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NOTES AND NEWS

African Law in the United States

There are now clear signs that interest in African law is rapidly growing in the United States, more especially among Professors of Law, who may not—up till now—have thought that legal science can benefit to any great extent from the study of systems of law so far removed from the American. It is now, however, being appreciated that a legal revolution, paralleling the economic and political revolutions, is taking place or about to take place in Africa. The transformation of the laws of African countries will be as exciting and significant an event as were the deliberations and the labours which led to the production of the Code Napoleon 150 years ago.

We have already noted in an earlier issue of the Journal the part that American lawyers are playing in the codification of the law of Liberia. Now at the Columbia Law School a Seminar in African Law is being planned and will be offered in the Spring Semester of the academic year 1959-60. This will be under the direction of Professor A. Arthur Schiller, whose name should already be known to readers as a keen student of the Adat or customary law of Indonesia. Professor Schiller is planning to make an extensive tour of African countries this summer in order to examine legal developments and problems there, in preparation for the Seminar already referred to.

The Seminar, which will almost certainly be the first of its kind to be offered at any institution of higher learning in the United States, will not involve classroom discussion of the substance of the law, either indigenous or non-indigenous. Essentially the Seminar will be interdisciplinary, and the contributions that the student of law, political science, or anthropology will be able to make will doubtless vary widely in character and attitude.

Professor Schiller presented a paper to the first annual conference of the (American) African Studies Association, meeting at Evanston, Illinois in September, 1958, in which he outlined his plans for such a Seminar. We now print an abstract of this paper in order to enable readers to see how American minds are moving. To one who has been engaged for some time on the study of African law predominantly from within the system it should be salutary to see how persons coming with fresh and open minds to the legal problems of Africa perceive and analyse them.

Proposed Seminar in African Law

A Seminar in African Law appears to be a course suitable for experiment in an American law school in that it combines research in several aspects of comparative jurisprudence with an introduction to the existing and prospective legal systems of an area which is becoming increasingly important to the United States. Though a law school seminar it will likewise be valuable for students in political science, international affairs, African area research and anthropology. In territorial scope the seminar will cover Africa south of the Sahara; North Africa as well as Ethiopia and Sudan (by and large) possess unitary legal systems without particular reliance upon indigenous legal systems. Within the area selected there exist geographical and ethnographical divisions, and from a legal point of view there is further differentiation based on the diverse background of the emerging states, all distinctions worthy of note.

The characteristic of African law south of the Sahara is its pluralistic nature. Throughout the area two or more systems exist side by side, identified with the personal status of the inhabitants. There is indigenous law for the indigenous population, and non-indigenous law for the residents whose ultimate origin was European or Asiatic. The indigenous law is variously described as African customary law, droit coutumier, native law and custom, and the like. The sources of this indigenous law are both written and unwritten. The non-indigenous law derives largely from the law of the mother country or is Islamic law. The nature and sources of both indigenous and non-indigenous law will be studied.

The law of the future in Africa is being determined by the policy followed: (1) the pluralistic legal systems may be retained, as in South Africa or possibly in Liberia; (2) the indigenous legal system may be abolished and the western-oriented legal system made dominant; or (3) a national legal system may be established by directed evolution of the law, fusing the plural legal systems into one, as in the British, French and Belgian areas.

The status of administration of justice is crucial for the legal system being fashioned. Historically, there have been two distinct and largely parallel systems of courts: (1) native tribunals culminating in revision by administrative authorities, and (2) western-type courts with appeal to higher judicial organs. Jurisdiction over the person and subject matter was sharply divided between the two. There were distinct rules of procedure, evidence and practice, and considerable disparity in the training and the role of the court personnel and in the supervision of the administration of justice. In recent years there has been increasing integration of the two systems at the higher levels, with concomitant unification of procedure, evidence and the like.

The means available for directed evolution of African law are many: (1) legislative measures, either metropolitan, territorial or local enactments, or even codification of the law; (2) restatements of the law, or as far as concerns the indigenous law, declarations of native authorities, local councils, etc.; (3) judicial decisions by native tribunals or high courts, persuasive or binding as precedent;

(4) scientific studies by anthropologists, sociologists and legal scholars, providing basic information, case records, and other data for legal development; (5) a trained legal profession to satisfy the needs of the bar as well as judicial posts, and consequent increased attention to legal education.

In the evolution of African law some particular problems come to the fore. The effect of culture contact, even in the field of law, requires constant attention so that there be no breakdown in the social structure. Regard must be had for the psychological implications of the impact of the western upon the indigenous law. Urbanisation and industrialisation raise special problems, while the infiltration of Islamic law affects the picture across the Sudanic belt.

The fields of African law deserving of study include: (1) the law of personal status, with discussion of inter-local, inter-religious and inter-racial problems in conflict of laws, as well as change of status: (2) the law of the family and the law of succession, largely indigenous law; (3) the law of contract, commercial law and associations, primarily non-indigenous law; (4) land law, being indigenous land tenure today with a trend to individual land ownership and non-indigenous law in the future; (5) the law of liability, civil and criminal, with attention to the distinction between tort and crime, compensation and punishment; (6) the law of civil and criminal procedure, affording striking contrast between indigenous and non-indigenous law; (7) selected problems in public law.

Finally, attention should be drawn to a series of territorial implications, as follows: (1) regional unification within areas of an inchoate or existent state, e.g., the attempt to eliminate differences between indigenous legal systems within the state; (2) national unification, implying the establishment of a single legal system for all within a given state, a process which will highlight the differences resulting from the distinct European legal systems introduced into the colonial areas; (3) federal law, superimposed upon areas of diverse legal systems; and (4) international aspects of African law, particularly with respect to legal relations with the United States and within the United Nations.

The preceding paragraphs indicate in summary form the content of a seminar in African law, a mass of material which obviously cannot be covered in classroom discussion or student reports within a semester. Accordingly, it is planned that reports on selected phases of the substantive content of African law (personal status, family law, succession, commercial law, land law, liability, procedure, public law) be prepared by the students under faculty supervision, while the remainder of the materials be handled in classroom discussion. This will permit suitable topics to be selected by law student, political science or anthropology major, and outside readings to be assigned for the classroom. In many instances it will be possible to allot specific geographical areas for assigned outside readings. In this way it is expected that the individual aims of the student will be satisfied and, at the same time, all the students will gain general background understanding of the field of African law.

A. Arthur Schiller

Legal Education in Nigeria

The Federal Government of Nigeria has recently announced what is a most important preliminary to the task of initiating a proper system of legal education in the country, namely the setting up of a Committee to consider and make recommendations for the future of the legal profession with particular regard to legal education and admission to practice, the right of audience before the courts and the making of reciprocal arrangement in this connection with other countries, the setting up of a General Council of the Nigerian Bar, the powers and functions of such a Council, the institution of a code of conduct, the disciplinary control of the professional members, and the principles to be applied in determining whether a member of the Bar should be prohibited from practising in Nigeria. The Committee will also make suggestions for amending, expanding, or improving the Legal Practitioners' Ordinance in conformity with present-day requirements.

Invitations to serve on the Committee have been sent to:

The Attorney-General of the Federation (Chairman)
The Attorney-General of the Western Region, or his representative
The Attorney-General of the Eastern Region, or his representative
The Attorney-General of the Northern Region, or his representative
The Solicitor-General of the Federation
The Legal Secretary of the Southern Cameroons
Alhaji Jibril Martin of Lagos
Mr. C. A. H. Obafemi of Ibadan
Mr. Osuquo Okon of Calabar
(Members of the legal practitioners committee established under the Legal Practitioners Ordinance)
Mr. J. H. Udochi, M.H.R., Hon. Secretary, Nigeria Bar Association
Dr. F. A. Ajayi, of Ibadan
Mr. C. O. Nwokedi of Aba
(Nominated by the Nigeria Bar Association)

The Committee will be visiting Ghana in June, presumably in order to study the system of legal education recently established there, and perhaps to discuss the possible harmonisation and mutual recognition of courses and qualifications in the two countries. The Committee will also be visiting the United Kingdom in July for further discussions.

Although the primary orientation of the Committee's terms of reference is towards the practitioners' side of the profession, the Committee will scarcely be able to refrain from simultaneously reviewing what provision there is or ought to be for law teaching in the University College at Ibadan, and in other institutions of higher learning throughout Nigeria. The Government of the Northern Region for example, intend to sponsor legal instruction in the North in order to carry into effect the far-reaching reforms in the legal

system proposed by the Panel of Jurists and accepted by the Regional Government.

One can unreservedly welcome this step of setting up a committee on legal education and the legal profession, since one of the prime requirements of Nigeria, as soon as it attains independence in 1960, will be the development of these aspects, with a view, inter alia, to the commercial and industrial advance of the Nigerian economy.

Conflict of Laws in Northern Nigeria

The expression " conflict of laws " normally has reference to certain occasions on which a court has to make a choice between the application of its own municipal law and the application of some foreign law, the necessity for such choice arising from the fact that a case involves what Dicey calls a " foreign element ", e.g., an event which occurred abroad, a contract by its terms governed by foreign law. Moreover, the principles on which the choice is made are themselves part of the court's own municipal law, in the wider sense of that term. The " conflict of laws " which was referred to in Professor Anderson's article on the above topic in the 1957 Summer issue of the Journal of African Law is something of quite a different nature. It arises, not before one and the same court owing to the presence of a foreign element in a case, but between two distinct systems of law administered by distinct courts co-existing in the same territory. The choice is not a choice made by a court, but by the legislature, which, assuming one system of law to be preferable in some respects to the other, enacts legislation with a view to ensuring that in those respects the preferable system shall prevail.

The methods by which the legislature has sought to achieve this object present some peculiar features. Originally, as Professor Anderson pointed out, sentences of death passed in a Muslim court for what under the Criminal Code would amount to manslaughter only were commuted by the exercise of the Prerogative of Mercy. In this connection the following quotation from Lord Lugard's *Political Memoranda* (1918) is pertinent:

> "Para. 36. It is an interesting question how far the administration of justice in Mohammedan Courts, in a British Protectorate, may be permitted to run counter to the rules which govern the administration of British justice, or a latitude given to a Native Judge which is denied to a British Chief Justice. In this connection, the Secretary of State writes as follows:—
>
> ' It is not the duty of the Governor to retry a case. His function is to decide whether to allow the law to take its course, or by the exercise of the Royal Prerogative which has been delegated to him, to prevent the law from taking its course. Unless the capital sentence has been passed for an offence which is not punishable by death under English law, or unless the facts disclosed in the Alkali's report on the case, or in that of the resident, are such that there is a serious likelihood of a miscarriage of justice if the sentence is carried out, the Governor and the Executive Council are justified in accepting the verdict and sentence of a Native Mohammedan Court, which has passed a sentence within its

> powers, after a trial carried out in accordance with the procedure enjoined by the Native Law, and not obviously inequitable, even though that procedure is widely different from the practice of English Criminal Courts.'
>
> . . . Residents will therefore exercise particular care in seeing that the reports on capital cases tried by a Native Court are adequate . . . "

The administrative reports furnished to the Governor would certainly deal expressly with the question of provocation, whenever it arose, and this fact and the subsequent exercise of the Prerogative were no doubt the reason why the " anomaly " to which Professor Anderson refers was " so largely accepted ".

The next stage was the enactment, after the decision in *Tsofo Gubba's* case, of the Native Courts Ordinance, 1948, which empowered the (then) Supreme Court to set aside on appeal a decision of a Muslim court " notwithstanding that the decision of the court . . . was correct by native law and custom ", and also imposed a compulsory review by a judge of the Supreme Court of all homicide cases in the Muslim Courts. On review the judge had to consider whether by reason of the application of Islamic law the decision of the Muslim court was " not satisfactory having regard to the provisions of the Criminal Code applicable in the circumstances ". That is to say, as regards the review, it was expressly enacted that in spite of the fact that the Muslim court had statutory authority to administer Islamic law, and even though it might have impeccably applied Islamic law to the facts of the case as ascertained by the Islamic methods of evidentiary procedure, nevertheless if the decision of the Muslim court was unsatisfactory by the standard of the Criminal Code, the provisions of which were totally irrelevant at the trial before it, its decision could be set aside. To call this procedure in the Supreme Court a " review " of cases before the Muslim court was, it is submitted, a misnomer. It was surely not a judicial review in the usual sense of that expression; the Supreme Court was merely being used so as to obtain by means of its decision an "ad hoc " amendment of the Islamic law in each particular case. In relation to the fortuitous nature of the decision whether an accused person should be tried in a Muslim court under Islamic law or in the Supreme Court under the Criminal Code, Professor Anderson comments that it

> " seems a preposterous demand to make on the Queen's Judges [preposterous, presumably, from a moral point of view—] that they should be required to confirm a death sentence in a case which, tried under the Criminal Code, would have been manslaughter only ";

and the Report of the Judicial Advisers' Conference, 1956, at page 20, expresses the opinion that

> " to leave it to the Prerogative of Mercy to say what Justice should properly say can scarcely promote respect for the Rule of Law ".

It is submitted, however, that the matter may very properly be looked at from another point of view, and that it is equally preposterous, from the professional and juristic point of view, to require

a judge to review the decision of a lower court based on one system of law by reference to another system of law which was totally alien to the proceedings before the lower court; and moreover, that such a procedure is by no means calculated to promote respect for the Rule of Law, since it results in upsetting, by a side door as it were, a decision which was legally unassailable, thus making a mockery of the proceedings in the court below. To have a higher court applying a different system of law from that in force in the lower court is, indeed, a device which, it is submitted, savours of scant respect of the Rule of Law. It is, perhaps, not unrealistic to suggest that it is such a device as might well be used by a totalitarian government to serve its purposes.

The final stage, which was definitely established by the construction placed by the Federal Supreme Court on section 10A of the Native Courts (Amendment) Ordinance, 1951—now section 22 of the Native Courts Law, 1956—in *Mallam Mamman Maizabo* v. *Sokoto N.A.* did away with the anomaly to which I have been referring by laying down that the Muslim court itself must have regard to the Criminal Code in imposing sentence. But while this is an improvement on the former position, it is still most unsatisfactory. As the learned Federal Chief Justice said:

> " The Native Court must, therefore, first of all ascertain in which category the act . . . falls, and then it must be careful not to impose a punishment greater than that prescribed for that category . . . by the Criminal Code. We realise that this is a complicated procedure for a Native Court to follow and that the task of a Native Court in a case of homicide which is intentional homicide by Maliki law, and manslaughter under the Criminal Code, is an almost impossible one. Nevertheless, this is the clear meaning of the proviso and effect must be given to it. "

Again, it is submitted, a statute which places on a court a task which is " an almost impossible one " is hardly calculated to promote respect for the Rule of Law.

Surely it is time that this sorry judicial farce should be ended, and that the object in view should be obtained by less questionable means. It is submitted that if, by further legislation if necessary, directions were given that all homicide cases investigated by the Native Authority police which reveal a defence of provocation should be at once transferred to the Nigeria police so that they come for trial in the first instance before the High Court, the problem would, apart, perhaps, from rare exceptions, be satisfactorily solved.

Since the above comments were drafted the Editor of this Journal has kindly brought to the notice of the present writer the recommendations made by the Panel of Jurists which was convened in Northern Nigeria last year. These recommendations have been largely accepted by the Northern Regional Government (see Statement by the Government of the Northern Region of Nigeria on the Reorganisation of the Legal and Judicial Systems of the Northern Region). As a result legislation modelled on the Sudan

Penal Code (which, in sections 246-249, recognizes a distinction between " culpable homicide amounting to murder " and " culpable homicide not amounting to murder ") is to be introduced, and Islamic criminal law will then cease to apply. The Government of the Northern Region is to be congratulated on taking this wise, though initially difficult, course, and all those who know the Northern Region will wish it God-speed in its new judicial venture.

PERCY C. HUBBARD

Professor Anderson writes:—

I have considerable sympathy with most of Mr. Justice Hubbard's comments. I would, however, observe:—

1. I am not wholly convinced that the prerogative of mercy adequately remedied, in practice, all cases in which, prior to 1948, the death penalty was imposed in an Emir's court in circumstances in which it would not have been applicable under the Nigerian Criminal Code; or, indeed, that the administrative reports furnished to the Governor would always sufficiently emphasise circumstances of provocation—irrelevant as these would have been considered in the trial court. The import of the Secretary of State's letter in this context, moreover, turns on the meaning of the exception regarding a capital sentence passed for " an offence which is not punishable by death under English law "; for, in my view, this exception would cover a death penalty imposed for " deliberate homicide " of a nature which would only amount to manslaughter under the Criminal Code. Simply to equate " deliberate homicide " in Maliki law with " murder " under the Code would, in fact, often amount to what the Minister terms a " miscarriage of justice ".

2. While I fully agree that the duty imposed in 1948 on a judge of the (then) Supreme Court to " review " all homicide cases tried by Muslim courts was unsatisfactory, I would emphasise (a) that this provision of the 1948 legislation was omitted from that of 1951, and (b) that it seems clear that it was never *intended* that judges reviewing cases tried under Maliki law, by the criterion of whether they were " satisfactory having regard to the provisions of the Criminal Code ", should exercise their discretion otherwise than in favour of a condemned man—i.e. simply in order to ensure that a death penalty, imposed in an Emir's court in circumstances in which it would not be applicable under English law, would be suitably reduced. No doubt the wording of the legislation invited the wider interpretation given it by some of the judges, whereby they regarded the trivial sentence imposed in native courts in cases which amounted to murder in English law, but where the heirs of blood had waived their claim to talion, as not " satisfactory having regard to the Criminal Code ", ordered a retrial, and subsequently imposed the death penalty; but this was open to the objection that it caused the accused to be put in peril twice on the same facts.

3. To suggest that this duty of review " by reference to another system of law ", however unsatisfactory the expedient may have

been, is analogous to the sort of device that might be used by a totalitarian government, seems to me to ignore the fundamental fact that the different system to which such reference had to be made in Northern Nigeria was none other than the general criminal law of Nigeria as a whole.

4. It also seems clear that the " final stage " should have been introduced by the legislation of 1951, not the decision of the Federal Supreme Court in *Mallam Mamman Maizabo's* case in 1956; for the proviso introduced by the legislation of 1951 that a native court, when trying under native law an act or omission which also constituted an offence under the code, must not impose a penalty in excess of the maximum provided under the code, appears to give little or no justification for the conclusion of the Nigerian courts that this did not require the Emirs' courts to exclude the death penalty in circumstances in which the homicide concerned would not have carried that penalty under the Code. Fortunately, the Federal Supreme Court reversed its previous decision and made the position perfectly clear in 1956.

5. Finally, I am not convinced that Mr. Justice Hubbard's proposals in his last paragraph—admirable as they are, so far as they go—would in fact have sufficed to solve the problems that he has so ably thrown into relief. Nothing could have done this adequately, in my view, except the proposals of the Panel of Jurists to which he pays tribute in his postscript: namely, that the Islamic criminal law and procedure should be entirely displaced in Northern Nigeria, as almost everywhere else in the Muslim world, in favour of a codified law applicable to all the inhabitants of the Region without distinction. It was only in this way that such problems as a uniform (and satisfactory) definition of the offence of capital homicide, the effect of provocation, and the applicability of the penalty regardless of the religion of the accused and his victim, could be resolved; just as it was only by the substitution of new rules of procedure in place of the Maliki rules of evidence previously applicable that the basic essentials of a fair trial, according to any modern view, could be ensured.

J. N. D. ANDERSON

Editorial Note: The Panel of Jurists to which reference is made above was composed of the Chief Justice of the Sudan, the Honourable Sayyid Muhammad Abu Rannat; the (then) Chairman of the Pakistan Law Reform Committee, Mr Justice Muhammad Sharif; Dr J. N. D. Anderson, Professor of Oriental Laws in the University of London; the Waziri of Bornu, Shettima Kashim; Mr Peter Achimugu, previously a Minister of the Regional Government; and Alkalin Bida, Sheikh Musa Othmah. The Panel made some thirty-two recommendations regarding the future legal and judicial systems of the Region, largely (but not exclusively) designed to eliminate conflicts of law between the three different systems of law (the English, the Islamic and the customary) which were currently in force. Far the most important of these was that the Maliki law as such (previously applicable, in some of the native courts of Northern Nigeria, even in homicide cases) should in future be confined to cases of personal status and family law in regard to Muslim litigants—although it might also be applied in other civil cases where it happened to be the law under which a particular

contract had in fact been concluded or the law of tort customarily current in the locality. It was to be totally excluded, on the other hand, from both the criminal law and the law of evidence and procedure, for in these spheres legislation based on the codes currently in force in the Sudan was to be introduced in its place.

The Reform of the Law of Succession in Ghana

For some time there have been various complaints made about the way that the laws of succession, statutory and customary, operate in Ghana. The Government has recently announced the constitution of a Commission of Inquiry, under the chairmanship of Mr. Justice Ollennu of the Ghana High Court, to make a thorough review of the whole subject. Among the other members of the Commission are a representative of the Christian Council for Ghana, a representative of the Catholic Church in Ghana, a nominated member of the Federation of Ghana Women, the Head of the Department of Sociology at the University College of Ghana, and a member appointed by the Governor-General. The Commission is so fortunate as to have as its secretary Mr. A. N. Stainton, third Parliamentary Draftsman at the Treasury in London but now seconded for duty with the Ghana Government under the technical aid scheme, and who is at present head of the Parliamentary Counsel Department in Ghana.

The terms of reference of the Commission are very far-reaching. They include:—

(i) To examine the existing statutory law of inheritance;
(ii) To record existing forms of customary law of inheritance in respect of self-acquired property, both real and personal;
(iii) To ascertain the views and reaction of the public to the existing systems and the possibility of a unified system of succession; and
(iv) To recommend ways in which the statutory and customary law relating to inheritance could be rationalised with a view to the adoption of a unified system.

The recording of the existing customary laws of succession is itself a task of some magnitude; this forms part of the more general need for a recording or restatement of the customary law. The statutory law of succession is deficient in various ways. In particular, whilst in theory the personal relations of Africans are governed by customary law, unless, in respect of any particular transaction, they have opted out of customary law and selected English or some other system of non-customary law, the position in regard to the law of succession is not so simple as that. It is often not the case that a man's estate is entirely governed, either by the general or " English " law, or by his own customary law: the devolution or distribution of a man's estate may, under the present somewhat confused provisions, be governed partly by one system and partly by another. Such " mixed " successions may lead to difficult problems of internal conflict of laws and choice of the appropriate law or mixture of laws.

To give some examples of how such a mixed succession may arise:—

(1) If a Ghanaian has married under the Marriage Ordinance, or has concluded a " Christian " or monogamous marriage outside Ghana, then, by s. 48 of that Ordinance, if he dies intestate his family property and other property of which—if he is an African—he cannot dispose freely by will or otherwise will descend according to customary law, notwithstanding his marriage under the Ordinance. Furthermore, if he is an African his disposable or self-acquired estate will, if he dies intestate, be held on a trust for sale to distribute as to 2/3 according to the English Statutes of Distribution relating to personalty; whilst the remaining 1/3 of his estate will be distributed in accordance with his personal or customary law, i.e. to his customary heirs or family. The old English statute law, under which 2/3 of the intestate's estate will pass to his widow and children, if any, is not necessarily the most suitable for the conditions of modern Ghana. A mode of distribution more closely adjusted to the social organisation and needs of an African country may be desirable and ought to be devised. A man dying intestate under the Marriage Ordinance will thus leave next of kin by English law and customary heirs by African law.

(2) This situation also obtains in the case of the female spouse of an Ordinance marriage; but a greater anomaly is that, under the Marriage Ordinance, the special scheme of succession laid down by section 48 also applies to the *issue* of an Ordinance marriage, whether or not such issue has married under the Ordinance. The leading case of *Bamgbose* v. *Daniel* [1955] A.C. 107, decided in the Privy Council on appeal from Nigeria, is very important in this connexion. This appeal arose out of the comparable provision (s. 36 of the Nigerian Marriage Ordinance—applying only in the Colony) in Nigeria about the succession to the estate of an issue of an ordinance marriage; and the Judicial Committee held that the fact that deceased was himself the child of a monogamous marriage was no impediment to his contracting a marriage by native law and custom; and that, for the purpose of distributing his estate on intestacy in accordance with the provisions of s. 36, the children of such a customary marriage were legitimate children by the law of the domicile (i.e. customary law of Yorubaland) and therefore eligible to take under the Statute of Distribution. In other words, in applying an English Act which has been adopted as part of the general law of an African country, local African meanings should be given to such terms as " child " that may be used in the statute and the courts in Africa are not bound to apply the narrow English definition of " child " in distributing an estate of an African. Serious consideration should be given to the abolition of this part of s. 48, the original intention of which seems to have been to try to ensure the permanent removal of persons married by a monogamous marriage and their descendants from the ambit of the customary law of personal relations.

(3) Further difficulties arise when one or more of the persons claiming a share in an estate are of different race from the deceased,

as where a non-African claims an interest under a will made by an African testator.

(4) There must be many cases where an African dies partly testate and partly intestate. In such cases the existing provisions may not prove easy to work.

(5) It is accepted by the courts of Ghana and has been for a long time that an African has power to make a written will in English form under the Wills Act, 1837, which has been held a statute of general application, and hence in force in Ghana. Nor have the courts felt the need to restrict the application of this Act to non-Africans (as has happened in many other African territories, where it is the law that an African cannot make a written will by the law of the land). Even if it is granted that an African has power to make a will in English form, and that such will is formally valid, the question still remains of the extent to which effect should be given to his purported dispositions. The courts, native and other, have on the whole assumed that if one accepts that an African can make a will in English form, therefore he can do what he likes with his property by this means, and that there is no limit to his powers of testation. This assumption is not necessarily correct.

Another matter which requires investigation is that of family provision. On this, owing to the special forms of social organisation existing in Ghana, it will not be enough to take over the provisions contained in the English Acts on the subject. The existence of matrilineal " families " alone presents a very great problem in this connexion.

A further matter requiring examination, to which attention has already been drawn from time to time in this Journal and elsewhere, is that of the customary law of succession in Accra. The judges of the superior courts of the Gold Coast long ago reached the settled opinion that the Ga law of succession was basically matrilineal, as it is with the matrilineal Akan. This, in the opinion of several writers intimately acquainted with the customary law as actually practised, is an incorrect statement of the law. According to such authorities the Ga law of succession is primarily patrilineal in character, and the attempt to force it into a matrilineal mould has led to miscarriages of justice.