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**A FACILE STUDY OF THE STATUTORY CHALLENGES CONCERNING
CUSTOMARY PRACTICE OF INTESTATE SUCCESSION IN NIGERIA**

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Abstract

The custom and tradition of Nigeria is an outgrowth of the history of the society. In this regard, customary law emanates from the spirit of the people. However, it has been observed that the locally made Wills Law of some states in Nigeria recognizes and preserves the Nigerian's customary practice of intestate succession. However, the Wills Act of 1837, which applies to all states except those that have to enact their wills law, seems to limit customary intestate succession. In this regard, this study adopts a hybrid research method in analyzing the statutory preservation and limitation of Nigeria's standard practice of intestate succession by the laws of the will and Act in Nigeria. The study used online survey questionnaires sent to 308 legal practitioners (randomly selected) in the various states of the federal republic of Nigeria. Descriptive and analytical statistics were used to analyze 308 respondent responses to the questionnaire. The study found that 76% of the respondents identify that the Wills Act places a customary limitation on customary intestate succession. They prefer the Wills Laws of 1958, given its preservation of the Nigerian custom and traditions concerning intestate succession. It was, therefore, concluded and recommended that there is a need for some of those states that still apply the Wills Act of 1837 to enact or amend the Wills Act to recognize customary intestate succession.

Keywords: Testate succession, Customary Practice, succession, Wills Act, Wills Law, Nigeria.

INTRODUCTION

Succession deals with the process or the procedure that entitles beneficiaries to inherit the property or estate of a deceased person after their demise. (Clark & Kerridge, 1996) In the law regulating succession, it is required that the beneficiary must be legally (either by statutory or customary law) entitled to succeed the deceased person (Animashaun & Oyeneyin, 2002). In Nigeria Family Law, the issues of succession are very holy (Ajuzie, 2012). This is given that when a man or woman who had children and other extended relatives died, the question of who is entitled to inherit his property/estate will arise. However, it is trite to state that there are two procedures (testate and intestate). That legally enables a beneficiary to succeed a dead person in his property or estate (Oni, 2014; Sagay, 2001)

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Testate succession is also called a testament, which, in essence, also means a process of making a will (Ikubanni & Aidonojie, 2021). A will is a legal document written by an individual (called a “testator”) during his/her lifetime, stating clearly, who will succeed or inherit his estate after his/her demise. A will is expected to take effect after the death of the testator (Diala, 2014). There are several sources of law that regulate testate succession in Nigeria; notably of these laws, concerning the focus of this research, are the *Wills Act of 1837*, and the *Wills Law 1958*. The *Wills Act* is an English wills law that is meant to apply to Nigeria (except the former state of the western region which include: Oyo, Ogun, Ekiti, Ondo, Osun, Lagos, Edo, and Delta, furthermore Anambra in Eastern region) as a result of the fact that they are statutes of general application that are in operation in England as at 1st January 1900. Furthermore, the *Wills Law* applies to states in the former western region except in Lagos and Oyo, it repeals and replaces the English *Wills Act*, 1837 and 1852.

However, unlike the *Wills Act*, the *Wills Law* and various states' wills law (such as section 3 (1) of the *Bendel State Wills Law*) provided for and recognized a limitation on the power of a testator concerning customary law of succession, thereby promoting and upholding the Nigeria customs and traditions. Furthermore, it is apt to state that, irrespective of the fact that the making of a will or devising of a testator estate/property had several limitations provided for under the Muslim practice of succession and some customs and traditions in some states that still operate by the *Wills Act* of 1837. However, the *Wills Act* does not statutorily recognize or provide for the recognition of the limitation of a testator's power concerning the customary or Muslim practice on succession that limits the ability of a testator to dispose of their property. This, in essence, can be said that section 3(1) of the *Wills Act* undermined and made a shambles of Nigeria's customs and traditions. Yet, it is still the law regulating testate succession in some parts of states in Nigeria.

Given the above, this study will attempt a theoretical and empirical analysis of the preference for customary limitations in making a Will as provided for in the *Wills Act* and *Wills Laws*. The questionnaire shall be issued to lawyers in the various state of the Federal Republic of Nigeria to empirically assess their view on the relevance of both *Wills Law* and *Wills Act* if there is a need for those states which still operate within the *Wills Act* to enact local law of wills that will recognize and preserve the Nigeria cultural heritage. Furthermore, the study will recommend savage the lapses within the *Wills Act*.

RESEARCH METHODS

The doctrinal and non-doctrinal survey research approach has been adopted for this study. The theoretical session aims to theorize and establish the provisions of the *Wills Law* and the *Wills Act*, which provide for the statutory and non-statutory customary limitation of testate succession. Furthermore, descriptive and analytical quantitative research methods enable the authors to gather objective, statistical, mathematical, and numerical data for analysis. These data were obtained through polls and questionnaire surveys using online google forms. The quantitative method allows the authors to collect and analyze extensive data (respondent responses to the questionnaire) from legal practitioners residing in various states in Nigeria. This is concerning the fact that they are conversant with the *Wills Law* and the *Wills Act*, and it will also enable the researchers to reach a concluded generalization that there is a need for those states or region that still applies the *Wills Act* to enact local wills law that preserved and promote their customary practices on succession.

RESULTS, DISCUSSION AND ANALYSIS

The world is moving quickly from the essence of controlled rigidity to a more flexible operating system. This concerns that succession is transmitting the rights and duties of a deceased person of his estate or office. Dignities to persons who succeed him, such as his heirs, children, spouse, or relatives, in a manner sanctioned by the law have relatively and legally gained momentum. However, in Nigeria, succession involves the act or right of legally or officially taking over a predecessor's office, rank, or duties; it is the rights or property by inheritance under the laws of descent and distribution. Therefore, succession law is very significant; it is the law and procedure under which beneficiaries become entitled to the property of a deceased (dead) person after death. It is the process by which one person succeeds another in the occupation of an estate; that is, the process of a person becoming entitled to property or interest in a deceased person's property.

Animashaun and Oyeneyin, in their study, emphasize the relevance of succession as involving the transmission of the rights and obligations of a deceased person in respect of his estate to his heirs and successors. They also stated that sequence also includes the rules governing the administration of a dead person's estate by personal representatives of the deceased person.

Furthermore, succession may be testate or intestate in Nigeria, depending on each deceased person's circumstances or state of affairs. Testate succession is the

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passing of rights or property by will; it involves the distribution of the estate of a deceased person upon his demise following the dictates of his will written following the *Wills Law* or *Wills Act*. On the other hand, Itua stated that intestate succession is the method used to distribute property owned by a person who dies without a valid will. According to Sagay, succession in Nigeria is generally regulated by statutory law, judicial precedent, and a deceased person's customary law. However, due to the legal pluralism of the Nigerian legal system that governs succession, there are different side-by-side rules, sometimes resulting in some form of internal conflict of law. These complex problems of the duality of legal systems also affect the issue of succession.

Given the above, the *Wills Act* (wills law inherited from the British colonialist), one of the laws regulating testate succession, allows a testator to dispose of his property by will without any limitation created by the indigenous customary law operational in Nigeria. However, Aigbovo stated that one of the earliest laws that regulated succession during the pre-colonial era is still active in the indigenous customary law of a deceased person residing in Nigeria. In the words of Diala, he stated that customary law is not a leftover or relic of the pre-colonial earlier period but a result of normative struggles by various interest groups before and after the colonial period. Given this, in Nigeria, during a man's (used here in a generic sense) lifetime, if he decides to make a will, for such a will to be valid, it has to be following or recognize the customary limitation created by customary law. In this regard, the *Wills Law* and its equivalent in most states in Nigeria were enacted to promote and preserve the Nigerian customary law because of its relevance as a law that emanates and represents the true spirit of the people of Nigeria. According to Himonga and Diallo, every day has distinct features that must be given special consideration, and it is a living law indigenous to the people of Africa. In this regard, recognizing and preserving the Nigerian customary law on succession is an excellent way to outlaw the colonial law that relegates and distorts the Nigerian customary law and African customary law in general (Badejogbin, 2022).

The researchers designed an online questionnaire (using Google form to suit the purpose of ensuring social distancing as a result of the Covid19) distributed to the respondents. The respondents were randomly picked to provide both predetermined options and free opinions. In selecting the respondents, the researcher used 'simple random sampling techniques,' which involve a random selection of lawyers from the various states of the Federal Republic of Nigeria. The simple random sampling

technique is considered the best of this study because the sample size focuses on lawyers in Nigeria, which is homogenous. According to Oladele et al., Majekudumi et al., and Aidonjio et al., the advantage of simple random sampling techniques is that it is a hassle-free method of sampling the population. It is homogeneous, and there is no chance of personal bias of the researcher to influence sampling.

Although there are several lawyers in the various states in Nigeria, to successfully arrive at an unbiased general conclusion, this study used a sample size of 308 Lawyers from the different forms of the Federal Republic of Nigeria.

1. **Data presentation/analysis**

The following research questions have been formulated for this study.

2. **Research question one**

Figure 1: Respondent awareness of the Wills Act of 1837, the Wills Law of 1957 and the equivalent in various states

Are you conversant with the Wills Act, 1837 (hereafter Wills Law), and the Wills Law 2 of 1958 (hereafter Wills Law)?

308 responses

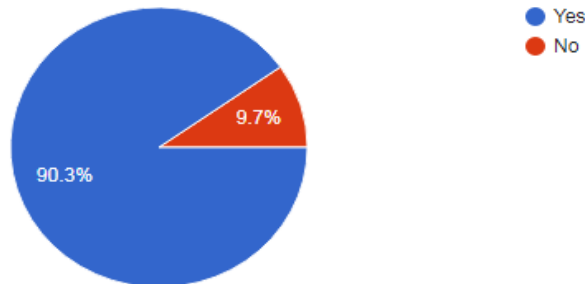


Table 1: Valid response of respondents' awareness of Wills Act, the Wills Law and the equivalent in various states

	Response	Percent
Valid Yes	278	90.3%
Valid No	30	9.7%
Total	308	100%

Figure 1 and Table 1 above shows 90.3% (278 Respondents) of the respondents that resides in the various states in Nigeria are conversant with the *Wills Act, and the Wills Law* in various states in Nigeria. Significant in the data is that it represents an absolute majority of respondents who are conversant with the various wills law, which is the focus of this study.

3. Research question two

Figure 2: Respondent preference of the *Wills Law* in various states or the *Wills Act of 1837*.

Do you prefer the *Wills Law* that provides for the customary limitation on testator power in testate succession, thereby promoting the Nigeria Customs and Traditions to the *Will Act* that does not recognise customary limitation on testate succession?

288 responses

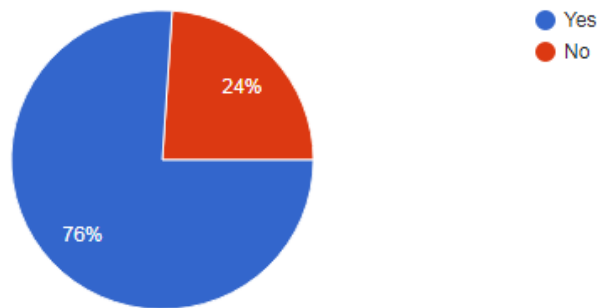


Table 2: Valid response of respondents' preference of the *Wills Law* in various states or the *Wills Act*

	Response	Percent
Valid Yes	219	76%
Valid No	69	24%
Total	288	100%

Figure 2 and Table 2 above shows an overwhelming preference and adoption of the *Wills Law* (Applicable in states of former western region) and its equivalent in various states in Nigeria, by lawyers that resides in the various states in Nigeria. 76% (219 respondents) of the respondents agreed that they prefer *Wills Law* of states in Nigeria. The reason for their preference is as captured in research question three.

4. Research Question 3

Figure 3: Cluster of respondents' reason for preferring the Wills Law

made you prefer the Wills Law?

226 responses

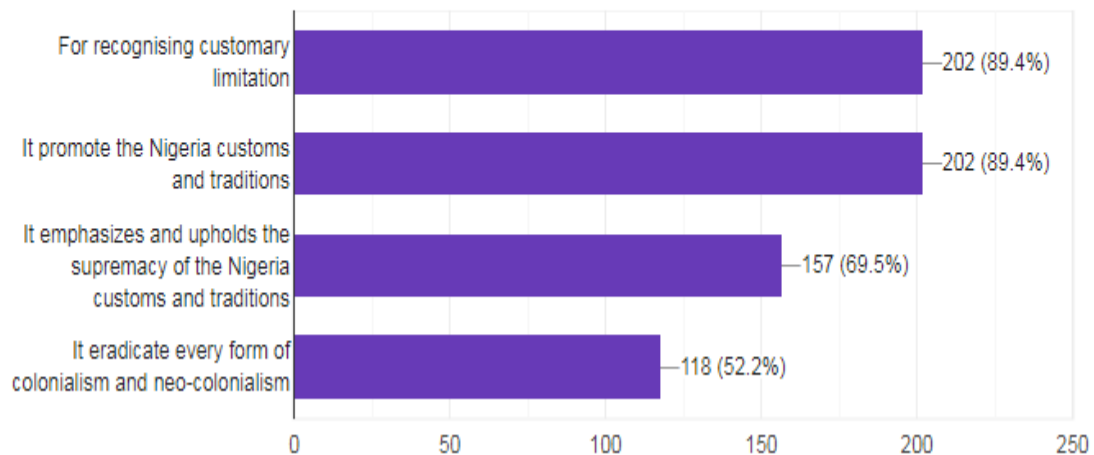


Table 3: Valid cluster of respondent stating the reason for preferring the *Wills Law*

S/N	Cluster of response	Response	Percentage
1	For recognising customary limitation	202	89.4%
2	It promote the Nigeria customs and traditions	202	89.4%
3	It emphasizes and upholds the supremacy of the Nigeria customs and traditions	157	69.5%
4	It eradicate every form of colonialism and neo-colonialism	118	52.2%

Figure 3 and Table 3 above show the four (4) clusters of responses which allow the respondents to select the reason for preferring the *Wills Law* to the *Wills Act*. The data reveals that most respondents agree that it promotes Nigerian customs and traditions (89.4%) and recognizes Nigerian customs and traditions (89.4%). The respondents' response gives credence to the fact that the *Wills Law* and its equivalent

in various states in Nigeria promote and preserve the custom and traditions of Nigeria.

5. Research question 4

Figure 4: Respondent suggestion in enacting local *Wills Law*

Do you agree that there is a need for those states in the North that still applies the Wills Act to enact the law of wills that will recognised customary limitations on testate succession?

288 responses

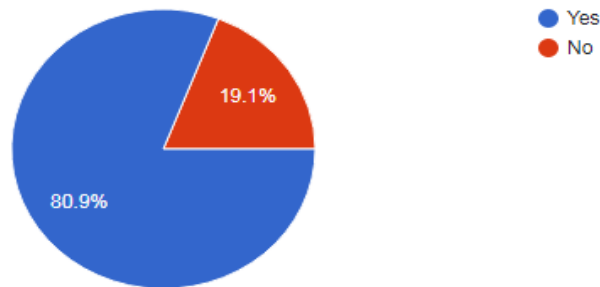


Table 4: Valid response of respondents' agreeing to enacting a local wills law or review of the Wills Act

	Response	Percent
Valid Yes	233	80.9%
Valid No	55	19.1%
Total	288	100%

Figure 4 and Table 4 above show that 80.9% (233 respondents) of the respondent agreed that there is a need for some of those states in the Northern part of Nigeria, which still applies the *Wills Act*, should enact a local law of wills that will promote and preserved their customs and traditions.

Given the above responses from the respondents, the study found, as represented in figure 1 and table 1, that an overwhelming 90.3% of the respondents are conversant with the *Wills Law* (with the various equivalents of Wills Law in different States) and the *Wills Act*. The respondents' knowledge of both laws reveals they can appreciate and respond positively to the other questions without bias.

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However, figure 2 and table 2 represent the responses from the respondent, aimed at ascertaining whether they prefer the *Wills Law*, which recognizes and preserves their custom and tradition on succession, to the *Wills Act*, which gives unlimited power to a testator without any reserved for business and practice, 76% (219 respondents) representing an absolute majority of the respondents responded "Yes." 76% of the respondents prefer the *Wills Law* as a result of the fact that it recognizes Nigeria's customs and traditions. This affirmation reconfirmed *Obaseki JSC's* decision in the case of *Oyewunmi v Ogunesan* when he stated that "Customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions."

Furthermore, figure 3 and table 3 represent the respondents' reasons for preference for the *Wills Law* and its equivalent Wills Law in various states. 89.4% (202 respondents) of the respondent agreed that it promote Nigeria customs and traditions, 89.4 (2020 respondents) of the respondent agreed that it recognizes customary limitation on the power of a testator to make a Will devising their estate, and 69.5% (157 respondents) decided that it emphasizes and upholds the supremacy of the Nigeria customs and traditions. This overwhelming response of the respondent further enforces the view that the statutory recognition, promotion, and preservation of the Nigeria Customary law on succession is not a burden placed on a testator, nor is it unrealistic and impracticable, as opined by *Oriakhogba D. O., and Fenemigho A. I.* in their research work, but rather it preserves the Nigeria cultural heritage (*Oriakhogba & Fenemigho, 2013*). The respondent's stating their reasons for the preference of the *Wills Law* and its equivalent law of wills in various states also reveals that they are aware that the *Wills Act* is an English law modeled following the English man's custom and traditions on succession. In contrast, the *Wills Law* and its equivalent Wills Law in various states in Nigeria are modeled following the customs and traditions of series in Nigeria. It is the view of this that informed the respondent's preference for the *Wills Law*, and this aligns with the historical school of thought theory, which thinks that law evolves from the spirit of the people; it binds the people of a particular nation together and distinguishes them from other people (*Berman, 2005*). The historical law theory also states that before a law is enacted for any society, there must be a good understanding of the people's history, and it must accord with the people's way of life. Given this, figure 4 and table 4 represent the respondents' responses to their suggestions for reviewing the Wills Act or enacting a local wills law. In this regard, 89.5% of the respondent agreed that there is a need for those states

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in the North that still operate the *Wills Act* should enact a local wills law that will be recognized and preserve their customs and traditions on succession.

CONCLUSION

Testate succession is a statutory power of a testator to dispose of his property to his beneficiary; however, the disposition will only take effect upon the death of a testator. In this regard, while a testator is still alive, they can revoke the Will. In Nigeria, the laws that regulate testate succession are the *Wills Act* (a statute of general application) and equivalent local wills statutes such as; The Wills Law (Western Region) applicable in states in the former western region except in *Lagos and Oyo, Wills Edict, 1990 (Oyo), Succession Law Edict, 1987 (Anambra), Kaduna State Wills Law 163 of 1999, Abia State Wills Law 37 Laws of 1999, Wills Law of Bendel State, 1976, Kwara State Wills Law 168 of 1991, Delta Wills Law 4 of 2006, Bauchi State Wills Law 168 of 1989 and Wills Law of Lagos State 2 of 2004, etc.*

However, the study observed that one of the fundamental differences between the *Wills Act* and the local Wills law in Nigeria is that the *Wills Act* did not recognize Nigeria's cultural limitation on a testator disposing of his estate. In essence, the *Wills Act* does not recognize and preserve the custom and tradition of a succession of various ethnic groups in Nigeria, irrespective of the fact that customary law had been said to be one of the source of Nigerian law that regulate the affairs and lives of members belonging to a particular group. As stated earlier, customary law existed before Nigeria was colonized by the British and still forms one of the significant sources of law held with passion by various ethnic groups in Nigeria.

Furthermore, Nigeria consists of over 250 ethnic groups with different customary laws. Given this, the introductory part of the Nigerian constitution recognizes the unity of all of Nigeria in their diversity. The unity of Nigeria in its diversity was further re-emphasized in the words of *Oputa JSC* in the case of *Oloruwu Olorwu* when he stated thus: Nigeria being one nation, one country.... Our former National Anthem supplied the answer 'Though tribes and tongues may differ in brotherhood, we stand, Nigerians all' There are different 'tribes and tongues' in Nigeria—other customary laws dealing with devolution of property on intestacy.

Given the above, it is apt to state that the *Wills Act* is modeled following the British culture and tradition of succession, which is very different from the various customary practices on series in Nigeria. In this regard, it is proposed and

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recommended that there is a need for those states in the north that still operate the *Wills Act* to enact a Wills law that will be recognized and preserve their ancestral heritage on succession. This recommendation is in line with the response of the respondent (80.9%), who agreed that there is a need to enact local law of wills that will promote and preserve Nigeria's customary heritage on succession that is not inimical.

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