FAMILY PROPERTY AND INHERITANCE AMONG
THE NORTHERN EWE OF GHANA

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There are some preliminary observations with which I would like to preface this paper. In the first place, it is not possible for me to speak authoritatively about all Ewe. As you may be aware, following the demarcation of the Anglo-French frontier after the first World War, part of the Ewe now live in the Republic of Togo and the rest in the Republic of Ghana. In this paper I am unable to deal with the Togolese Ewe because I have not conducted any research in that part of Eweland. Even among the Ghanaian Ewe I would like to concentrate primarily on those whom I describe as the Northern Ewe of Ghana. Thus the Anlo Ewe, who lie South along the sea coast, are strictly speaking not included in this area. Similarly the Tongu Ewe, who are found mainly along the Volta River, are also not strictly included in the area under consideration. The Northern Ewe inhabit that part of Eweland in Ghana which roughly stretches northwards from Ho and its environs, through Peki and Kpandi to Hohoe (Gbi). Even in this restricted area the statement of the law is made difficult by the fact that it comprises a congeries of small but politically independent chiefdoms or duwo. For the laws and customs within the respective chiefdoms are not necessarily the same, a fact which is reflected in the Ewe maxim dusiadu kple efe koklo koko, that is "each community has its peculiar mode of dressing its chicken for the table."

Subject to the above observations an attempt will be made to state general propositions for the Ewe. It may well be that some of the propositions are valid for all Ewe, but they are necessarily subject to possible local variations.

As a starting point in our enquiry, we may look

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at the concept of the family among the Ewe. For it is only after explaining the concept of family that we can attempt an understanding of the notion of family property. Furthermore this is desirable because the family is a central institution in the customary laws of all Ghanaian communities, especially because of the all-pervasive notion of family property.

The ordinary non-legal meaning of family in English is that it embraces only a man and his wife and children, possibly adding domestic servants (O.E.D.). The Ewe however, do not understand the family to mean a man, his wife and children. It is not surprising, therefore, that the Ewe language has no single word for the conjugal family. The only accurate way to refer to this group to an illiterate Ewe, without misleading him, is to give the composition of the unit by saying *natsu esro kple eviawo*, that is "a man, his wife and children".

The term family, however, has become a term of art. Although its meaning and composition may vary according to the different communities of Ghana, it is suggested that among the Ewe the unit referred to as the family is the dzotinu. It is also known in some Ewe areas as *avadzidzi* or *togbevime*. Members of the Ewe family or dzotinu are in principle descended patrilineally from a common ancestor and they constitute a corporate entity in the indigenous law, for the purposes of title to certain property, entitlement to hereditary offices and some other privileges and obligations. This is generally a large unit, often consisting of a number of households or sections.

I do not wish to translate family as *fome*, as is usually done by some authorities (Ollennu, 1966: 71). In my view *fome* properly only means "relations". It comprehends an indeterminate circle of persons, related by both consanguinity and affinity on both the paternal and maternal sides and extends to relations of any remove.

The Ewe dzotinu originates from a remote male ancestor, whose name the unit usually bears, though this need not necessarily be so. This group,
consisting of descendants in the male line, constitutes a single unit, recognised in Eweland as having the legal capacity to hold the absolute interest in ancestral property, particularly land, and to be entitled to offer its members for traditional offices, vested in it on a hereditary basis. They are therefore, known as nu-deka-dulawo or "the group of people who eat one thing". To say of a set of persons that they are nu-deka-dulawo is another way of saying that they are members of the same dzotinu. Every dzotinu has a head known as dzotinu'metsitsi (a contraction of dzotinu fe ametsitsi) or "the elder of the dzotinu".

The legal concept of dzotinu among the Ewe of Ghana, apart from the obligations it imposes, is meaningful only within the context of land-holding and succession to rights in property and traditional hereditary offices. Within this context, every adult Ewe is clear in his mind about the composition of the dzotinu. There is no classification into the so-called "immediate" or "wider" family. For every Ewe belongs to one dzotinu and one only. Thus when an Ewe is told that some property is family property, it has only one meaning for him: it belongs to the "immediate family", "nuclear family", "wider family", "extended family", "ancestral family", "trunk family" or "what-not family". It would not be necessary, as it was for instance for the West African Court of Appeal in Amarfio v. Ayorkor to say that "the first enquiry must be, to what family did Ayiku belong during his life-time". 1

This type of characterisation excludes from our consideration such units as the children of a man or simply his grandchildren. Even though the general rule of Ewe law is that children inherit their father's property, such children inherit because they are in a position somewhat analogous to that of the next-of-kin in English law. For children alone cannot be regarded as a family because they do not constitute a legal entity. In the Ewe circumstance, a wife is not a member of her husband's dzotinu. Hence to treat a man and his children as a family would give us a unit which is
smaller than the conjugal family. The metaphor often given is that the so-called "ancestral" or "wider family" may be likened to the trunk of a tree, with the so-called "immediate families" representing its branches (Ollenu, 1966: 74). To carry the metaphor further, it would be wrong to refer to every branch and bough as a trunk. It is the tendency on the part of the judiciary of the statutory courts and text-writers to raise the composite segments to the level of family that is causing confusion and uncertainty.

It is admitted that by this type of analysis, we are giving a technical meaning to the Ewe family. Indeed, it would perhaps be more accurate to say that our concept of family in this context is functional, for our identification of the family as a legal entity is meaningful only within the context of certain legal consequences, such as the right to the enjoyment of dzotinu property and succession to property and hereditary offices.

What then is dzotinu or family property among the Ewe? Stated simply it is property to which the paramount title is vested in a family. And since there is only one type of family among the Ewe, family property means dzotinu property. This definition deliberately excludes from the ambit of family property even undivided property in which the interest is jointly held by the children who do not constitute a dzotinu.

Thus defined family property is practically non-existent among the Northern Ewe-speaking people of Ghana, except for ancestral lands. The reason lies in the Ewe system of succession to property. For among the Ewe the dzotinu as such does not succeed to the intestate estates of its deceased members. It is individuals who succeed. Although the right to succeed to interests in property is derived from membership of the dzotinu, the latter itself never succeeds to those interests held by its individual members.

There may be a contrast here with the institution of family property among some of the other
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communities of Ghana, notably the Akan and the Ga. The law to be deduced from a long line of cases is that among some other Ghanaian communities the self-acquired property of a deceased person automatically becomes family property on intestacy. It is the family or lineage and not individuals, who succeed to rights in property in such communities (Ollennu, 1962: 33). Those who are appointed "successors" in such communities do not, therefore, enjoy more than a life interest in the property, thus lacking both the power of alienation inter vivos and testamentary disposition, as regards the inherited property. In effect and in practice therefore, there is a continuing addition to family property in some Ghanaian communities. As Ollennu puts it:

"Ancestral family property is property which was once the individual self-acquired property of a very remote ancestor, and which has become vested in a very wide family consisting of a number of small families or tribes" (Ollennu, 1962: 33). The same view is held by Bentsi Enchill that "self-acquired property is forever becoming ancestral property" (1964: 185). This is not true of the Ewe as a rule.

The main type of family property among the Ewe are the ancestral family lands. If self-acquired property does not become family property among the Ewe, what explanation can be given for the existence of family lands? How can we answer for instance, Bentsi-Enchill who says that:

"The very notions of family, sub-family and immediate family property carry with them the acknowledgement of an original individual acquisition by the founder of the family or branch of the family"? (1964: 81).

It is respectfully submitted that there is a fallacy of non-sequitur in the argument which assumes that every family property was originally self-acquired by a member of that family. In the old Ewe law, it was the rule that individual persons could not hold the paramount interest in land, because land was regarded as a special type of property. All acquisitions of land were,
therefore, family acquisitions. They were not regarded as self-acquired properties of the individuals who had reduced the unappropriated land into effective occupation. That is why ancestral lands are family property among the Ewe. (The Ewe law has however now changed and individual acquisition of land, not on behalf of the dzotinu, is possible today.)

If the family lands became family property, because of the principle that self-acquired property of today would become family property of tomorrow, then this would not have been limited to land alone. The principle would have applied to other types of property so that, in addition to lands, there would also be other kinds of family property. But this is not the case. Every head of a family or dzotinu interviewed in an extensive field research stated that the only family property administered by him in that capacity consisted of the ancestral lands.

Having said that the family as such does not succeed to the self-acquired property of its member, and that it is individuals who succeed, we may now look at some of the rules on this issue. The basic rule among the Ewe is that post mortem succession to rights in intestate property is based on the patrilineal principle. This means that it is based on relationships traced through the male line from the ancestor, that is patrilocal descent from the previous holder of the interest in the property. As regards ancestral dzotinu or family property it means that the inherent right of occupation and use of such property is in principle derived from membership of the family or dzotinu through one's father. Concerning self-acquired property, the rule of Ewe land is that children succeed as of right to their deceased father's interests in property. It has, however, been suggested by some authorities that in some Ewe communities, notably the Anlo Ewe, succession is matrilineal. For example Manoukian says:

"In other sub-tribes, for example Anlo and Glidzi, individual property is transmitted matrilineally, a man's heir being his sister's son"
Presumably Manoukian relied on Ward, (1949: 93), the latter reproducing the view of Westermann (1935: 264). Certainly this is not true of the Anlo Ewe, because the series of cases which have come before the courts from that area have always been decided on the basis that succession is patrilineal and the Anlo Paramount Chief's Tribunal has emphasized this in its opinions to the courts.\(^3\)

It was not possible to ascertain the law of succession among the Glidzi Ewe in the Republic of Togo, with whom Westermann was specifically concerned in his *Die Glidzi-Ewe in Togo*. It may be pointed out, however, that the primary source of the information supporting matrilineal succession among the Ewe, that is Westermann himself, accepts the basic proposition of patrilineal succession among the Ewe, and explains that the idea of matrilineal succession was introduced to the Glidzi Ewe through contact with the Akan (1935: 264). It is also stated by Westermann that immovable property among the Glidzi Ewe is inherited automatically by the children of a deceased man, or failing them, the brothers of the deceased (ibid). Movable, particularly less valuable movables, are normally distributed among relatives generally in Glidzi, as in other Ewe areas, and matrilineal relations may partake of the distribution. But this does not imply a "mixed system" of inheritance.

Recent writers in Ghana have generally accepted the patrilineal system of inheritance among the Ewe (e.g. Ollennu, 1966). Within this principle, however, they maintain that it is the entire patrilineal family and not its individual members, who inherit the property of a deceased member. Ollennu says "the first principle of the customary law of succession applicable to all tribes in Ghana is that upon a person's death intestate - male or female - his or her self-acquired property becomes family property" (1966: 70).

Agreeing with him is Bentsi-Enchill, who also says that, "the fundamental rule on which all are agreed (is) that upon the death intestate of a person his self-acquired property becomes family
property" (1964: 126,) and also that "the basic rule everywhere throughout Ghana is that upon the death intestate of a person, his or her self-acquired property becomes family property. This is so whether the family be patrilineal or matrilineal" (1964: 134).

These are sweeping generalisations with which I do not concur and it is not insignificant that the learned authors cite no Ewe authority and no Ewe case to support their categorical propositions. On the contrary, the Ewe cases clearly illustrate that a man's heirs are his children.

Taking the Ewe case chronologically, the first is In re Tamakloe. When in that case a reference was made to the Paramount Tribunal of Anlo State on the Ewe law of succession, its report, dated 21st March, 1945, said: "According to Anlo customary laws children are the heirs and successors to the fathers' real properties". Although the Tribunal did state that, "One important point which must not be forgotten is that the senior boy or girl never automatically succeeds to the estate," yet it went on to emphasize that, "when the eldest surviving son is disqualified for any reason from succeeding the choice is given to one of his fit younger brothers". In the other case of Khoury v Tamakloe, Smith, J., referred to the evidence of the Paramount Chief of Anlo, Fia Sri II and said, "In the first place the Fia says that in modern times children inherit father's property." Without so expressing it, it was the same principle that was applied in Yawoga v Yawoga, a case from Ho district, when the High Court (Lands Division) held that the children of a deceased man were the successors to his property and could by themselves alone dispose of the inherited property without any reference to the family or dzotinu. It was said by Ollenu, J., that "Succession in the tribe to which the plaintiff and the first defendant belong is patrilineal. And it is admitted that upon the death of the said Yawoga, his family who became entitled to the property consisted of his children and their descendants." The learned Judge in Yawoga v Yawoga, inspite of the erroneous reference to the children as a family, was correct in identifying the children as those
entitled to inherit their father's property. In Ahoklui v Ahoklui, a case from Cobi (Hohoe), Ollenu, J., was even more explicit on the right of children to inherit their father's property. He said: "The parties being Ewes, the custom of succession is that children succeed to their father's estate. It is only during minority of children who inherit property that a paternal uncle is made to take charge and control of the property until the children are of age.\textsuperscript{8} It is submitted that the rule in Yawoga v Yawoga, as further elaborated in Ahoklui v. Ahoklui, expresses the correct law of succession among the Ewe.

Although the children have an indefensible right to succeed to their father's property, there is no automatic right of priority inter se, nor is there an automatic right of entitlement to specific portions of the estate. The share of each child in the estate is a matter for the determination of the family or d\textsuperscript{\textregistered}ni. If, however, there is only one child, then he is entitled to all the estate. There is the similar automatic entitlement to all the estate if the deceased was childless and is survived by only one brother.

It is submitted, therefore, that there must be a qualification of the sweeping proposition stated in the head-note to the decision of the West African Court of Appeal in the Ewe (Tongu) case of Makata v Ahorli that: "There are no rigid rules of intestate succession in Gold Coast native custom, but the elders of a family of which a deceased was a member may appoint a successor at their discretion".\textsuperscript{9} In Makata v. Ahorli the deceased was not survived by any issue and the family only granted a special dispensation to the maternal nephew to inherit his property for life, because it was the nephew who had helped him on his farm and who had also shouldered a considerable part of the deceased's funeral expenses. For the same reason we disagree with Margaret Field when she says, "There are no rigid laws of inheritance as a European understands codified law" (1940: 43). The Ewe law indeed is not codified, but it is explicit
The general attitude of Ewe law was that women were not entitled to succeed to rights in property, except chattels. In any case, men were preferred to women as successors to property. Today the rule is not observed with the same rigidity, but is still the general principle that male successors are preferred to female ones. The table of succession to the intestate property is determined by a fixed formula, for the right to succeed, is, as it were, as that of next-of-kin in English law. It is only subject to variation by the family in very exceptional and rare cases. On the failure of a prospective successor therefore, the next set of persons in proximity to the deceased in the genealogy, traced patrilineally, become entitled to succeed.

The first general rule is that, if a deceased male is survived by children, the children succeed to his interests in property as of right on intestacy, male being preferred to female children. If there are no children, but children's children, such descendants have the right to succeed and priority is determined among them in the descending order of seniority. If there are no children or descendants of children, the actual father of the deceased, if still living, is the successor. If the deceased is not survived by any child or descendant and the deceased's own father had pre-deceased him, then the next set of persons entitled to succeed are brothers and sisters of the deceased, brothers being preferred to sisters, and sisters taking only a life interest, and as between brothers, full brothers take precedence over half brothers. Failing brothers and sisters, the children and descendants of the brothers (but not of sisters) are considered for succession. Failing all these, we move one step up to the brothers of the deceased's father and their descendants. The right is thus traced upwards along the genealogy until a successor is found, and in every case a successor must be found. Hence the intestate property can never become family property as a result of the failure of succession.

It is far more difficult to spell out the rules governing succession to interests in the property left
intestate by a woman. Certain principles are here in conflict. There is the general principle that children should benefit from the property left by their deceased parents. Against this must be applied the all-pervasive rule that the intestate's property must be retained within the patrilineal family of the deceased, and the children among the Ewe do not belong to their mother's family. In some Ewe areas such as Abutia, Kpedze and Kpeve, the rule seems to be that the children of a deceased woman are those entitled to succeed to her property on intestacy, and this includes both sons and daughters. Such inherited property in those areas remains in the patrilineal family of the deceased woman's children and not in the family of the deceased. But there is a right of reversion in the deceased woman's family if the descendants of the body of that woman become extinct. The rule in most Ewe areas, however, is that children of a deceased woman succeed to their mother's interest in intestate property, but only for the joint lives of the children. Thus after the death of the last of the children, the property devolves as if the original female owner had died childless, that is to be inherited by the members of the deceased woman's own patrilineal family. In the application of this rule, it is obvious that only immovable property and property of a durable nature can survive the joint lives of the children.

If a woman dies childless, her intestate property is inheritable in the same way as a man's. She is succeeded by her father, and failing him, the deceased woman's brothers and sisters. The circle of entitled person is then widened in practically the same manner as for a deceased male. The mother is excluded, because she is not of the same family as her daughter.
Cases Cited


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3. e.g In re Tamakloe, Unreported, Suit No.78/44
   High Court, Accra, 4th May, 1948; Attipoe v. 
   Shoucaire, (1948) D.C. (Land) '48-'51, p.17;

4. Unreported Land Court, Accra, Suit No. 78/44,
   4th May, 1942.

   pp. 201, 205.


8. Ahoklui v. Ahoklui, Unreported, Land Court,
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10. See e.g. Golo v. Doh (1965) C.C. para. 214.


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