CUSTOMARY LAND LAW

These notes touch on fundamental areas of immovable Property Law

1. <u>What is Property</u>

It is important at the onset to dispel one common lay person's notion concerning 'property'. Non-lawyers (and sometimes even lawyers) speak loosely of property as the *thing* which is owned. While this usage appears harmless in ordinary parlance, it tends to obscure certain salient features of property as a legal phenomenon.

C.R. Noyes, in his book *The Institution of Property*, at p. 357 defines property as:

> "The interest, which can be acquired in external objects or things. The things themselves are not, in a true sense, property, but they constitute its foundation and material, and the idea of property springs out of the connection, or control, or interest which, according to law, may be acquired in them or over them".

In other words, property is not a 'thing' but a relationship. Property is the relationship between the owner and the thing, i.e. between a 'subject' and an 'object'. This explains why it is possible for conflicting claims to be brought by two or more 'subjects' in respect of the same 'object'. This is demonstrated more clearly in the case of land. Land could be the object of a multiplicity of claims made simultaneously by an owner-occupier, a tenant, a building society or a neighbour who enjoys an easement.

Generally speaking "Property" concerns the ownership of things. At a basic level everyone is familiar with the idea of property since they have some experience of owning something – for example your car, clothes, etc. As a consequence of your ownership you are able to do whatever you want with it (subject of course to the limitations imposed by the law). You can sell it,

destroy it gift it and so on. All of these are made possible by the fact that you own the car. There are two main types of property, namely Tangible and Intangible Property.

1. <u>Distinction Between Tangible and Intangible Property</u>

Tangible property consists of things, which are physical in nature, e.g. car. Intangible property consists of things which are not physical in nature but which are regarded as property because they are capable of ownership, e.g. shares in a company, intellectual property.

3. <u>Distinction Between Proprietary and Personal Rights in Property</u>

A proprietary right is a right, which exists in relation to a thing, whether tangible or intangible. For example a house, which is "owned" by one person may be leased to a tenant and mortgaged to a bank. In this case the owner, tenant and bank will all enjoy proprietary rights in the house. In other words a proprietary right is a right existing in the "res" or thing to which it relates. Such right is described as a right *in rem* – in the thing itself. For example a lease is capable of enduring through changes in ownership and is enforceable against the new owner.

A personal right is an entitlement, which a person enjoys against another specific individual person. Its central characteristic is that it can only be enforced against that specific person. It is described as a right *in personam*.

4. <u>What is the Law of Immovable Property</u>

The law of immovable property is not particularly concerned with things. It is concerned with the relationships which arises between persons in respect of things. The law of immovable property comprises the range of legal rules and principles, which regulate the proprietary issues concerning that, which is classified as land. It is an analytically coherent body of law as, for example, is criminal law which concerns itself with how the law determines if conduct is criminal in the eyes of the state or the law of contract which comprises of the legal rules regulating obligations voluntarily entered into by consensual agreement. The concerns of land law are of tremendous social significance since the ownership, control and exploitation of land is of fundamental importance to society. No one can live in the modern world

without reference to land. Land may provide a home, place of work or recreation. You can make a long list.

5. What does the Law of Immovable Property Cover

a. Ownership of land, and formalities and procedures for transfer of land.
b. Creation of subsidiary interests in land and the rights and obligations of holders of subsidiary interests.
c. Priorities between competing interests.

6. What is Land

Regarding land Blackstone, the legendary English legal historian commented as follows: “Land is a word of a very extensive signification”.

Ordinarily land is seen in terms of physical ground. For example Kofi owns land. Upon hearing this, your mind is focused on a plot of land or a piece of turf located somewhere at West Legon or Ofankor, for example.

According to Ollennu:

> “The term land as understood in customary law has a wider application. It includes the land itself, i.e. the surface soil, things on the soil, which are enjoyed with it as being part of it by nature, i.e. rivers, streams, lakes, lagoon, creeks, growing trees like palm and dawadawa trees or things artificially tied to it like buildings and any structure whatsoever. It also includes any estate, interest or right in, to or over the land or over any of the other things which land denotes, i.e. right to collect herbs or snails or to hunt on the land”.

For legal purposes land includes all trees, shrubs, hedges, plants and flowers growing thereon, whether cultivated or wild. However, in the Dadzie v. Kokofu (1961) 1 GLR 19, the Supreme Court held that ownership of cocoa farms was to be strictly distinguished from ownership of the land on which they were situated, and that the successor to the land had no authority to claim such farms where these had been made by another person under a license from the deceased.

For legal purposes water is seen as a species of land.

The Interpretation Act 1960 (C.A. 4) provides that 'Land' in any enactment includes any estate, interest or right in, to or over any land or water".

England's Law of Property Act, 1925, S.205 (1)(x) defines land as follows:

> "Land includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings… (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; and also a manor, advowson, and a rent and other incorporeal hereditaments and an easement, right, privilege or benefit in, over or derived from land".

Several unfamiliar terms have been introduced in this definition. But importantly land is not regarded just as a mere ground. But a category describing a whole range of rights associated with the ground.

The above definition distinguishes between two very important categories of rights, which make up land, viz., corporeal and incorporeal hereditaments. Hereditament signifies rights that are heritable, i.e. capable of passing by way of descent to successors in title.

Corporeal hereditaments include the physical and tangible characteristics of land. These are the physical features of land and consist of the physical surface and everything attached to the land. For example minerals, buildings attached to the surface and plants and trees growing on the land.

Incorporeal hereditaments refer to certain intangible rights which may be enjoyed over or in respect of land. These are intangible rights existing in the land as a physical entity. Thus proprietary rights in the land are classified as land. For example lease, easement and mortgage may all be regarded as land.

7. Relationship Between Ownership of the Surface of Land and Rights Above and Below the Surface

The general rule is that ownership of the surface of land carries with it rights to what is below the surface and to control of the airspace above. This is

expressed in Latin as: *"cuius est solum, eius est usque ad coelum et ad inferos"* (meaning whoever owns the soil owns everything up to the heavens and down to the depths of the earth). Whether accurate or not this notion articulates the sacred notion of the nature of property rights in the common law.

> Pountney v. Clayton (1883) 11 QBD 820 at 838.
> Kelsen v. Imperial Tobacco (1957) 2 QB 334.
> Bernstein v. Skyviews and General Ltd. (1978) QB 479.

What, if any, are the constitutional, legislative and other limitations imposed on the incidents of ownership. Indeed, the original notion of *"cuius est solum* is now subject to so many statutory and constitutional limitations that one would discount it as a worthless statement in contemporary land law.
It is worth noting that the definition of land includes 'fixtures' attached to the land. This is consistent with the common law notion of *quicquid plantatur solo, solo cedit* (meaning whatever is attached to the ground becomes part of it). In order to achieve this goal, the law has to distinguish between 'fixtures' and 'chattels'.

Fixtures comprise that category of material objects which, when physically attached to the land, are regarded as becoming annexed to the realty. Irrespective of their previous ownership, title to such objects, thenceforth vests automatically and exclusively in the owner of the realty or land. As fixtures, they are regarded as having merged with the 'land' by reason of some curious legal metamorphosis, and thus pass with all subsequent conveyances of the realty unless and until lawfully severed from the land.

By contrast the category of 'chattels' consists of objects which never lose their character as mere personalty, but which retain their 'chattel' status even though placed in some close relationship with realty. Not being included within the realty, chattels do not automatically pass with conveyances of the land.

The distinction between 'fixtures' and 'chattels' is not entirely straightforward. The distinction seems largely to turn on two separate but related tests as to the intention of the original owner of the object in question. These two tests relates to the degree of annexation present in a given circumstances and to the general purpose of the annexation.

Holland v. Hodgson (1872) LR 7 CP 328 at 334.

8. Concept of Ownership and Appropriate Terminology

Our focus would be to answer the question whether all or some of the English legal terminologies are appropriate for describing interests in land in Ghana.

Topic 2 –Customary Law Interests in Land

1. Introduction

It is important to preface this part of the course by discussing the nature and historical antecedents of the land tenure system in this country. Tenure in this country consists of a hydra-headed body of rules, principles and practices.

Indeed one can identify a hybrid of English Common Law rules and principles; the Ghanaian customary rules and principles, constitutional provisions and statutory provisions. The picture is even made complicated by Article 11 of the 1992 Constitution which outlines the sources of law in Ghana. Article 11(1)(e) mentions "the common law" as one of the sources of law in Ghana. Then Article 11(2) defines the common law of Ghana as comprising the received common law and the rules of customary law. Customary law is defined in Article 11(3) as "rules of law which are by custom applicable to particular communities in Ghana".

Given our concept of community in this country, how many variations of the customary law do we have in Ghana? In other words what is the Customary Land Law of Ghana? To even take it to another level: Is there any such thing as the Customary Land Law of Ghana that we should be studying?

It would be difficult to answer these questions. However, you can be sure that we are able to make broad generalisations after a distillation of rules and

principles from the available body of case law, customary practices and writings of scholars and practitioners in the field. Particular propositions of law may not be applicable country-wide or even in the same political region or ethnic group or subdivision. Yet that is what makes the subject challenging.

Be that as it may a caveat must be sounded regarding making broad generalisations about the customary land law. You could go wrong!

For our purposes the following customary law interests in land are recognised:

a. Allodial title
b. Customary law freehold
c. Customary tenancies
d. Customary licenses

2. The Allodial Title

a) Nature and Location of the Allodial Title

This interest is also described as the Paramount title, Absolute title or Ultimate title. According to Bentsi Enchill it is the only customary title that is not held by a tenant from a lord. Under English law there is legally speaking only one landlord, i.e. the Crown. Everyone else is a tenant of some sort.

If one considered a hierarchy of interests under the customary law, the allodial title occupies the apex. It is thus the highest interest you can hold in land under the customary regime. There is some controversy as to what entities can hold the allodial title. In other words where is the allodial title located? Two ideas are put forward. First are customary communities, viz Stools and Families and Individuals.

Mention the example of Ada regarding the salt investors and the structure of the Ada political system and how it impacts on land tenure and management.

Also mention the case involving Mr. Martey's Family at Osu Wem.

There are authorities which have held that in certain parts of the country the allodial title is vested in customary communities called *Stools.* See:

Akwei v. Awuletey (1960) GLR 231.
Kotey v. Asere Stool (1962) 1 GLR 312.

However in Jamestown Stool v. Sempe Stool (1989-90) 2 GLR 393, it was held that the allodial title was vested in sub-stools ie each of the substools had allodial title to as designated to them ie Sempe, Alata, Akumajay

In other parts of the country, the allodial title is vested in customary communities called *Skins.* See the following cases:

Azantilow v. Nayeri (1952) DC (Land) (1952-1955),
Saaka v. Dahali (1984-86) GLR 149.

There are authorities holding that the allodial title could also be vested in *Families.*
Ameoda v. Pordier (1967) GLR 479.

In one case there was a suggestion of the possibility of the allodial title being vested in *Individuals*. *See* the case of*:*
Nyasemhwe v. Afibiyesan (1977) 1 GLR 27. Uncle of the plaintiff handed down land to him; we can therefore infer that Allodial tilt was vested in an individual. However, there is some ambiguity in the decision as the judge also seemed to suggest that in the particular case the allodial title was vested in the plaintiff's family. See also:

Amodu Tijani v. Secretary of Southern Nigeria (1921) 1 AC, 399.

Compare with:

Golightly v. Ashirifi (1961) 1 GLR 28 (PC).
Sasraku v. David (1959) GLR 7.

The last three cases deal with the question of whether or not the allodial title could be transferred to an individual. Note particularly Sasraku v. David (Kyempo) stool had sold land to the plaintiff-family) and examine the

position taken by Jackson J, and indicate whether you agree with him on his reasoning.

Read the following cases in relation to specific cases in "Accra". For the purposes of the above exercise Accra is used in reference to the area around Kokomlemle, not as synonymous with the national capital.

See Golightly v. Ashirifi (1955)14 WACA 676, affirmed (1961) 1 GLR 28.

La – Mechanical Lloyd v. Nartey (1987-88) GLR 314.
Onano v. Mensah (1948) DC (Land) (1948-1951) 97.

Osu – Akwei v. Awuletey (1960) GLR 231.
Kwami v. Quanor (1959) GLR 269.

Teshie – Mensah v. Ghana Commercial Bank (1958) 3 WALR 123.

Accra - Golightly v. Ashirifi (1955)14 WACA 676, aff'd. (1961)1GLR 28.

Jamestown – Kotey v. Asere Stool (1962) 1 GLR 312
Jamestown Stool v. Sempe Stool (1989-90) 2 GLR 393

a. Incidents of the Allodial Title

By incidents we are referring to the bundle of rights which accrues to the holder of the allodial interest or for that matter any interest in land. It describes the rights of user and control that the holder of an interest in land can enjoy. Pay attention to the incidents of the allodial title and be prepared to compare those with the customary law freehold.

For the purposes of our discussion under the allodial title one must distinguish between subjects of the stool on one hand and strangers on the other. We use subjects and strangers in place of citizens and aliens respectively.

Among these are:

i. Members of the community are entitled to take natural fruits and products, farm or build upon the land and thus acquire the customary law freehold or usufruct in the land.
i. Community can grant land to subjects or strangers.
i. The community has the right to defend its interest in litigation.
i. The community is entitled to allegiance and customary services from the subjects or strangers in occupation.
vi. The community retains the reversionary interest in cases where the holder of the customary law freehold abandons his interest or dies without heirs.- allodial holders may take possession of land when the holder of the usufruct abandons the land/dies

a. Acquisition of the Allodial Title

The *locus clasiccus* on this matter is the case of Ohimen v. Adjei (1957) 2 WALR 275. From Ohimen v. Adjei (1957) 2 WALR 275 and subsequent cases the following modes of acquisition can be identified:

i. Conquest and subsequent settlement and cultivation by subjects of the stool.

Nyamekye v. Ansah (1989-90) 2 GLR 152.
Owusu v. Manche of Labadi (1933) 1 WACA 278.

ii) Discovery by hunters or pioneers of the stool and subsequent settlement thereon and use thereof by the subjects of the stool.

Ngmati v. Adetsia (1959) GLR 323.

iii) Contiguity—where there is unoccupied land between two paramount stools.

Wiapa v. Solomon (1905) Ren. 405.
Ababio v. Kanga (1932) 1 WACA 253.
Ofori-Ata v. Atta Fua (1913) D & FCt. (1911-16) 65-66.

For an analysis of the last three cases, s*ee* Kludze, The Ownerless Lands of Ghana

iv) Gift to the stool.
v. Purchase.
vi.

Acquisition of allodial case-
Principle: Substools are vested with interest under the head stoolYaw Nkansah II nd others (Kwahu) v Wudanu Kwasi , Chief Djaba and others (ewe)
The defendants said that the nframa stool as a substool of the wusuta (Ewe-speaking) could not let the land out to the Kwawu tribe since the substool of theirs (ewes) did not have the allodial title.
HELD: that the nframa stool(substool of the ewe stool Wusuta) under customary law was vested with the allodial title under the wususta (head chief)-so they could give out the land
SO KWAHUS WON THE CASE
But when Kwahus started using land two of their tribes, Bukuruwa and Nkwatia stools fought. Bukuruwa claimed the land Nkawatia occupied
Nkwatia counterclaimed
HELD

Principle in acquisition
if any land is vested in a head stool that land must first belong to a sub-stool/skin. Thus, when a dispute arises between a substool of one state and that of another state, the heads are to take it up. one can't say that land belongs to a head stool and does not belong any of the substools
Osus found and settled at Christianborg through the goodwill and permission of the akras and the labadis
In Golightly v Ashrifi in the Coconut Plantation case Jackon J said that with time too much land was yieded to the Osus by the tact permission of the Gas that it came to be regared as their property
then the Anahors broke away from the Labadis and joined Osu so their land was for the Osus.......
anohor abondoned
labadi settled and since they were the original owners and they won the case
if there had bn no abandonment then osu wud still own the land but since Anahor left........

d. <u>Loss of the Allodial Title</u>

i) Abandonment.
ii) Conquest. <u>Owusu</u> v. <u>Manche of Labadi</u> (1933) 1 WACA 278.

i. Adverse possession under the Limitations Decree 1972 (NRCD 54).

iv. Extinction by effect of constitutional provisions. See 1992 Constitution, Article 266(3), which converts existing freeholds held by non-citizens into leases for 50 years effective August 24, 1969. Issue is whether allodial title is the same as freehold?

v.) Sale. Golightly v. Ashirifi (1961) 1 GLR 28 (PC).
Sasraku v. David (1959) GLR 7.

vi) Compulsory acquisition. Examine the following provisions:

- 1992 Constitution, Article 20, clauses 1,2,3,5 & 6.
- Administration of Lands Act, 1962 (Act 123).
- State Lands Act, 1962 (Act 125) as amended.

Distinguish between the procedure as well as the effects of compulsory acquisition and vesting. Particularly emphasise the effects on the allodial title.

In compulsory acquisition the allodial title is extinguished. However, vesting does not extinguish the allodial title. For effects of vesting refer to the case of Nana Hyeaman II v. Osei (1982-83) GLR 495.

Section 7(1) provides that of the Administration of Lands Act provides:

> "Where it appears to the President that it is in the public interest so to do he may, by executive instrument, declare any stool land to be vested in him in trust and accordingly it shall be lawful for the President, on the publication of the instrument, to execute any deed or do any act as trustee in respect of the land specified in the instrument".

Section 10(1) provides that:

> "The President may authorise the occupation and use of any land to which this Act applies for any purpose which in his opinion, is conducive to the public welfare or the interests of the state".

Section 10 makes provision for the payment of appropriate compensation from funds voted byParliament. Examples of Vested Land are Koforidua

and Nkawkaw Lands (E.I. 195 of November 1, 1961); Efutu and Gomoa Ejumako Lands (E.I. 206 of November 21, 1961) and Stool Lands within one mile radius of the Winneba Roundabout (E.I. 83 of June 6, 1963);.

But discuss the possibility of reversion in cases where the acquired land is not used for the intended purposes. Refer to current government position on the matter, especially in the light of Article 20(6) of the 1992 Constitution. Eg. Atomic Energy area, P & T at Pantang, Achimota School v. Owoo Family.

d. Constitutional and Statutory Interventions in the Incidents of the Allodial Title

"Man cannot always be allowed by society to be complete master of what he calls his own, and that he must submit to the restrictions placed by the law upon the exercise of his proprietary rights." For example:

i. Constitutional provisions on prohibition of certain grants by stools.
   - Article 267(5) prohibits grants of freehold in stool lands.?

ii. Constitutional provisions governing restrictions on grants to persons who are not citizens of Ghana.
   - Article 266(1)-(5).

i. Constitutional provisions on the vesting of minerals in their natural state in the president on behalf of and in trust for the people of Ghana.
   - Article 257(6)

iv. Constitutional provisions subjecting grants of concessions or right for the exploitation of any mineral or natural resource to parliamentary ratification.
   - Article 268. See proviso for exemptions to be made by Parliament. Article 269(2).

v. Constitutional provisions governing the receipt and allocation of revenue from stool lands.
   - Article 267(1) and Article 267(6).
   - See also the Office of the Administrator of Stool Lands Act, 1994 (Act 481), SS. 2 & 7.

vi. Legislation relating to timber, minerals and petroleum.
   - Concessions Act, 1962 (Act 124), as amended by the Timber Resources Management Act, 1997 (Act 547), S.1.
   - Minerals and Mining Act 2006 S.1.

- Petroleum Exploration & Production Law, 1984 (PNDCL 84), s.1.
- Legislation relating to Planning and Zoning, e.g. Local Government Act, 1993 (Act 462) S. 49, 52, 53, 54 and 55.

f. <u>Social, Economic and Political Influences on the Allodial Title</u>

Note particularly the following:

a. Economic and technological developments leading to the new and intensive uses of land.
b. The emergence of the customary law freehold.
c. The extension of the governmental authority in land administration.
d. Changes in the nature, structure and organisation of customary communities and particularly traditional notions and structure of the family.

3. Usufructuary Interest

a) What is this interest?

It has been called the Usufruct, Determinable Estate, Customary Freehold or Customary Law Freehold. (For the last term see S.19(1)(b) of the Land Title Registration Law, 1986 (PNDC L. 152) dealing with registrable interests under the Law). As usual we shall not delve into the terminological difficulties.

In Roman law, usufruct was the right of using and enjoying property belonging to another person provided the substance of the property remained unimpaired or unchanged. In Roman law, a usufruct was not capable of being alienated. In addition, the Roman usufruct did not survive the life of the usufructuary. On the other hand, the Ghanaian usufruct is inheritable, alienable and potentially perpetual. The usufruct was described as a burden on the allodial title. According to this view, the usufruct is not another species of ownership in itself but consisted of perpetual rights of beneficial user or land, which now co-exist with the allodial title.

However, in Awuah v. Adututu (1987-88) GLR 191, the Supreme Court described the usufruct as "a specie of ownership co-existent and simultaneous with the stool's absolute ownership".

See also Yiboe v. Duodu (1957) 2 WALR 293 (Ollennu J, as he then was). See also Denning LJ in Kotey v. Asere Stool (1961) GLR 492 (PC).

b) Acquisition of the Usufructuary Interest

It can be acquired in four (4) ways.

1. **Discovery of vacant land by pioneers of a stool**.
   As a general rule, when the subjects of a stool discover unoccupied land, and subsequently settle thereon and reduce into occupation, the stool acquires the allodial title and the subjects acquire the usufruct. See Ngmati v. Adetsia (1959) GLR 323. (Already cited under discussion on allodial title.)

2. **Implied grant from a stool**.
   Subjects of a stool have an inherent right to a usufruct in any unoccupied portion of stool land and the fact of the occupation and cultivation by a subject was all that was required to establish a usufruct. No formal grant was required. See the following cases:

   Ohimen v. Adjei (1957) 2 WALR 275.
   Bruce v. Quarnor (1959) GLR 292.
   Oblee v. Armah (1958) 3 WALR 484 (see holding 2).
   Budu II v. Ceasar (1959) GLR 410, at 426).

3. **Express grant from a stool.**
   Such grants were usual in the case of urban lands where some supervision of the allocation of plots was necessary for the purpose of orderly development and equitable allocation of communal lands.

   Armatei v. Hammond (1981) GLRD 300.
   Frimpong v. Poku (1963) 2 GLR 1.
   Oblee v. Armah (1958) 3 WALR 484 (see holding 5).

- It must be noted, however, that though the subject may now be required to seek an express grant from the stool, the subject's access to land still remains an entitlement.

4. **Transfer**.

Could be from a subject to a subject or from a subject to stranger. See

Kotey v. Asere Stool (1961) GLR 492 (PC).

- Such grant to a subject or stranger being one under customary law is effective from the moment it is made and a deed subsequently executed by the grantor may add to, but cannot take away from the effect of the grant already made under customary law.

Bruce v. Quarnor (1959) GLR 292.

- 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.
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Norquaye-Tetteh v. Malm (1959) GLR 468.
Owusu v. Manche of Labadi (1933) 1 WACA 278.
Wuta Ofei v. Danquah (1961) 1 GLR 487.

- Note that this principle amounts to a presumption, which can be rebutted by contrary evidence.
- The subject can alienate so long as the obligation to recognise the allodial ownership of the stool is preserved.

Norquaye-Tetteh v. Malm (1959) GLR 468.
Total Oil Products v. Obeng (1962) 1 GLR 228.
Thompson v. Mensah (1958) 3 WALR 240, at 249-250.
Awuah v. Adututu (1987-88) GLR 191.

- However, 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.

  Buour v. Bekoe (1957) 3 WALR 26.

- On the other hand the stool cannot make a valid grant of land in which a subject holds the usufruct without the consent of the subject.

  Total Oil Products v. Obeng (1962) 1 GLR 228.
  Awuah v. Adututu (1987-88) GLR 191.
  Baidoo v. Osei & Wusu (1958) 3 WALR 289.
  Mansu v. Abboye (1982-83) GLR 1313.

But compare opinion in Armatei v. Hammond (1981) GLRD 300.

3. Extent of Beneficial User and Enjoyment of the Usufruct

- Holder of the usufruct has exclusive right of possession and use of the land. There were no restrictions on his use of the land—could be for farming or building purposes.

  Oblee v. Armah (1958) 3 WALR 484 (see holding 5).
  Mansu v. Abboye (1982-83) GLR 1313, especially opinion of Abban JA starting from the bottom of page 1321 to 1322.

- 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.

  Awuah v. Adututu (1987-88) GLR 191.

- The subject was required to render customary services to the stool; it has been said that this duty was not a consequence of the proprietary relationship between the stool and a subject but rather by virtue of the political and kinship ties between them. In other words, a subject who does not have a usufruct in community land still owes allegiance to the stool.

4. Loss of the Usufruct

1. Abandonment.

    Mansu v. Abboye (1982-83) GLR 1313.

2. When the usufructuary denies the title of his grantors.

    Total Oil Products v. Obeng (1962) 1 GLR 228.

3. Failure of successors.

    Mansu v. Abboye (1982-83) GLR 1313.

4. By consent of the usufructuary.

    Mansu v. Abboye (1982-83) GLR 1313.

5. The New Usufruct

Woodman has argued that the rights enjoyed by the subject usufructuary have reached a point where one can safely say that when a subject acquires the usufruct, it essentially extinguishes the allodial title. There is support for this position. Particularly the opinion of Denning LJ in Kotey v. Asere Stool (1962) 1 GLR 492. See also the views expressed in Yiboe v. Duodu and Awua v. Adututu.

Ask for the views of the class, especially in the light of a the incidents of the two interests. Note that even with the acquisition of the usufruct, there is still the possibility of reversion to the allodial owner upon abandonment or even failure of succession.

6. Constitutional and Statutory Interventions

Article 267(5) prohibiting grants of freehold in stool land. Whether it takes away the inherent right of the subject.

Article 266 (1-6) on grants to foreigners.

S.19 of PNDCL. 152 dealing with registrable interests which mention customary law freehold.

Refer to previous discussions on this aspect.

Topic 3 – Customary Law Licenses and Tenancies

Provide outline and general ideas. Then give this topic as a Class Assignment as follows:

Class should present assignment in groups of FIVE (5) *persons* per group.

Class should look for a copy of the Report of the Parliamentary Inquiry in the Problems of Tenant Farmers in the Sefwi Area. Will give my copy our, if I am able to locate it.

Each group should present a paper on the following issues:

- What are the different categories of customary tenancies?
- What are the problems associated with such tenancies?
- What are some of the efforts made to address the problems you identified?
- Assess the effectiveness of the approaches used?
- Provide your own recommendations for addressing the problems.

TOPIC 4 – Management of Stool Property

1. Introduction

Article 295(1) of the Constitution of 1992 defines a stool as follows: "Stool" includes a skin and the person or body having control over skin land".

May connote a customary community similar to a body corporate headed by a chief, who holds some traditional political authority. It may also connote the symbol of office of a chief or other customary office holder. Normally consist of a small black carved wooden stool. **Explain procedure for consecrating a stool.**

It is the former meaning of the word which will engage our attention during the course of this class. That is to say a stool as a customary law corporation, having a separate legal personality distinct from the individuals who belong to the said corporation. The said individuals are called subjects. In some parts of the country the equivalent of the stool is a skin.

We have described the allodial title and the usufructuary interest. Much of what was covered has to do with stools, skins and or family interests in land. We shall now proceed to discuss in more detail the management of stool property and related issues, bearing in mind the corporate character of the stool.

2. Management of Stool Property

Administration of Lands Act, (Act 123 of 1962), S. 31 defines Stool land as:

> "Stool land includes land controlled by any person for the benefit of the subjects or members of a stool, clan, company or community, as the case may be and all land in the Upper and Northern Regions vested in the President and accordingly stool means the person exercising such control".

Please note that the reference to lands in the Northern and Upper Regions was superseded by the 1979 Constitution which divested the said lands of state control. See also Article 257 (2), (3) & (4) of the 1992 Constitution confirming the revesting the lands in the Northern, Upper East and Upper West Regions in the

appropriate traditional owners. Need to revest was to cure a possible effect of the abrogation of the 1979 Constitution on December 31, 1981.
Article 295(1) of the Constitution of 1992 defines stool land as:

> "Stool land includes land or interest in, or rights over, any land controlled by a stool or skin or the captain of a company, for the benefit of the subjects of that Stool or the members of that community or company".

Section 1 of the Administration of Lands Act (Act 123 of 1962) provides that "The management of Stool lands shall be vested in the Minister".

Article 267(1) of the Constitution of 1992 vests all stool lands in Ghana in the appropriate stools on behalf of and in trust for the subjects of the stool in accordance with customary law and usage.

Please flag the above quoted provision, as we shall be coming back and forth to it during this course.

We need to address one fundamental question. Does the definition of Stool land encompass family lands? In other words is it possible to extend the legal regime relating to stool lands to family lands?

Unfortunately, statutory sources and judicial decisions have even compounded the scope of this controversy. Examine the statutory provisions and decided cases and attempt a resolution of the controversy. **Class should be encouraged to go and find two cases on the subject and discuss in tutorials.**

From Article 267(1) of the Constitution of 1992, stool lands are vested in stools as trustees for the subjects and in accordance with custom and usage. Under the custom and usage the stools' allodial titles were the highest interest in land with its incidents. However, we have noted several provisions which seek to place limitations on the powers of stools regarding stool lands.

We also noted that under the State Lands Act (Act 125 of 1962) as amended stool land could be vested in the President in trust for the people. 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.

> Nana Hyeaman II v. Osei (1982-83) GLR 495.
> Gyamfi v. Owusu (1981) GLR 612.

Look out for an unreported judgement of the High Court, Sunyani. Supervising Judge, Justice Twumasi. Case was reported in the Daily Graphic. Class should find the case through the Sunyani High Court Registry. Assign to any student from the BA Region.

Note also that stool property cannot be seized in execution with the written consent of the Minister. Chieftaincy Act, 1971 (Act 370). Section CHECK

Discuss the relation between stool property and the property of the occupant of the stool. Problem posed by PNCDL 111, which addresses the issue of inheritance to property, but not succession to office. So in matrilineal systems, succession to offices is still matrilineal. See:

> Serwah v. Kesse (1960) GLR 227.

3. Litigation in Relation to Stool Land

The High Court (Civil Procedure) (Amendment) Rules 1977, LI 1129, Order 15, Rule 13(1) provides as follows:

> "The occupant of a Stool or Skin (or where the Stool or Skin is vacant) the regent or caretaker of that Stool or Skin may sue and be sued on behalf of or as representing such Stool or Skin".

In other words the customary law position is that the Chief is the proper person to sue or to be sued in respect of stool land. See:

> Gyamfi v. Owusu (1981) GLR 612.

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.

> Ofuman Stool v. Nchiraa (1957) 2 WALR 229.
> Bukuruwa Stool v. Kumawu Stool (1962) 1 GLR 353.

Private citizens have no standing to commence or defend proceedings in respect of stool lands. Indeed in Gyamfi v. Owusu, the Court of Appeal rejected an invitation

by counsel to extend the exemptions in Kwan v. Nyieni (1959) GLR 67, (relating to family property) to stool property.
Customary law position is that a chief is not liable to account during his reign.

Gyamfi v. Owusu (1981) GLR 612. Per Archer JCS at page 629.

However, refer to the Sunyani case. Indeed, under the Administration of Lands Act, Section 17(1) the chief is not allowed to receive revenue, payments or fees from stool lands. That was the basis of the criminal proceedings against the Chief of Kumawu.

Note that S. 2 of the Administration of Lands Act empowers the President to direct the institution or defence of, or intervention in any proceedings relating to any stool land in the name of the Republic, on behalf of and to the exclusion of any stool concerned, and may compromise or settle any such proceedings.

Vesting in the President under Act 125 has not affected the powers of stools to litigate in respect of stool lands.

Nana Hyeaman II v. Osei (1982-83) GLR 495.

4. Alienation of Stool Land

The general rule was stated by Justice Ollennu in the case of:

Allottey v. Abrahams (1957) 3 WALR 280.

A valid alienation is one which is made by the occupant of the stool with the consent and concurrence of the principal councillors.

There is authority for the proposition that where the occupant does not participate in the transaction, it is void.

Agbloe v. Sappor (1947) 12 WACA 187.

However, 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.

Amankwanor v. Asare (1966) GLR 598.

Topic 5 – Management of Family Property

1. The Family as a Holder of Interests in land

What is the family? The meaning of the word family necessarily depends on the field of law in which the word is used; the purpose intended to be accomplished by its use, and the facts and circumstances of each case.

Any controversy or claim arising from, or relating to, this Agreement or its breach shall be submitted, at the written request of either party delivered to the other party not less than thirty (30) days in advance of the submittal, to arbitration in accordance with the Alternative Dispute Reduction Act of Ghana, (Act 795).

First, family could be used to refer to husband, wife and children.

Second, family could also refer to a collective body of persons who live in one house under one head or management.

Third, family could refer to a group of blood-relatives or all the relations who descend from a common ancestor or ancestress as the case may be, or who spring from a common root.

Fifth, family may be used interchangeably with household.

In the context of customary land law, a family generally refers to groups of persons or individuals whose precise kinship relationship to each other are known, in the sense that they can identify the persons through whom they trace their relationships. In this context members of a family do not necessarily have to be related by blood.

Note however, that in certain cases the word family is used to describe wider groups which are known to be related but whose precise relationships have been forgotten.

Mention types of families as Matrilineal and Patrilineal. Defer discussion on distinction between family, clan, lineage and ethnic group, etc. See:

In Re Adum Stool: Agyei & Anor. v. Fori & Ors. [1998-99] SCGLR 191.

2. Family Land

What is family land? How is that different from stool land? We discussed that controversy previously. We need not belabour the issues. You may recall that the definition of stool land in Article 295(1) of the 1992 Constitution does not include family land. There are arguments on both sides of the divide about whether stool land should cover lands held by families. Refer to implications of Article 267(5) on prohibiting the grant of freeholds in stool land.

The logical implication of Articles 267(5) and 295(1) could be that you could make grants of freehold in family lands. Reason being that family lands are subject to a different regime from stool lands.

3. Incidents of Membership of the Family

Here we are referring to the bundle of rights and responsibilities that accompany an individual's membership of a family. In other words what rights does a member have in relation to land held by the family?

Distinguish between situations where the family holds the Allodial title and where it holds a customary freehold.

Generally speaking where the family holds the allodial title, the members' rights are similar to the interest of a subject in stool lands. Refer back to the case of Oblee v. Armah, supra cited. Member acquires the customary freehold upon his occupation and use. See:

> Heyman v. Attipoe (1957) 2 WALR 87.

The member may exercise the rights of possession against the head of family.

> Heyman v. Attipoe (1957) 2 WALR 87.

There is authority for the proposition that such rights are exercisable even against other members of family.

Nunekpeku v. Ametepe (1961) 1 GLR 301.

Such rights could also be exercised against non members of the family or strangers.

Botwe v. Oduro (1946) DC (Land) '38-47, 184.

What other rights could members enjoy? (**Ask class**)

- Right to residence in family houses, but without power to determine which room you would occupy;
- Funeral and other expenses to be payable by other members upon your death;
- Support for school or to start a business or trade;

Are any of these "rights" capable of judicial enforcement?

Obligations of members:

- Contribute towards the payment of family debts;
- Contribute towards the payment of debts of individual members;
- Payment of funeral and burial expenses of deceased members; and
- Assistance to needy members.

4. Acquisition of Family Property

Two issues arise here. First, which acquisitions inure to the benefit of the family member performing the acts of acquisition and which inure to the benefit of their family.

Second, where property inures to the benefit of the family how do you determine the scope of the entitled class in the family?

The mode of acquisition determines the status of the property.

The general rule is that property acquired with family resources, e.g. income from existing family property (or where family property is sold and proceeds used to acquire other property) such property is family property.

Where property is acquired by the joint efforts of members of the family, there arises a rebuttable presumption in favour of family property. Generally speaking 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).

Tsetsewa v. Acquah (1947) 7 WACA 216.

Where a member acquires property with a small contribution from the family the property does not assume the character of family property.

Cudjoe v. Kwatchey (1935) 2 WACA 371.

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.

Larbi v. Cato (1960) GLR 146.

(Particularly the last paragraph starting from the bottom of page 151)

Read the middle paragraph of page 152 in Larbi v. Cato above for situations in which a member is building his own house and seeks assistance from the family.

Where one member of the family acquires land with his own resources and other members provides the funds to build on the land the house becomes family property.

Boafo v. Staudt (Extracted in Ollennu PCLLG).

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 behaviour.

Amissah-Abadoo v. Abadoo (1974) 1 GLR 110.

Where a member makes an extension to existing family farm or improves same, the essential character of the farm remains family property.

Nkonnua v. Anaafi (1961) 2 GLR 559.

Where a member extends or improves existing family building such improvement does not change the character of the building which remains family property.

Kumah v. Asante (1991-93) Part 1 GBR 328.

Where family property is lost through sale or other attachment and a member repurchase or redeem 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.

Nwonama v. Asiedu (1965) CC 179.

Where social obligations require some individuals to assist another person, when such assistance is given any 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.

Yoguo v. Agyekum (1966) GLR 482.

5. Alienation of Family Property

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 family land.

Awortchie v. Eshon (1872) Sarbah F.C.L. Page 170.

The main issue is who must participate in and consent to an alienation of family land in order to validate the transaction?

Woodman identifies different categories of transactions. For example Head joined by (a) all the principal members; (b) a majority of the principal members; and (c) a minority of the principal members.

He also mentions situations in which the Head does not participate in the transaction or where the Head alone makes a disposition of family land.

The general rule was stated by Ollennu J, as he then was in the case of:

Allotey v. Abrahams (1957) 3 WALR 280, at page 286 is as follows:

"According to native law and custom it is only the occupant of the stool or the head of 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."

There have been situations where the alienation was by the head of family acting alone. The rule was stated in the case of:

Beyaidee v. Mensah (1878) (Sarbah F.C.L.) at Page 171 as follows:

"Now although it may be, and we believe it is the law, that the concurrence of the members of the family ought to be given in order to constitute an unimpeachable sale of family land, the sale is not itself void, but capable of being opened up at the instance of the family provided they avail themselves of their rights timeously and under circumstances in which, upon rescinding of the bargain, the purchaser can be fully restored into the position in which he stood before the sale."

See also the cases of:

Manko v. Bonso (1936)3 WACA 625.
Yawoga v. Yawoga (1958) 3WALR 309.

The Court of Appeal clarified the rule stated in Beyaidee v. Mensah in the case of :

Adjei v. Appiagyei (1958) 3 WACA 401, at 404 as follows:

"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 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."

The Court of Appeal outlined the conditions to be satisfied by the family seeking to avoid a transaction thus:

- That the person seeking to set aside the transaction was the proper person to represent the family in a suit relating to family land;
- That the members of the family were wholly ignorant of the transaction;
- That the family had not by any conduct subsequent to the date mentioned acquiesced in the transaction;
- That the family had acted timeously and with due diligence, and
- The defendant could on a declaration by the court avoiding the transaction be put in the same situation that he stood before the transaction.

The burden of establishing the above facts is on the person seeking to set aside the sale.

Ata v. Aidoo (1968) GLR 362.

Where the head does not participate in the transaction such alienation is void *ab initio*. See the case of:

Agbloe v. Sappor (1947) 12 WACA 187.

The rule was stated as follows:

> "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 void *ab initio* and the respondents derive no right of absolute ownership by virtue thereof."

5. **Litigation in Respect of Family Property**

The issue of who is the proper person to represent a family in litigation involving family land often arises as a preliminary or threshold question. Because it may require calling evidence, judges are reluctant to dispose of it as a preliminary matter.

However, Order 15, Rule 13(2) of the High Court (Civil Procedure) (Amendment) Rules 1977, L.I. 1129 provides as follows:

> "The head of a family in accordance with customary law may sue and be sued on behalf of or as representing such family."

The general rule therefore is that it is the head of family who may sue or be sued in respect of family land.

Kwan v. Nyieni (1959) GLR 67.

Where the head of family sues on behalf of the family, the face of the Writ must show that he is suing in representative capacity.

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.

Nyamekye v. Ansah (1989-90) 2 GLR 152, at 161.

Where the person suing leads evidence to show that he is the head of family, the burden shift to the person denying such status to show that someone else was indeed the head of family.

Akrofi v. Otenge (1989-90) 2 GLR 245.

On the other hand where a person sued as a representative of a family denies being a lawful representative of the family to be sued, the burden of proof lies on the plaintiff to show that indeed the person sued is capable of being sued on behalf of the family.

Refer to the general rule. Kwan v. Nyieni provides three exceptions to the general rule in which persons other than the head of family are allowed to sue in respect of family property.

- 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
- Where owing to a division in the family, the head and some of the principal members will not take any step, or
- 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.

Where such special circumstances are established an action by any member of the family will be entertained by the court:

- Where it is proved that such member has the authority of the other members of the family to sue, or
- Upon proof of necessity, provided that court is satisfied that the action is instituted to preserve the family character of the property.

See also:

Lamptey v. Neequaye (1968) GLR 357.

Where head of family sues in representative capacity, he is held personally liable for the payment of costs awarded against him.

Daatsin v. Amissah (1958) 3 WALR 480.

6. Head of Family

a. Appointment / Election

The head of family is appointed by the principal members of the family.

Walbeck v. Captan (1956) 2 WALR 47.

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.

Lartey v. Mensah (1958) 3 WALR 410.

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 members.

Lartey v. Mensah (1958) 3 WALR 410.

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.

Lartey v. Mensah (1958) 3 WALR 410.

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.

Lartey v. Mensah (1958) 3 WALR 410.

Where there is a division in the family, one faction cannot appoint a head for the whole family.

Ankrah v. Allotey (Ollenu PCLLG, 1st Ed p. 167).

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.

Banahene v. Adinkrah (1976) 1 GLR 346.

The appointment of a person as the head of family is neither automatic nor does it devolve on any person as a matter of right or entitlement.

Hervi v. Tamakloe (1958) 3 WALR 342.

b. Removal of the Head of Family

Decision to remove the head of family must be taken at a family meeting. All the principal members must be invited to attend the meeting.

Quagraine v. Edu (1966) GLR 406.
Abaka v. Ambradu (1963) 1 GLR 456 [SC].

The head could be removed by a decision of a majority of the principal members.

Abaka v. Ambradu (1963) 1 GLR 456 [SC].

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 absentia.

Abaka v. Ambradu (1963) 1 GLR 456 [SC].

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 natural justice.

Allotey v. Quarcoo (1981) GLR 208.

The burden of proving specific grounds of invalidity of either the appointment or removal of the head of family lies with the particular member seeking to avoid the decision of the family.

Walbeck v. Captan (1956) 2 WALR 47.

7. **Accountability of Head of Family**

General rule was stated in the case of:

Fynn v. Gardiner (1953) 14 WACA

"Members of the family cannot call upon the head of family for and account their remedy is to depose him and appoint another person in his stead".

Position was affirmed in:

Abude v. Onano (1946) 12 WACA.

Abude v. Onano was followed in Hansen v. Ankrah (1987-88) 1 GLR 639. [CHECK]

The decision in Hansen v. Ankrah 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.

CLASS MUST get copies of the PNDCL 114. Compare accountability of head of family and that of a chief. Are the incidents of family land similar to that of stool land?

8. Rights of Spouses and Children

Two issues arise. First rights of spouses (and children) following a divorce. Second, rights of spouses (and children) following death intestacy of one spouse.

a) Upon Divorce

Marital property upon divorce could be handled by pre-nuptial settlement or by the court as an ancillary relief after a formal decree of dissolution.

Article 22(2) of the Constitution of 1992 enjoins Parliament to enact legislation regulating the property rights of spouses.
Clause 3 of Article 22 provides for joint access to property acquired during marriage and further mandates the equitable sharing of matrimonial property between the spouses upon divorce.

Prior to constitutional and legislative interventions, Ollennu J, as he then was stated the law in:

Quartey v. Martey (1959) GLR 337.

> "By customary law it is a domestic responsibility of a man's wife to assist him in the carrying out of the duties of his station in life; i.e. 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."

See also:

Clerk v. Clerk (1968) GLR 353.

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 the 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.

Abebreseh v. Kaah (1976) 2 GLR 46.
Annang v. Tagoe (1989-90) 2 GLR 8.

However, see the recent case of:

Mensah v. Mensah [1998-99] SCGLR 350.

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.

c. Upon Death Intestacy

Refer to Matrilineal and Patrilineal societies in Ghana. Biggest problem was among the matrilineal communities. 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 the successors.

This position was severely criticised by the court in:

In re Antubam (1965) GLR 138.

Examine Hayford v. Moses (1980) GLR 757, decided in 1979 in which the court seemed to be extending the rights of widows and children.

The courts have held that the rights of Akan children to reside in their father's house subject to good behaviour, was limited to their father's self-acquired property.

Yeboah v. Kwakye (1987-88) 2 GLR 50.
Boateng v. Boateng (1887-88) 2 GLR 81.

PNDCL 111 changes the customary position and provides for a proportional distribution of the estate of a deceased spouse in accordance with the formula prescribed in the law. **Class to get copy of the law**.

Reports are that law is not functioning effectively on the ground. Outreach conducted by Raymond Atuguba and myself in selected villages in the Western and Northern Regions showed that there is a large measure of public awareness about the law.

Article 22(1) of the Constitution of 1992, guarantees every spouse a reasonable provision from the estate of the other spouse, upon death testate or intestate.

5. Formalities for Transfer of Interests in Land at Customary Law

Basic rule was stated in the case of:

> Bruce v. Quarnor (1959) GLR 292, at page 297.
>
> "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 from the effect of the grant."

Because customary law did not know writing, ceremonies were usually performed in the presence of witnesses to show the conclusion of the transaction relating transfer of land.

For the transfer of land by sale, Sasraku v. David (1959) GLR 7 suggested that "Guaha" is the ceremony among the Gas and its equivalent in Ashanti is "Tramma".

However, see Adjowei v. Yiadom (1973) 2 GLR 90, which appear to take a different perspective.

In Tei Angmor v. Yiadom III (1959) GLR 157, at 161, Korsah CJ stated as follows:

> "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 "Guaha" custom (for personal property the custom is "tramma".) After conclusion of the

> negotiations, if the parties intend the ownership to pass from the vendor to the purchaser, they agree on a date when the customary ceremony will be performed. They then invite witnesses for the purpose, and proceed to the land. There 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, i.e. that 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."

Gift was considered in Ahmed v. Afriyie (1963) 2 GLR 344, at page 347 the court indicated that two requirements must be satisfied to validate a gift:

- Must be made in public before witnesses; and
- Donee must accept.

In Yoguo v. Agyekum (1966) GLR 482, the Supreme Court (with Ollennu JSC) 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.

See also:

> Donkor v. Asare & Others (1960) GLR 187, at page 189.
> Norquaye-Tetteh v. Malm (1959) GLR 368, at page 373.