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**IoE/MoF/TUC/GHANA CARES TRAINING AND RETRAINING
PROGRAMME FOR PRIVATE SCHOOL TEACHERS**



Ministry of Finance



Trade Union Congress



Institute of Education, UCC

SOCIAL STRUCTURE OF GHANA
UNIT 5: SESSION 1

Dr. Atta Kwenin

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- Before the coming of the British to Ghana, the traditional communities of Ghana were governed exclusively by customary law.
- The customary law of the day was diverse as it varied from one tribal group to the next, but was voluntarily implemented and adhered to by both kings and their subjects.
- However, on 24 July 1874, the Gold Coast (Ghana) was proclaimed a British colony, with its own legislature and executive.
- The colonial legislature soon passed the Supreme Court Ordinance 4 of 1876 (hereafter referred to as “the Supreme Court Ordinance”) in an attempt to introduce English common law to Ghana.
- The effect of the Ordinance was the introduction of a dual legal framework in the country that comprised of English common law and Ghanaian customary law.

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- The Supreme Court Ordinance created a choice of law in that judges had to make a determination as to the system of law to apply, i.e., either English law on the one hand or Ghanaian customary law on the other hand.
- The Supreme Court Ordinance established complex rules for the terms and conditions according to which “native law and custom” should be adhered to and implemented by the court.
- In order to be enforceable, customary law had to comply with the following criteria:
- Evidence had to be provided that the law or custom was in existence in the relevant colony before the promulgation of the Supreme Court Ordinance.

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- The law or custom must not be repugnant to natural justice, equity and good conscience.
- The law or custom must not be directly or implicitly irreconcilable with any other law in the country for the period of its enforcement.
- The customs must not be contrary to public policy.
- Furthermore, under the Supreme Court (Civil Procedure) Rules of 1954, customary law had to be ascertained as a question of fact by the proof or evidence of witnesses.

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- In 1883, the colonial legislature passed the Native Jurisdiction Ordinance 5 of 1883 which made provision for the establishment of native courts, which primarily adjudicated on matters of customary law and which would be presided over by chiefs and their councillors
- Appeals arising from the native courts had to be heard by the Supreme Court.
- There were therefore two systems of courts in place in Ghana during colonialism:
- the first system comprised of the Privy Council, West African Court of Appeal, the Supreme Court of the Gold Coast and Magistrates' Courts which heard cases involving common law or British law, and
- the second system comprised of native courts, which presided over cases involving customary law alone.

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- In 1960, the legislature adopted its First Republican Constitution and a new Courts Act (CA 9) 1960 (hereafter referred to as “the Courts Act, 1960”) which altered the existing position of customary law dramatically.
- For example, section 67(1) of the Courts Act, 1960 made the ascertainment of any rule of customary law a question of law and no longer one of fact.
- This situation has been retained in the current Courts Act 459 of 1993. Any issues arising from the internal conflict of laws (ie, whether to apply customary law or English common law to an issue) were initially regulated by the Courts Act, 1960, but are now regulated by the choice of law rules found in section 54 of the current Courts Act 459 of 1993.
- The Courts Act 459 of 1993 consolidated both the British and native judicial systems into a single hierarchy of courts.

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- **The Customary Nature of Customary Law**
- Customary law is often based on the customs of indigenous Ghanaian people.
- The term “custom” refers to the traditions, practices, moral or ethical codes and the rules for living that are adhered to by members of the community.
- The customs of an indigenous community are well known by every member of the community as they are passed down from generation to generation by older members of the group; usually the older men.
- The customs of an indigenous community are generally adhered to for fear of ancestral punishment and to maintain social order.

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- Customs commonly transform into customary law over time and especially when they are endorsed by the group's belief in its "indispensability and desirability", and "through recognition of the judicial decisions of the authority".
- Therefore, the terms custom and customary law, although distinct, are interrelated. Customary law refers to the rules of law which by custom are applicable to particular communities... (1992 Constitution, Art. 11).
- Customary law may also be said to mean a living law of the community concerned.
- The main concern of customary law is the preservation of the cohesiveness of the community and kinship rights.

SESSION 1: THE HISTORICAL BACKGROUND OF THE INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

- In the Ghanaian traditional society, the individual citizen is primarily seen as a link of a community-chain and the full respect of social order and necessity to achieve group harmony are crucial values which are maintained.
- The distinct interest of the Ghanaian customary law is therefore the community and not the individual.
- Individual rights are subservient to broader communitarian objectives.
- **The General Characteristics of Customary Law**
- The unwritten nature of customary law
- customary law was an expression of community values.
- The main focus of customary law is to initiate reconciliation between people and to guarantee the preservation of group harmony

SOCIAL STRUCTURE OF GHANA
UNIT 5: SESSION 2

Dr. Atta Kwenin

SESSION 2: INTESTATE SUCCESSION LAW

- In 1985 the Intestate Succession (PNDC) Law 111 also referred to as the legal system of inheritance was enacted to alter perceived adverse effects of these traditional norms, especially on widows with husbands of matrilineal lineage.
- The Law (PNDCL 111) was promulgated by the Government of Ghana.
- The main Innovation that brought by the Law was the specific protection granted to members of the nuclear family (as opposed to the extended family) In the distribution of the man's self-acquired property on his death intestate.
- The Intestate Succession law was introduced two years after Ghana launched the Economic Recovery Program in 1983.

SESSION 2: INTESTATE SUCCESSION LAW

- The interpretation section of the PNDCL 111 provides a definition for household chattels, which includes jewellery, clothes, furniture and furnishings, refrigerator, television, radiogram, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, books, motor vehicles other than vehicles used wholly for commercial purposes, and household livestock.
- At the time of the passage of the Law, there were some debate regarding the application of the Law to any type of marriage; including marriages celebrated under customary law (which are the most common form of marriage in Ghana).

SESSION 2: INTESTATE SUCCESSION LAW

- The customary Marriage and Divorce (Registration) Law, 1985 (PNDCL 112) states that the 1985 Law on intestate succession applies also to all customary marriages, as long as they have been registered, Woodman:1985) states that:
- following the PNDCL 112 Law "all customary marriages are required to be registered, but it seems likely that unregistered marriages will continue to be valid for the purpose of the Intestate Succession Law'.

SESSION 2: INTESTATE SUCCESSION LAW

- In 1991, the PNDCL¹¹² was amended by the Customary Marriage and Divorce (Registration) (Amendment) Law, 1991 (PNDCL 263) to solve this applicability issue.
- The amended Law states that the Intestate Succession Law applies also in cases "where a court or tribunal is satisfied by oral or documentary evidence before it that a customary law marriage had been validly contracted between a deceased and surviving spouse.
- The practice of disposing of individually owned property by will seems to be rare among Ghanaians as many views drafting a will as inviting death.

SESSION 2: INTESTATE SUCCESSION LAW

- The PNDCL₁₁₁ was amended by the Intestate Succession (Amendment) Law, 1991 (PNDC: 264' to further protect spouse and children from ejection from the matrimonial home before the distribution of the estate and prescribe punishment for those who deprive a person entitled to inherit from his' portion of the estate.
- The Children's Act, 1998 (Act 560) amended PNDCL 111 mainly providing that "Where there is a child who is a minor undergoing educational training, reasonable provision shall be made for the before distribution".
- The intestate Succession Act (PNDCL 111, 1985) remains the existing Law which governs family inheritance when a property owner dies without a will.

SESSION 2: INTESTATE SUCCESSION LAW

- Since 1985, specific amendments have been made so that it is more consistent with recent legislation, in particular with the passage of the Intestate Succession Amendment Law (PNDCL 264).
- The main opportunity provided through PNDCL 111 is the protection of the surviving spouse's property rights in intestate succession.
- It recognizes that a Surviving spouse and children face insecurity under customary law, that the nuclear family is of growing importance in the Ghanaian family system, and that a wife's role in a husband's economic activity requires legal recognition.

SESSION 2: INTESTATE SUCCESSION LAW

- The Intestate Succession Law is now the uniform statute regulating matters concerning intestate succession in Ghana.
- That means that the law governs all types of marriages, i.e., marriages concluded according to the Marriage Ordinance, customary marriages and marriages concluded according to the Marriage of Mohammedans Ordinance.
- The new law substantially alters the rules of customary law, especially as it affects members of matrilineal communities.
- The Law also demonstrates government's commitment to adhere to international law and certain proposals that advocated for a re-examination of laws "relating to the rights of women and children in order to end discrimination against them".

SOCIAL STRUCTURE OF GHANA
UNIT 5: SESSION 3

Dr. Atta Kwenin

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **General provisions in the Law**
- **Proclamation, 1981, this Law is hereby made:**
- **Section 1—Application of Law.**
- (1) On the commencement of this Law, the devolution of the estate of any person who dies intestate on or after such commencement shall be determined in accordance with the provisions of this Law subject to subsection (2) of this section and the rules of private international law.
- (2) This Law shall not apply to any stool, skin or family property.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **General provisions in the Law**
- **Section 2—Intestacy and Partial Intestacy.**
- (1) A person shall be deemed to have died intestate under this Law if at the time of his death he had not made a will disposing of his estate.
- (2) Any person who dies leaving a will disposing of part of his estate shall be deemed to have died intestate under this Law in respect of that part of his estate which is not disposed of in the will and accordingly the provisions of this Law shall apply to such part of his estate.
- **Section 3—Devolution of Household Chattels.**
- Where the intestate is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled absolutely to the household chattels of the intestate.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **General provisions in the Law**
- **Section 4—Spouse or Child or both to be entitled to one House.**
- Notwithstanding the provisions of this Law: —
- (a) where the estate includes only one house the surviving spouse or child or both of them, as the case may be, shall be entitled to that house and where it devolves to both spouse and child, they shall hold it as tenants-in-common;
- (b) where the estate includes more than one house, the surviving spouse or child or both of them, as the case may be, shall determine which of those houses shall devolve to such spouse or child or both of them and where it devolves to both spouse and child they shall hold such house as tenants-in common:

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **General provisions in the Law**
- Provided that where there is disagreement as to which of the houses shall devolve to the surviving spouse or child or to both of them, as the case may be, the surviving spouse or child or both of them shall have the exclusive right to choose any one of those houses; except that if for any reason the surviving spouse or child or both of them are unwilling or unable to make such choice the High Court shall, upon application made to it by the administrator of the estate, determine which of those houses shall devolve to the surviving spouse or child or both of them.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 5—Intestate Survived by Spouse and Child**
- (1) Where the intestate is survived by a spouse and child the residue of the estate shall devolve in the following manner:
 - (a) three-sixteenth to the surviving spouse;
 - (b) nine-sixteenth to the surviving child;
 - (c) one-eighth to the surviving parent;
 - (d) one-eighth in accordance with customary law:
- Provided that where there is a child who is a minor undergoing educational training, reasonable provision shall be made for the child before distribution.
- (2) Where there is no surviving parent one-fourth of the residue of the estate shall devolve in accordance with customary law

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 6—Intestate Survived by Spouse only.**
- Where the intestate is survived by a spouse and not a child the residue of the estate shall devolve in the following manner:
 - (a) one-half to the surviving spouse;
 - (b) one-fourth to the surviving parent;
 - (c) one-fourth in accordance with customary law:
- Provided that where there is no surviving parent one-half of the residue of the estate shall devolve in accordance with customary law.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 7—Intestate Survived by Child only.**
- Where the intestate is survived by a child and not by a spouse the surviving child shall be entitled to three-fourths of the residue and of the remaining one-fourth, one-eighth to the surviving parent and one-eighth shall devolve in accordance with customary law:
- Provided that where there is no surviving parent the whole of the one-fourth shall devolve in accordance with customary law.
- **Section 8—Intestate Survived by Parent only.**
- Where the intestate is survived by a parent and not by a child or spouse, three-fourths of his estate shall devolve to the surviving parent and the remaining one-fourth shall devolve in accordance with customary law.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 9—Devolution of Residue where Customary Law is Inapplicable.**
- Where no customary law is applicable to the devolution of that part of the residue which by virtue of sections 5, 6, 7 or 8 of this Law shall devolve in accordance with customary law such part of the residue shall devolve in equal shares to those beneficiaries otherwise entitled to share the residue under the relevant provisions of this Law.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 10—Where Customary Law provides for Succession by Family.**
- Where the rules of succession under customary law applicable to any portion of the estate provide that the family of the intestate shall be entitled to a share in the estate: —
- (a) that family shall be the family to which the intestate belonged for the purposes of succession in accordance with the customary law of the community of which he was a member;
- (b) in the case of an intestate who, being a member of two customary law communities belonged to two families for the purposes of succession, that family shall be the two families;
- (c) in the case of an intestate not being a member of any family, that family shall be the family with which the intestate was identified at the time of his death or, failing that, to the families of his parents or failing that to the Republic.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 11—Intestate Survived by neither Spouse, Parent nor Child.**
- (1) Where the intestate is not survived by a spouse, child or parent his estate shall devolve in accordance with customary law.
- (2) Where there is no customary law applicable to the devolution of the estate of an intestate who is not survived by a spouse, child or parent in the circumstances referred to in subsection (1) of this section the estate shall devolve to the Republic.
- (3) Where the estate of an intestate devolves to the Republic under subsection (2) of this section, if upon an application made to the High Court the Court is satisfied that any person who was maintained by the intestate or with whom the intestate was closely identified, should be maintained out of his estate or that a portion of his estate or the whole of his estate should devolve to him the Court may make an order that such person is maintained out of the estate or that a portion of the estate or the whole estate devolves to him.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 12—Small Estates.**
- Notwithstanding the provisions of sections 4 and 5 to 8 of this Law—
- (a) where the total value of the residue does not exceed ₦10 million the residue shall devolve to any surviving spouse or child of the intestate or where both the spouse and child survive the intestate to both of them;
- (b) where the intestate is survived only by a parent and the total value of the estate does not exceed ₦10 million the estate shall devolve to the surviving parent. [As amended by The Children's Act (Act 560), sch. to s.125]
- **Section 13—Secretary may Alter Value of Residue, Etc.**
- The Provisional National Defence Council Secretary responsible for Justice may by legislative instrument vary the maximum value of the residue or estate prescribed under section 12 of this Law.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 14—Sharing of Portion of Residue by Two or more Persons.**
- Subject to the rules of customary law relating to a member's interest in communal property, where two or more persons are entitled to share a portion of an estate under this Law, they shall divide it among themselves in equal shares.
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- **Section 15—Presumption against Survivorship.**
- Where spouses die in circumstances—
- (a) in which it appears that their deaths were simultaneous; or
- (b) rendering it uncertain which of them survived the other, the older shall, for the purposes of this Law, be presumed to have predeceased the younger.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 16—Grandchildren of Intestate.**
- Where a child of the intestate who has predeceased him is survived by a child (being of the grandchild of the intestate) the grandchild shall, if he is dependent upon the intestate at the time of his death be entitled to the whole or a portion of the estate which would otherwise have devolved to his parent if he had not predeceased the intestate.

SESSION 3: PROVISIONS IN THE INTESTATE SUCCESSION LAW

- **Section 16—Grandchildren of Intestate.**
- Where a child of the intestate who has predeceased him is survived by a child (being of the grandchild of the intestate) the grandchild shall, if he is dependent upon the intestate at the time of his death be entitled to the whole or a portion of the estate which would otherwise have devolved to his parent if he had not predeceased the intestate.

SOCIAL STRUCTURE OF GHANA
UNIT 5: SESSION 4

Dr. Atta Kwenin

SESSION 4: ADVANTAGES OF INTESTATE SUCCESSION LAW

- Protection of women and children
- the Law also takes cognisance of a wife's involvement in her husband's economic activity, a fact which Ghanaian customary law ignored; and also recognises the “growing importance of the nuclear family in the Ghanaian family system”.
- The Law creates a homogeneous system of law governing intestate succession in Ghana and also replaces the complicated rules of succession (applicable under the Marriage Ordinance) with simple rules of succession.

SESSION 4: ADVANTAGES OF INTESTATE SUCCESSION LAW

- **Disadvantages of Intestate Succession Law**
- The Law does not make distinctions according to the gender of the deceased and/or the successors as was the case under the Marriage Ordinance.
- It applies uniformly amongst all tribes in Ghana and is not cognisant of the fact that the customary rules of intestate succession differ from tribe to tribe.

SESSION 4: ADVANTAGES OF INTESTATE SUCCESSION LAW

- **Criticisms of the Intestate Succession Law**
- The Intestate Succession Law applies to intestate estates alone
- Secondly, the Law applies to the intestate's self-acquired property alone, and disregards family property entirely
- The law affects both patrilineal and matrilineal communities. As stated above, in matrilineal communities, the self-acquired property of an intestate becomes family property.
- The sub-division of the intestate estate into fractions merely complicates the devolution process.
- The fractional formula used in the distribution of the estate to the successors under the Law inevitably results in the disintegration of the estate

SESSION 4: ADVANTAGES OF INTESTATE SUCCESSION LAW

- In some instances, determining the various shares of the estate which should be distributed to particular heirs is virtually hopeless without converting the property into cash.
- if the intestate is a member of two customary families, the share which has to be distributed according to customary law would have to be divided, requiring that the one-eighth portion be further split into two.
- The Intestate Succession Law fails to consider that customary law recognises a system of polygyny
- where the estate comprises of only one house but more than one surviving spouse with several children, this often results in prolonged conflicts which in most cases can only be resolved by alienating the house and the chattels and dividing the profits

SOCIAL STRUCTURE OF GHANA
UNIT 5: SESSION 5

Dr. Atta Kwenin

SESSION 5: THE CONCEPT OF WILL

- A will may be defined as a declaration in a prescribed manner of the intention of the person making it with regard to the matters which he wishes to take effect upon or after his death.
- A will can also be said to mean a legal document that sets forth a person's wishes regarding the distribution of property and the care of any minor children.
- If a person dies without a will, those wishes may not be carried out.

SESSION 5: THE CONCEPT OF WILL

- **Essentials characteristics of a will**
- A will is not limited to dispositions of property but deal with other matters he wishes to take effect on or after his death.
- It must be in a prescribed form, a form now normally prescribed by a statute: This means that a will must be written, it must be signed at the foot or end thereof by the testator or by someone at his direction and his presence and it must be witness by at least witnesses
- A will is revocable: A will can always be revoked by the testator. Even if he has undertaken by contract not to revoke it, still the testator may revoke his will.
- A will is an inflexible rule that takes effect only on death.
- A will is ambulatory: This means that a will is capable of dealing with property acquired after the date when it was made

SESSION 5: THE CONCEPT OF WILL

- **Formalities of a Will**
- The provisions of Section 2 of the Wills Act, 1971 govern formalities and requires that
- A will must be written
- It must be signed at the foot end thereof by the testator or some other person on his direction and in his presence.
- It must be attested by the signatures of at least two or witnesses in whose presence the signature must be made or acknowledged.

SESSION 5: THE CONCEPT OF WILL

- **Types of Will**
- **Conditional will:** A will be described as conditional if the intention of the testator is that it shall not become operative except on the fulfilment of a specified contingency or occurrence of a specified event.
- **Mutual will:** A mutual will is a will made by two or more persons, usually in substantially the same terms and conferring reciprocal benefits.
- **Joint Will:** A joint will is a type of will in which two or more persons incorporate their testamentary disposition and wishes in a single document, while complying with the formalities of the will
- **Holographic wills:** Wills written and signed by the testator but not witnessed are known as holographic wills from the less common secondary meaning of the word holograph, meaning a document hand-written by its author.

SOCIAL STRUCTURE OF GHANA
UNIT 5: SESSION 6

Dr. Atta Kwenin

SESSION 6: LEGAL TERMINOLOGIES IN INHERITANCE AND A WILL

- **Terminologies Under Will**
- Testator means the maker of a will. Feminine “Testatrix”
- Intestate means a person who died without a will
- Intestate estate means property in respect of which the owner did not make a will or in respect of which disposition in a will is ineffectual
- Devisee denotes a person or other object taking a benefit under a gift of immovable property
- Bequest or legacy means a gift of movable property or personality
- Legatee is a person or object taking a benefit under a gift of movable property
- Donee includes both devisee and legatee

SESSION 6: LEGAL TERMINOLOGIES IN INHERITANCE AND A WILL

- **Terminologies Under Will**
- Gift includes both devisee and bequest
- A codicil is a testamentary document which is supplementary to the main will and may add to or modify it. A codicil is similar to a will. Or a codicil refers to a dully executed documents which add to varies or revoke certain provisions of a will.
- Executor is a person appointed by the will to administer the estate. Its feminine is “Executrix”
- Administrator is a person who is appointed by the court to administer the estate where the deceased died intestate or where the deceased left a will but did not appoint an executor by will.

THANK

YOU

FOR YOUR

ATTENTION!!!

