

# CUSTOMARY LAND LAW PRINCIPLES

*I have gathered a possie of other men's flowers and nothing but the thread that holds them is my own – Montaigne*

TKS 2004

Principle	Case
<b>Relationship Between Ownership of the Surface of Land and Rights Above and Below the Surface</b>	
<b>1.) Whoever owns the soil owns everything up to the heavens and down to the depths of the earth.”</b>	Poutney v. Clayton Kelsen v. Imperial Tobacco Bernstein v. Skyviews and General Ltd.
<b>Nature and Location of the Allodial Title</b>	
<b>2.) In certain parts of the country, the allodial title is vested in customary communities called stools</b>	Akwei v. Awuletey Kotey v. Asere Stool
<b>3.) Allodial title is vested in customary communities called skins.</b>	Azantilow v. Nayeri Saaka v. Dahali
<b>4.) Allodial title could be vested in families</b>	Ameoda v. Pordier
<b>5.) Possibility of allodial title being vested in individuals</b>	Nyasemhwe v. Afibyesan
<b>6.) Possibility of allodial title being vested in sub-stools</b>	James Town v. Sempe
<b>7.) Conquest and subsequent settlement and cultivation by subjects of the stool</b>	Nyamekye v. Ansah Owusu v. Manche of Labadi

<b>Modes of Acquiring the Allodial Title</b>	
<b>8.) Discovery and Occupation</b>	Ohemee v. Adjei
<b>9.) Discovery by hunters or pioneers of the stool and subsequent settlement thereon and use thereof by the subjects of the stool.</b>	Ngmati v. Adetsia
<b>10.) Where there is unoccupied land between two stools.</b>	Wiapa v. Solomon Ababio v. Kanga Ofori-Ata v. Atta Fua
<b>11.) Through purchase or it could be gifted to the stool.</b>	Sasraku v. David
<b>The Usufruct</b>	
<b>12.) Supreme Court described the usufruct as “a species of ownership co-existent and simultaneous with the stool’s absolute ownership.”</b>	Awuah v. Adututu
<b>13.) Holder of the usufruct has exclusive possession and use of the land. There are no restrictions on the use of the land – could be for farming or building purposes.</b>	Oblee v. Armah Mansu v. Abboye
<b>14.) The holder of the usufruct can maintain an action in trespass against the stool and can impeach a grant made by the stool without his consent.</b>	Awuah v. Adututu
<b>Modes of Acquiring the Usufructuary Interest</b>	
<b>15.) Implied grant from a stool</b>	Ohimen v. Adjei Bruce v. Quarnor Oblee v. Armah Budu II v. Caesar
<b>16.) Express grant from a stool</b>	Armatei v. Hammond
<b>17.) Transfer: Could be from a subject to a subject or from a subject to a stranger.</b>	Kotey v. Asere Stool
<b>18.) Such grant to a subject or stranger being one under customary law is effective from the moment it is made and a</b>	Bruce v. Quarnor

<p><b>deed subsequently executed by the grantor may add to, but cannot take away from the effect of the grant already made under customary law.</b></p>	
<p><b>19. Whether a subject has satisfied the degree of occupation required to confer the usufructuary title is a matter to be determined on a case by case basis. The general rule is that the presence of economic trees on the land is a prima facie indication that someone is in occupation.</b></p>	<p>Norquaye-Tetteh v. Malm Owusu v. Manche of Labadi Wuta Ofei v. Danquah</p>
<p><b>Alienating the Usufruct</b></p>	
<p><b>20.) The subject can alienate so long as the obligation to recognize the allodial ownership of the stool is preserved.</b></p>	<p>Norquaye Tetteh v. Malm Total Oil Products v. Obeng Thompson v. Mensah Awuah v. Adututu</p>
<p><b>21.) When alienation is without the consent of the stool, it is only voidable, not void and can be set aside only when the stool acts timeously.</b></p>	<p>Buour v. Bekoe</p>
<p><b>22.) The stool cannot make a valid grant of land in which a subject holds the usufruct without the consent of the subject.</b></p>	<p>Total Oil Products v. Obeng Awuah v. Adututu Mansu v. Abboye</p>
<p><b>Loss of The Usufruct</b></p>	
<p><b>23.) Abandonment</b></p>	<p>Mansu v. Abboye</p>
<p><b>24.) Where the usufructuary denies the title of his grantors.</b></p>	<p>Total Oil Products v. Obeng</p>
<p><b>25.) Failure of successors</b></p>	<p>Mansu v. Abboye</p>
<p><b>26.) By consent of the usufructuary</b></p>	<p>Mansu v. Abboye</p>
<p><b>Management of Stool Property</b></p>	

<b>27.) The Courts have held that “vested in the president” does not take away the powers of the stool to manage and control stool lands or even to litigate in respect of same.</b>	Nana Hyeaman II v. Osei Gyamfi v. Owusu
<b>28.) In matrilineal systems, succession to offices is still matrilineal.</b>	Serwah v. Kesse
<b>29.) The Chief is the proper person to sue or to be sued in respect of stool land.</b>	Gyamfi v. Owusu
<b>30.) In the absence of the chief another person may be appointed to represent the stool if by customary law that person is competent to represent the stool.</b>	Ofuman Stool v. Nchiraa Bukuruwa Stool v. Kumawu Stool
<b>31.) Customary law position is that a chief is not liable to account during his reign</b>	Gyamfi v. Owusu
<b>32.) Vesting in the president under Act 125 has not affected the powers of stools to litigate in respect of stool lands</b>	Nana Hyeaman II v. Osei
<b>33.) A valid alienation is one which is made by the occupant of the stool with the consent and concurrence of the principal councillors.</b>	Allottey v. Abrahams
<b>34.) There is authority for the proposition that where the occupant does not participate in the transaction, it is void.</b>	Agbloe v. Sappor
<b>35.) A document purported to be executed by the occupant of the stool and at least the linguist would be deemed to be binding on the stool.</b>	Amankwanor v. Asare
<b>The Family as a Holder of Interests in Land</b>	
<b>36.) Member acquires the customary freehold upon his occupation and use.</b>	Heyman v. Attipoe
<b>37.) The member may exercise the rights of possession against the head of family.</b>	Heyman v. Attipoe
<b>38.) There is authority for the proposition that such rights are exercisable even against other members of the family or strangers.</b>	Nunekpeku v. Ametepe
<b>39.) Such rights could also be exercised against non-members of the family or strangers.</b>	Botwe v. Oduro

<b>Acquisition of Family Property</b>	
<b>40.) Upon the death of one of the acquiring members, the surviving contributors only retain a life interest and the property becomes a full fledged family property upon the death of the other contributor(s).</b>	Tsetsewa v. Acquah
<b>41.) Where a member acquires property with a small contribution from the family, the property does not assume the character of family property.</b>	Cudjoe v. Kwatchey
<b>42.) The fact that a family member benefited from financial support of the family towards their education does not make property subsequently acquired by them in the future family property.</b>	Larbi v. Cato
<b>43.) Where one member of the family acquires land and with his own resources and other members provide the funds to build on the land the house becomes family property.</b>	Boafo v. Staudt
<b>44.) Where a member builds a house on family land, the land remains family land and the house becomes family property with the member only retaining a life interest. Indeed upon his death, the widows and children of the man have only a right of occupation subject, of course, to good behavior.</b>	Amissah-Abadoo v. Abadoo
<b>45.) Where a member makes an extension to existing family farm or improves same, the essential character of the farm remains family property.</b>	Nkonnua v. Anafi
<b>46.) Where a member extends or improves existing family building, such improvement does not change the character of the building which remains family property.</b>	Nkonnuah v. Anafi
<b>47.) Where a member extends or improves existing family building, such improvement does not change the character of the building which remains family property.</b>	Kumah v. Asante
<b>48.) Where family property is lost through sale or other attachment and a member repurchases or redeems the property, it becomes family property unless members of the family were specifically informed at the time of the repurchase or redemption that the property would not resume its former position as family property.</b>	Nwonama v. Asiedu
<b>49.) Where social obligations require some individuals to assist another person, when such assistance is given, any</b>	Yoguo v. Agyekum

<p><b>property acquired is the individual property of the person so assisted. Indeed, under the customary law, where a child assisted his father or guardian to acquire property, he did not become a joint owner.</b></p>	
<p><b>Alienation of Family Property</b></p>	
<p><b>50.) As a general rule or at least best practice, a family meeting should be convened to secure the necessary consents required for a valid alienation of a family land.</b></p>	<p>Awortchie v. Eshon</p>
<p><b>51.) According to native law and custom, it is only the occupant of the stool or head of the family who is entitled, with the consent and concurrence of the principal elders of the stool or family, to alienate stool or family land. There can be no valid disposal of stool or family land without the participation of the occupant of the stool or the head of family; but there can be a valid alienation of stool or family land if the alienation was made by the occupant of the stool or the head of family with the consent and concurrence of some, but not necessarily all, the principal elders of the stool or family. The occupant of the stool or head of family is an indispensable figure in dealing with stool or family land.</b></p>	<p>Allotey v. Abrahams</p>
<p><b>52.) Court of Appeal clarified the rule stated in <i>Beyaidee v. Mensah</i>. They stated that, “A sale by the head of family without the assent and concurrence of the rest of the family is not void. It is voidable at the instance of the family, but the Court will not avoid the sale if it is not satisfied that the family has acted timeously and with due diligence, and that the party affected by the avoidance of the sale can be restored to the position in which he stood before the sale took place.”</b></p>	<p>Adjei v. Appaigyei</p>

<p><b>53.) The Court of Appeal outlined the conditions to be satisfied by the family seeking to avoid a transaction thus:</b></p> <ul style="list-style-type: none"> <li>-That the person seeking to avoid the transaction was the proper person to represent the family in a suit relating to family land.</li> <li>-That the members of the family were wholly ignorant of the transaction.</li> <li>-That the family had not by any conduct subsequent to the date mentioned acquiesced in the transaction.</li> <li>-That the family acted timeously and with due diligence</li> <li>-The defendant could on a declaration by the court avoiding the transaction be put in the same situation that he stood before the transaction.</li> </ul> <p>The burden of establishing the above facts is on the person seeking to set aside the sale.</p>	<p>Ata v. Aidoo</p>
<p><b>54.) Where the head of the family does not participate in the transaction such alienation is void <i>ab initio</i>. The rule was stated as follows:</b></p> <p>“The principal members of a family cannot give any title in a conveyance of family land without the participation of the head of family. The head of family may be considered to be in a position analogous to a trustee from which it follows that it is quite impossible for land to be legally transferred and legal title given without his consent. The alleged deed transferred was therefore <i>ab initio</i> and the respondents derive no right of absolute ownership thereof.”</p>	<p>Agbloe v. Sappor</p>
<p><b>Litigation In Respect of Family Property</b></p>	
<p><b>55.) The general rule is that it is the head of the family that may sue and be sued in respect of family land.</b></p> <ul style="list-style-type: none"> <li>-Where the head of family sues on behalf of the family, the face of the Writ must show that he is suing in a representative capacity.</li> </ul>	<p>Kwan v. Nyieni</p>
<p><b>56.) Where the capacity of the person suing in representative capacity on behalf of the family is challenged, the burden of proof lies on the person suing to show that indeed he has the power to sue as representing the family.</b></p>	<p>Nyamekye v. Ansah</p>
<p><b>57.) Where the person suing leads evidence to show that he is the head of family, the burden shifts to the person denying such status to show that someone else was indeed the head of family.</b></p>	<p>Akrofi v. Otenge</p>

<p><b>58.) Three exceptions to the general rule in which persons other than the head of family are allowed to sue in respect of family property.</b></p> <ul style="list-style-type: none"> <li>-Where the family property is in danger of being lost to the family and it is shown that the head (either out of personal interest, or otherwise) will not make any move to save or preserve it, or</li> <li>-Where owing to a division in the family, the head and some of the principal members will not take any step, or</li> <li>-Where the head and the principal members are deliberately disposing of family property in their personal interest, to the detriment of the family as a whole.</li> </ul> <p>Where such special circumstances are established, an action by any member of the family will be entertained by the Court:</p> <ul style="list-style-type: none"> <li>-Where it is proved that such member has the authority of the other members of the family to sue, or</li> <li>-Upon proof of necessity, provided that Court is satisfied that the action is instituted to preserve the family character of the property.</li> </ul>	<p>Kwan v. Nyieni</p>
<p><b>59.) Where the head of the family sues in a representative capacity, he is held personally liable for the payment of costs awarded against him.</b></p>	<p>Daatsin v. Amissah</p>
<p><b>Head of Family (Appointment/Election)</b></p>	
<p><b>60.) The head of family is appointed by the principal members of the family.</b></p>	<p>Walbeck v. Captan</p>
<p><b>61.) There is authority for the proposition that the appointment of the head of family must be made by all the principal members of the family.</b></p>	<p>Lartey v. Mensah</p>
<p><b>62.) The meeting at which the appointment is done must be convened specifically and solely for the purpose of appointing the head and notice to that effect should be sent to all the principal elders.</b></p>	<p>Lartey v. Mensah</p>
<p><b>63.) Where some principal members absent themselves after having been duly notified, those present can duly appoint the head of family and such appointment shall be binding on the absentees.</b></p>	<p>Lartey v. Mensah</p>



<b>64.) Where some of the principal members are not duly notified, upon proof of such failure of notification, they may move to set aside the decision taken at the meeting.</b>	Lartey v. Mensah
<b>65.) Where there is a division within the family, one faction cannot appoint a head for the whole family.</b>	Ankrah v. Allotey
<b>66.) Strangers (non members) could be invited to the meeting as observers and possibly participate in the deliberations; however, they cannot take part in the decision to appoint the head of family.</b>	Banahene v. Adinkrah
<b>67.) The appointment of a person as head of family is neither automatic nor does it devolve on any person as a matter of right or entitlement</b>	Hervi v. Tamakloe
<b>Removal of the Head of Family</b>	
<b>68.) Decision to remove the head of the family must be taken at a family meeting. All the principal elders must be invited to attend the meeting.</b>	Quagraine v. Edu Abaka v. Ambradu
<b>69.) The head could be removed by a decision of a majority of the principal members.</b>	Abaka v. Ambradu
<b>70.) The head of family must be served with the notice to attend the meeting (but purpose of the meeting should not be stated in the notice), and where the head fails to attend without good reason, the meeting may proceed and he could be removed absentsia.</b>	Abaka v. Ambradu
<b>71.) The courts will not interfere with the merits of the family's decision to remove a head unless it is proved that there was substantial departure from the tenets of <i>natural justice</i>.</b>	Allotey v. Quarcoo
<b>72.) The burden of proving specific grounds of invalidity of either the appointment or removal of the head of the family lies with the particular member seeking to avoid the decision of the family.</b>	Walbeck v. Captan
<b>Accountability of Head of Family</b>	
<b>73.) Members of the family cannot call upon the head of family to account and their remedy is to depose him and appoint another person in his stead.</b>	Fynn v. Gardiner

<b>74.) Position was affirmed in</b>	Abude v. Onano
<b>75.) The decision in this case prompted the enactment of PNDCL 114, the Head of Family (Accountability) Law, 1985. PNDCL 114 has three sections: -Section 1 makes the head of family accountable to the family for family property. -Section 2 requires the head to prepare an inventory of family property in his custody. -Section 3 empowers members with beneficial interest in property to bring an action after certain preliminary procedural requirements have been satisfied.</b>	Hansen v. Ankrah
<b>76.) <i>Ollenu J.</i> stated prior to constitutional and legislative interventions that, “By customary law it is domestic responsibility of a man’s wife to assist him in the carrying out of the duties of his station in life, that is farming or business. The proceeds of this joint effort of a man and his wife and or children, and any property which the man acquires with such proceeds are by customary law the individual property of the man. It is not the joint property of the man and the wife and or children. The right of the wife and children is a right to maintenance and support from the husband and father.</b>	Quartey v. Martey  Clerk v. Clerk
<b>77.) Later customary law was prepared to accept a different treatment in situations where the wife’s contribution exceeds mere assistance given by a wife under customary law. In such situations, where the courts found that the wife’s contribution was substantial, the court would hold that she had become a joint owner of the property.</b>	Abebreseh v. Kaah  Annang v. Tagoe
<b>78.) However, see this recent case, where it was held that upon dissolution, the parties become joint owners of the matrimonial property and that the ordinary rules of contract have no place in the context of a marriage.</b>	Mensah v. Mensah
<b>Upon Death Intestate (Governed by PNDCL 111)</b>	
<b>79.) Specifically among the Akans, the customary law before September 1985 was that the self acquired property of an Akan man, upon his death intestate becomes family property and the maternal family become successors. This position was criticized in, <i>In re Antubam.</i></b>	In re Antubam

<p><b>Article 22(2) enjoins Parliament to enact legislation to deal with property relationship of spouses. Up till now, Parliament has not passed it.</b></p> <p><b>Clause 3 of Article 22 says there must be joint assets for property acquired during marriage plus equitable sharing of property.</b></p>	
<p><b>80.) The courts have held that the rights of Akan children to reside in their father’s house subject to good behavior, was limited to their father’s self acquired property.</b></p>	<p>Yeboah v. Kwakye Boateng v. Boateng</p>
<p><b>81.) Guarantees every spouse a reasonable provision from the estate of the other spouse, upon death testate or interstate.</b></p>	<p>Article 22(1)</p>
<p><b>Formalities For Transfer in Land</b></p>	
<p><b>82.) “A conveyance of land made in accordance with customary law is effective from the moment it is made. A deed subsequently executed by the grantor for the grantee may add to, but it cannot take away from the effect of the grant.</b></p>	<p>Bruce v. Quarnor</p>
<p><b>83.) For transfer of land by sale, <i>Guaha</i> is ceremony among Gas, <i>Tramma</i> for Ashantis.</b></p>	<p>Sasraku v. David  Adjomei v. Yiadom (Different Perspective)</p>
<p><b>84.) Two requirements must be satisfied to validate a gift: -Must be made in public before witnesses and -Donee must accept.</b></p>	<p>Ahmed v. Afriyie</p>
<p><b><i>Ollenu JSC</i></b> <b>85. )Supreme Court stated that there must be: -Ceremony of transfer of the property -Publication to the living and the dead that ownership has passed from the donor to the donee -Pouring of libation, and -Aseda indicating acceptance of a gift of land</b></p>	<p>Yoguo v. Agyekum</p>
<p><b>86.) “In order to conclude a contract for the sale of land at native customary law certain ceremonies have to be performed before ownership in the land can be transferred to a purchaser. That custom is known as the “<i>Guaha</i>” custom (for personal property the custom is “<i>tramma</i>.”) After conclusion of the negotiations, if the parties intend the ownership to pass from the vendor to the purchaser, they</b></p>	<p>Tei Angmor v. Yiadom III (for actual description of ceremony)</p>

**agree on a date when the customary ceremony will be performed. They then invite witnesses for the purpose, and proceed to the land. Their representatives of each party collect some twigs or branches of trees on the land, and come before the witnesses. The parties face each other, the vendor holding one end and the purchaser the other end of the twigs or branches. They then declare the purpose of the ceremony, that is the contract of sale is now being finally concluded, and they break the twigs into two. After this, the witnesses receive witness fees, and this concludes the ceremony.**