in both houses during his life time hence at the hearing it was not an issue whether both houses constitute the deceased Igiogbe. Secondly, the deceased in his will gave out the two houses as his Igiogbe, the Supreme Court only follow the facts before it in arriving at the decision. It is my submission that the Supreme Court arrived at the decision in Idehen’s case and could not have held otherwise because the parties had agreed in their pleadings that both houses constitute the deceased Igiogbe and the deceased will did not say anything contrary. The Supreme Court decision in this case was based on the litigants’ pleadings before it. We must also note that in Idehen’s case the question whether more than one house can constitute Igiogbe was not in issue before the court. In the later case of Agidigbi v Agidigbi supra the Supreme Court upheld the decision of the two lower courts which refused to declare the deceased whole compound comprising of three separate houses in Benin City as Igiogbe. This is one area where those calling for codification of customary law in Nigeria will be interested in. If customary law is codified then judgment of this nature may not be given per incuriam.

According to Benin customary law Igiogbe is the house were the deceased lived and died. A man cannot have more than one Igiogbe, only one house out of several houses owned by a Bini man constitutes Igiogbe. For the purpose of Igiogbe a man cannot during his lifetime lived in two or more houses or died.

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107 Eghobamien S1 (2008)Igiogbe and Miscellany in Benin jurisprudence, seevon prints, Benin city
in two or more houses, even if he lives in two or more houses during his lifetime the paraphernalia (ancestral shrine and ukhure) that goes with the Igiogbe can only be found or erected in one of the house and not all the houses. What this means is that the house where the ancestral shrine is erected is the Igiogbe.

However, based on Supreme Court decision in Idehen’s case there is a shift from traditional held view of one Igiogbe to modern concept of multiple Igiogbe. As it stands now on the authority of Idehen’s case two or more houses can constitute Igiogbe.

**Can a man during his life time sell or make a gift of his Igiogbe or the one he inherits from his father?**

The pattern of building houses in old Bini kingdom is radically different from nowadays “modern” houses. In those days houses were built for the benefit of the entire family. The founder of the family take into consideration the generation after him and so built a single house that can accommodate two to three generations. A typical ancient Benin house is one with courtyard as described by Aisien, “Architecturally Edo land was on the same footing with the ancient Roman world, with its tropicalised mode of house-building as represented by the basic building unit which the Romans called ATRIUM and the Edos the IKUN. The Atrium or Ikun consisted of a rectangular edifice with its centre open to the skies. Running along the inner sides of the four walls of this rectangle were the rooms in which the members of the household lived. The household members would come out of their rooms and appear under their private sky in the centre of the rectangle. This open space, this bit of sky trapped within the house was the oteghodo which the Romans called the IMPLUVIUM. A home consisted of a number of Ikun strung together in series, one Ikun linked to the next one by an internal corridor…”

For the fact that he had only one big house built for the purpose of accommodating the future generation a Benin man would not under any circumstances dispose of his Igiogbe in his life time as he will have no place to live with his family and to discharge the responsibilities pertaining to Igiogbe. As one of my informant puts it;

“No sane Benin man would sell or make a gift of his Igiogbe during his life time. If he does and still remain in the house until he dies then the house remain his Igiogbe and devolves on his eldest son at his death but if he move out of the house and live in another house until his death automatically the former house ceases to be his Igiogbe.”

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109 My interview with Chief Sam Igbe, the iyase (Traditional Prime Minister) of the Benin kingdom
Thus custom does not forbid the sale or making a gift *inter vivos* of *Igiogbe*. It should be mentioned that if the person is not the founder of the family then he cannot sell or make a gift of the *Igiogbe* he inherited because the *Igiogbe* he inherited does not belong to him exclusively it passes to his eldest son when he dies. Therefore *nemo dat quod non habet* applies. Again he would not dispose of his *Igiogbe* because he would have no place for his ancestral shrine. We mentioned earlier that ancestral worship is the reason for the existence of *Igiogbe*. It is said that a Benin man cannot serve his ancestors nor celebrate *Eho festival*\(^{110}\) as a tenant in another person’s house.

We must however distinguish the *Igiogbe* of hereditary chief from the *Igiogbe* of non-hereditary title holders and ordinary persons, in the former his *Igiogbe* and other properties cannot under any circumstances be alienated whether in his lifetime or at his death\(^ {111}\). While the later customs and traditions does not forbid the alienation but for reasons mentioned above no Benin man would in his right senses give out his *Igiogbe* during his lifetime\(^ {112}\).

**Can *Igiogbe* be dispose of by a will? Or Does Benin native law and customs take away the testamentary capacity of a Benin man?**

The issue came up in *Idehen v Idenhen* supra when the Supreme Court was called upon to interpret the provision of section 3(1) of the Wills law of Bendel state (now applicable in Edo and Delta state). Section 3(1) provides:

> “Subject to any customary law relating there to, it shall be lawful for every person to devise, bequeath or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either in law or in equity, at the time of his death and which if not so devised, bequeathed and disposed of would devolve upon the heir at law of him, or if he became entitled by descent, of his ancestor

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\(^{110}\) *Eho festival* is an Annual festival performed for members of the family by the head of the family.

\(^{111}\) See generally *Benin traditional council* (1994) a hand book on some Benin customs and usages, Issued on the Authority of the Omo N Oba Erediauwa, Oba of Benin.

\(^{112}\) Interview with chief Sam Igbe, June 2011, Benin City
or upon his executor or administrator\textsuperscript{113}.

Arising from this section of the wills law are two conflicting views. One view is of the opinion that the opening words of the above section “subject to any customary law relating thereto” are intended to relate the subject matter of a devised. According to this school of taught, the intention of the phrase and the entire section 3(1) of the wills law is to give testamentary capacity to every citizen of the state in which everybody is subject to one form of customary law or another. This group further argued that the mere inclusion of the phrase could not serve to defeat its main objective. The opposing view argued that the opening phrase and the entire section 3(1) of the wills law is intended to take away the testamentary capacity of every citizen of the state subject to customary law.

The Supreme Court was called upon in Idehen's case to interpret the meaning of section 3(1) of the Wills law of Bendel state as it relates to Igiogbe. At the trial court, the learned trial chief judge, concluded that the late Joshua Iserhienrhin Idehen died testate and that his will was validly made in compliance with the provisions of the Wills law. However, he held that the devise of the igiogbe was void for being contrary to Bini customary law.

The plaintiffs and defendants dissatisfied with the judgment appealed and cross-appealed to court of appeal and subsequently to Supreme Court.

The fact of the case is as stated above in page 30 but different issue for determination. At issue here is whether the phrase “subject to any customary law relating thereto” occurring in section 3(1) of the Wills Law of Bendel state is a qualification of the testator’s capacity to make a will or whether it is no more than a qualification of the subject matter of the property dispose of or intended to be disposed of or intended to be under the will.

The supreme court held that “the opening words, subject to any customary law relating thereto” occurring in section 3(1) of the Wills law of Bendel state are intended to relate to the subject matter of a devise. The expression could not have been intended to qualify the testamentary capacity so unambiguously conferred on every Bini citizen by section 3(1) of the Wills Law. It is only subject to any customary law affecting the property to be disposed of. What this means is that a Bini man can make a will, devises and bequests, section 3(1) of the wills Law does not

\textsuperscript{113} Section 3 (1) wills law of Bendel state, now Edo State
take away his testamentary capacity. However, when making his will he must avert his mind to
the fact that under Benin customary law, the Igiogbe cannot under any circumstances be given
out to any other person except the eldest surviving son. At his death the testator is entitled under
Bini customary law; to devise all his property except the igiogbe. Thus igiogbe would at his
death no longer be his own to give away.

Nowadays, enlightened persons can make a statutory will by which they determine in advance
how their estate could be share among the children but the will must not conflict with Benin
customary law of inheritance.\(^\text{114}\)

The answer that a man cannot dispose of his igiogbe by a will to any other person except his
eldest son has raised certain questions of its own;

1. What if the deceased discovered before his death that his first son is planning his death in
other to inherit the Igiogbe so therefore he bequeath the Igiogbe to another person other
than his first son? What is the position of the Benin traditional council on this? Will
custom still permit him (the eldest son) to inherit the Igiogbe? Will the will be void?

I put this question across to my informant’s members of the Benin traditional council and the
answer I got was that there has not been any reported incident of this nature. And all the cases
reported none have this fact. However, the research must add here that going by the high rate of
crimes in Bini kingdom and many greedy first sons interest in Igiogbe and other properties the
day may not be far when the Bini traditional council and Nigerian courts will be faced with this
question.

2. What if the first son does not have the mental capacity to lead or head the deceased
family, considering the fact that Igiogbe is associated with ancestral worship can he still
inherit?

The position of Bini customary law concerning Igiogbe inheritance is rigid; customs allow only
the first son (eldest surviving son) to inherit Igiogbe. What this means is that irrespective of the
mental capacity or the social status of the first son he inherit the Igiogbe. But in situation where

\(^{114}\) Benin traditional council(1994:15) a hand book on some Benin customs and usages, Issued on the Authority of
the Omo N Oba Erediauwa, Oba of Benin

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the eldest son renounces his claim to *Igiogbe* customs permit his younger brother to inherit the *Igiogbe*\textsuperscript{115}.

**Can the eldest son renounce his claim to the Igiogbe in preference for another property?**

The custom says that it is the eldest son that automatically inherits the *Igiogbe* of his deceased father while the remaining landed properties, if any, is shared among the remaining children. But there have been cases where the *Igiogbe* property is by far inferior to the other landed properties usually because the late man chose to live in the inferior house while he put the superior house out for commercial purpose. The eldest son in such a case would feel cheated to be confined to inferior *Igiogbe* while his juniors are given the superior landed properties. On strict interpretation of custom, that is how it should be. But in these days of modern development, it would be manifestly unfair to give the eldest son a dilapidated property simply because it is the *Igiogbe* and give a more superior one that the deceased earmarked for commercial purpose to a junior. Such cases have gone to the palace and the Omo N’Oba Erediauwa, in consultation with chiefs in attendance, has exercised his traditional discretion by giving the eldest son the option to choose between the inferior *Igiogbe* property and the other superior property on the condition that if he choose the other superior property he would forfeit his traditional rights to the (inferior) *Igiogbe* property with all that go with it. The eldest son had accepted the choice; and it has been endorsed by the palace\textsuperscript{116}.

\textsuperscript{115} Benin traditional council(1994:14) a hand book on some Benin customs and usages, Issued on the Authority of the Omo N Obia Erediauwa, Oba of Benin

\textsuperscript{116} Benin traditional council(1994:14) a hand book on some Benin customs and usages, Issued on the Authority of the Omo N Obia Erediauwa, Oba of Benin
Can a daughter inherit her deceased father Igiogbe?  
*Igiogbe* has been defined as the house where a man lived and died which automatically devolves on the eldest surviving son. Under Benin customary law inheritance is by blood, since inheritance is by blood if a man dies without any male child his daughter(s) inherit his *Igiogbe* and other properties. However, before the daughter(s) can inherit the *Igiogbe* her paternal uncle will remove the *Igiogbe* paraphernalia (ancestral shrine and ukhure) to his own house and erect ancestral altar with it were family members can come to worship their departed ancestors. What this means is that the ancestral home, seat or altar is no longer present in the house inherited by the deceased daughter(s). It therefore means that the inherited *Igiogbe* becomes a mere house without the *Igiogbe* paraphernalia attached to it.

**Effect of the decision in Idehen v Idehen**

The decision in *Idehen’s* case that two houses constitute Igiogbe has created more room for litigation on *Igiogbe* to the effect that many first sons have now been laying claims to all the houses and properties left by their late fathers to the exclusion of their siblings, *Agidigbi v Agidigbi* supra and *Egharevba v Oruonghae* supra.

**Effect of modernity on Igiogbe**

Modernity has brought *Igiogbe* practice to the limelight because in the olden days, when *igiogbe* practice was instituted usually a man has only one house hence it make it easier for the eldest son to succeed him upon his death and inherit the *Igiogbe* without any controversy but with modernity people began to build more than one house and make a will hence litigation arises on what constitute *Igiogbe* and who is entitle to inheritance thereof\(^\text{117}\).

**Relevance of Igiogbe**

*Igiogbe* inheritance is designed to keep the deceased estate intact in other for the property not to dissipate. Another importance is for the age-long customs and traditions of Bini people not to go into extinction, and most importantly for ancestral worship. In other words *Igiogbe* serve as a

\(^{117}\) Interview with Onions Edionwe, Aigbovo and chief Igbe, June 2011 and January 2012, Benin city
means of preserving the people’s culture. Justice Belgore in *Lawal-Osula v Lawal-Osula supra* while commenting on the relevance of customs and traditions of Binis and the reason why legislations are drafted to accommodate such practice as *Igiogbe*, has this to say: “Binis like some other tribes in Nigeria have got some age-long traditions and norms, some peculiar to them, others in common with the other race in other parts of the world that cannot easily be written off by mere legislation. To legislate to ban some of these native laws and customs, would lead to serious disorder that makes governance and obedience difficult. It is in the light of these that instead of entirely discarding a practice that has been tried and tested over centuries, legislation are carefully drafted to accommodate the native laws and customs in question and to regulate their practice”\(^{118}\). The import of this is that native law and customs of the people of Bini kingdom and Nigerians at large is still very much relevant in modern Nigeria society.

Having identify the concept and relevance of *Igiogbe* to the Binis, it is clear that the traditional concept of Igiogbe inheritance has changed from ancestral worship and taking care of the deceased estate to Igiogbe inheritors laying claims to all the estate of their deceased fathers to the exclusion of their siblings, and inheriting modern houses for commercial reasons thereby abandoning the concept and intention of the founding fathers. It seems therefore that *Igiogbe* has lost its concept; this call to question the relevance of such practice in this 21\(^{st}\) century. It is however imperative to ask the following questions: (a) should the practice of a culture that has lost its concept be allowed to continue? (b) Is Igiogbe practice not an infringement on the fundamental human rights of other children of the deceased especially the female children who often times senior to the inheritor? Or is this customary law not discriminatory? (c) Is the practice not repugnant to natural justice equity and good conscience? Does this practice still fit into 21\(^{st}\) century Bini kingdom? These and other questions I intend to find answers to in the larger and more broader research work which may be titled, Nigerian legal pluralism; Codification or Unification of Customary laws, obstacles and prospects.

\(^{118}\) Justice Belgore in *Lawal-Osula v Lawal-Osula supra*
The home of all Oba’s ancestral shrines
CHAPTER 5

Conclusions

Findings
i. Igiogbe is the house in which the deceased lived and died\textsuperscript{119}.

ii. Igiogbe is to be inherited absolutely by the deceased first or eldest surviving son\textsuperscript{120}.

iii. The concept is for ancestral worship, family seat and value.

iv. Igiogbe without the paraphernalia is a mere house.

v. According to Bini customs and traditions only one house can constitute igiogbe two or more houses cannot constitute Igiogbe. However, based on the Supreme Court authority in \textit{Idehen v Idehen} supra two houses can constitute Igiogbe.

vi. Igiogbe cannot be disposed of by will\textsuperscript{121}.

vii. Bini customs and traditions do not forbid a man from making gift or selling his Igiogbe inter vivos.

viii. The first son can renounce his claim to the Igiogbe in preference for another property\textsuperscript{122}.

ix. A daughter cannot inherit Igiogbe, although since inheritance is by blood she can inherit the mere house without the paraphernalia of office.

x. Igiogbe is still relevant in this modern period in other to preserve Bini customs and traditions.

Shift in Igiogbe
Research has shown that Igiogbe is still of utmost significant in the life of a Bini man. The concept is for continued co-existence of the family, to keep family traditions and values intact, to maintain family unity and orderly continuity of family rituals, and for the house to serve as family seat or home where every member of the family can later return to most especially to worship their departed ancestors. However, research reveal there is a shift from traditional

\textsuperscript{119} Supreme court and Benin customs and traditions
\textsuperscript{120} Supreme court and Benin customs and traditions
\textsuperscript{121} Section 3 (1) wills laws law of Bendel state now Edo state
\textsuperscript{122} Benin traditional council, Modern concept.
practice of maintaining ancestral home and ancestral worship to modern practice, and emphases have shifted from traditional ancestral worship to commercial and monetary gains attached to the property. As against Benin customs and traditions, Igiogbe inheritors now want to inherit not just the Igiogbe but all properties of the deceased to the exclusion of their siblings while relying on Idehen v Idehen supra to abuse Bini customs. The Supreme Court decision in Idehen’s case that two houses constitute Igiogbe is a new and modern concept, and a shift from tradition to modernity. Although the Bini’s criticized this decision as it run contrary to their tradition but the opportunity has not presented itself for the Supreme Court to overrule itself on this, as it stands on the authority of the Supreme Court under Bini customary law two houses can constitute Igiogbe. Another significant shift from tradition to modernity in Igiogbe inheritance is that the first son can now renounce his claim to old Igiogbe property in preference for another modern property because of commercial value attached to the modern property. It is said that in doing so the first son forfeit his rights as eldest son, this is a landmark change on the concept Igiogbe resorting from modernity. What this means is that contrary to the Bini’s claim that only the first or eldest surviving son is entitled to inherit Igiogbe, the renounced Igiogbe and its paraphernalia can now be inherited by a younger son. The making of will is another impetus that encourages the shift from tradition to modern practice on Igiogbe. In the olden days Bini men do not make will, on the death of a man his first son automatically inherit the Igiogbe without any controversy but recently Bini men started making will devolving the Igiogbe on persons other than their first sons thereby denying the first sons what customs says rightfully belong to them. In Benin customs and old Benin kingdom second burial ceremony is a condition sine qua non for the first child to inherit Igiogbe, however, in today’s Benin kingdom that has changed commitment on the part of the first son that he will perform the second burial ceremony when he has the finances to do so is enough ground to inherit.

123 Egharevba v Oruonghae (2001) 11 NWLR (pt. 724) 318
124 A handbook on some Benin customs and usages, (1994:14) issued by Benin traditional council on the authority of the Omo N’ Oba Erediauwa, Oba of Benin
125 Idehen v Idehen and Lawal-Osula v Lawal-Osula supra
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