

# University of Miami International and Comparative Law Review

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Volume 10  
Issue 2 *SPECIAL ISSUE: 2001-2002 AFRICA AT  
THE CROSSROADS: CURRENT THEMES IN  
AFRICAN LAW*

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Article 5

10-1-2001

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### **Recommended Citation**

Paul Sergius Koku, *Student Article: Market Forces and the Rule of Law as a Means of Improving the Quality of Life in Sub-Saharan Africa: Ghana, a Case of Critical Analysis*, 10 U. Miami Int'l & Comp. L. Rev. 23 (2001)

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## **Market Forces and the Rule of Law as a Means of Improving the Quality of Life in Sub-Saharan Africa: Ghana, a Case of Critical Analysis**

**Paul Sergius Koku**

### **Introduction**

In conducting an institutional analysis of Ghana, the objective of this paper is to examine how market forces and the rule of law, specifically, the law of torts and contracts, impact the quality of life in sub-Saharan Africa. The paper focuses on Ghana for several reasons: first, as a former British colony, Ghana's legal system is built on the United Kingdom's legal system and thus benefits from a long-established tradition of recording past cases and deciding current cases by using the common law system of precedent. Second, because Ghana and the United States share a common legal root with the United Kingdom, the Ghanaian system easily lends itself to exposition to non-Ghanaians. Third, as the first African colony to gain independence from Britain, and in many respects, being in the forefront of developments in West Africa, Ghana's economic and political experiences serve as a lesson to many other former colonies.

The rule of law and the free market economic systems are essentially alien to native Sub-Saharan Africans. However, the success of these institutions would be instrumental in improving the quality of life in Ghana. These systems could also restore peace and order to other former sub-Saharan colonies such as Sierra Leone, where legal and market failures combined with the lack of viable alternative systems has plunged the country into a deep civil war.

Several studies have examined the role of free market forces in the economic development of sub-Saharan African countries. For example, one study examined the role of informal financial markets under market liberalization and concluded that informal financial markets continue to serve as an important vehicle for mobilizing household savings.<sup>1</sup> Other studies examined the lack of integration between the different West African economies and concluded that the absence of sufficient infrastructure and a coherent aid policy between the advanced Western nations continue to hamper economic progress in

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<sup>1</sup> Market liberalization is an important aspect of a free market economic system as it relaxes the government's control over the market. For a more detailed discussion of this issue, see William F. Steel et al. *Informal Financial Markets Under Liberalization in Four African Countries*, 25 *WORLD DEVELOPMENTS* 5 (1997).

West Africa.<sup>2</sup> Along a separate stream of studies, some political scientists have examined the role of political systems in establishing economic stability, and concluded that assistance to democracy-building organs are instrumental in bringing together a cohesive new policy strategy.<sup>3</sup>

These studies have been particularly useful in explicating the political and economic problems facing sub-Saharan emerging economies. However, none of the studies has explicitly examined quality of life issues or the effect of the judiciary on market forces. Additionally, none of the earlier studies addressed the effectiveness of market forces as a mechanism for developing economies of sub-Saharan Africa. The failure of earlier studies to include quality of life issues leaves a big gap that needs to be filled. After all, isn't the ultimate objective of a country's economic system to improve the quality of life for its citizens?

Furthermore, legal and educational systems directly affect the operations of market economies. Thus, the failure of earlier studies to explicitly address the role of the judicial and educational systems in ensuring the effective operations of the market system economies in sub-Saharan Africa makes those studies amenable to extension. A cursory examination of anti-trust and anti-collusion laws in the United States clearly shows how the legal system serves as the grease that oils the cogs of the market system. The ability of the market participants to enlist the help of the law in instances where a participant's behavior violates prevailing norms illustrates the virtue in both the educational and the legal systems working together to ensure the operations of the market system. However, it must be noted that the judicial system is inextricably tied to the political system, thus an orientation to either democracy or socialism could either enable or disable a properly functioning judiciary.

By examining pre-colonial and postcolonial institutions this study analyzes how markets forces operate within the Ghanaian economy to assure an improved quality of life. Specifically, the effect of the

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<sup>2</sup> See, e.g., C.V. Tuho, *West Africa and the Future of Relations Between the ACP Countries and the European Union*, 3 WORKING PAPERS ON EU DEVELOPMENT POLICY (Friedrich Ebert Stiftung 1996), available at [http://www.oneworld.org/euforic/fes/3gb\\_tuh.htm](http://www.oneworld.org/euforic/fes/3gb_tuh.htm).

<sup>3</sup> For more detailed discussions, see L. DIAMOND, PROMOTING DEMOCRACY IN AFRICA: U.S. AND INTERNATIONAL POLICIES IN TRANSITION, (J. Harbeson & D. Rothchild eds., Westview Press 1995); *Promoting Democracy in the 1990s*, Carnegie Corp. of New York, (Oct. 14, 2001), at [http://www.carnegie.org/sub/pubs/deadly/dia95\\_02.html](http://www.carnegie.org/sub/pubs/deadly/dia95_02.html); see also Thomas Carothers, *Democracy Assistance: the Question of Strategy*, 4 DEMOCRATIZATION 109 (1997); WILLIAM I. ROBINSON, POLYARCHY: GLOBALIZATION, U.S. INTERVENTION AND HEGEMONY (Cambridge Univ. Press 1996), available at <http://www.chez.com/bibelec/publications/international/polyarchy.html>.

current economic forces on the citizens is illustrated by looking at current judiciary and market systems and contrasting them with pre-colonial institutions. The educational system is also worthy of analysis as an important factor that allows the citizens to transcend the confines of past social and institutional structures and move into the present. Some observers might consider literacy as a mundane issue to the effective functioning of the economic system, but the opposite is true. In fact, literacy is essential in assuring an improved quality of life, because it serves as a critical bridge between market forces and tort and contract law.

Like Sierra Leone, Gambia, and Nigeria, the Gold Coast (the colonial name for Ghana) was a colony of the United Kingdom until 1957.<sup>4</sup> At independence, the Gold Coast changed its name to Ghana, and inherited the English judicial system, and a developing capitalist economy. However, under its first prime minister, Kwame Nkrumah, Ghana quickly drifted away from the Westminster-type of governance and market economic system, and instead practiced some variant of socialism.

In this respect Kwame Nkrumah was an anomaly; he was educated in the United States and the United Kingdom,<sup>5</sup> and thus expected to be imbued with Western ideologies. However, he was enamored by Marxism and entertained socialist ideas which he quickly put into practice upon his election as prime minister of Ghana. Several reasons have been ascribed to Nkrumah's fascination with socialism.<sup>6</sup> The more persuasive include a) disenchantment with the Western style of governance and the realization that it might not be suitable to a third world country whose culture and ways of doing things are completely different, b) his mistaken belief that socialism was essentially equal to egalitarianism, and as such would serve as a more practical means of bringing about social equality, and c) his mistaken belief that socialism would help the newly independent nation to a more rapid and efficient development its natural resources.

Nkrumah's flirtation with socialism led to the depletion of the country's positive balance of payment position, the depletion of the country's foreign reserves, an acute shortage of so-called "essential goods," and massive corruption amongst government officials.<sup>7</sup>

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4 In 1957 Ghana became the first black sub-Saharan African nation to attain independence. C.I.A., THE WORLD FACT BOOK, (Oct. 14, 2001) <http://www.cia.gov/cia/publications/factbook/geos/gh/html>.

5 KWAME NKUMAH; THE AUTOBIOGRAPHY OF KWAME NKUMAH (Thomas Nelson and Sons Ltd. 1957) 1971 (discussing his formal and political education).

6 See HAROLD CRUCE, THE CRISIS OF THE NEGRO INTELLECTUAL (Quill 1984).

7 See BASIL DAVIDSON, BLACK STAR 104 (Westview Press, Inc. 1989) (1973).

The situation became intolerable. As a result, the country witnessed its first coup d'état in February 1966. Thus, in addition to being the first British colony in Sub-Saharan Africa to achieve independence, Ghana also acquired the unenviable reputation of being the first country in sub-Saharan Africa to experience a coup d'état. The 1966 coup was the first in a series of several military interventions in the governance of Ghana. To make themselves popular with the citizens who regarded the military as warriors and not rulers, the military often implemented price controls, and nationalized foreign corporations. However, to its credit and as a result of Western pressures, after each intervention the military returned the reigns of government to pro-West democratic regimes that implemented free market economy policies.

### **I. Commerce & the Rule of Law During Pre-Colonial Gold Coast**

Historical evidence and accounts suggest that thriving commerce existed in sub-Saharan Africa and specifically in the Gold Coast long before colonization.

Between the fourth and fourteenth century the old Ghanaian empire was so well known for its commerce and wealth<sup>8</sup> that it is worthwhile to examine its commercial mechanisms to shed light on possibilities for modern improvements. Transactions in pre-colonial Ghana were not necessarily consummated instantaneously, and "payments" for goods were made over extended periods. The market participants effectively practiced a version of modern day "buying on credit." Thus it is important to analyze the mechanisms with which pre-colonial Ghanaians enforced their contracts, paid their debts, and ensured the quality of their goods.

The evidence shows that natives of pre-colonial Gold Coast relied on trust, reputation, and the institutions of the extended family and chieftaincy to police the behavior of the market participants.<sup>9</sup> These institutions were used to prevent fraudulent practices in the market, and to ensure that contractual obligations were dutifully discharged. The village chiefs, as custodians of the laws and customs, ensured order. They held court and relied on their council of elders to dispense justice. In extreme cases the chiefs meted out punishments such as temporary or permanent banishments to individuals who violated the norms of their respective villages. Because members of tribal communities were illiterate, the rules governing market operations and the community in general were recorded through the practice of oral history whereby traditions and rules would be narrated by the elders to the young.

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<sup>8</sup> See BASIL DAVIDSON, *AFRICAN CIVILIZATIONS REVISITED*, (Africa World Press 1991).

<sup>9</sup> See Paul Collier and Ashish Garg, *On Kin Groups and Wages in the Ghanaian Labour Market*, 61 OXFORD BULL. OF ECON. & STAT. 133 (1999).

Sometimes these narrations were ritualistically performed, conferring solemnity upon the rules and reverence upon the elders and chiefs.

*Panyarring* was one means of ensuring the performance of contractual obligations, particularly debt obligations, in pre-colonial Gold Coast.<sup>10</sup> This practice indirectly invites members of the extended family or the community to exert pressure on the offender to fulfill his or her obligations.<sup>11</sup> Under this practice any inhabitant from the village of the delinquent debtor is seized by the members of the village of the creditor. The debtor is then put to work for the creditor until the debt is paid. Although the practice appears rather harsh when viewed through today's lenses of fairness and justice, the appeal of *panyarring* lies in its ability to use family and community pride as a guarantee for the fulfillment of contractual obligations.

Insights can be gained from examining economic forces that ensured a "well-behaved" market during the pre-colonial Gold Coast. First, primitive means of transport made trading regions small. Trade occurred more within small communities and between members of neighboring communities. Occasionally, a group of merchants traveling on foot would make their "rounds" selling their goods to distant communities. These traveling merchants would visit a community, stay for a few days, sell their goods, and rest before they moved on to the next community.

Commerce was essentially conducted between people who knew each other, or between people who could easily be found afterwards, if need be. Thus, fly-by-night operations in which a trader would intentionally sell a bad product and disappear were non-existent. There was literally nowhere to hide, and therefore the trader had little choice but be truthful to the buyer. He either sold only high quality goods or, at a minimum, disclosed the known defects.

A second economic advantage inherent in trading with familiar people is actually two-fold. First, the practice of incremental payment over an extended period was not a problem. After all, the market participants knew where to find each other in a case of late payment. And second, the market operations indirectly implicated multi-period models involving repeat transactions between the same parties, which allowed the parties' reputations to serve as a warranty. Generally, in such multi-period models the magnitude of potential loss of repeat purchases outweighs the possible gains from cheating and serves as an effective deterrent to traders who want to cheat.<sup>12</sup>

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10 See W. E. F. WARD, *A HISTORY OF GHANA*, (George Allen & Unwin, Ltd. 1963).

11 See Collier, *supra* note 9.

12 See Clifford W. Smith, *Economics and Ethics: The Case of Salomon Brothers*, 5 J. OF APPLIED CORPORATE FINANCE 23 (1992).

While maintaining a good reputation, honest performance on the part of sellers, family pride and integrity, this system assured performance on the part of buyers in the pre-colonial Gold Coast market. The culture placed a premium on family pride and integrity which would be lost if a buyer failed to live-up to his end of a bargain by failing to pay a debt. Financial obligations privately entered into by individuals often took on a larger meaning because they invariably obligated an entire family if not the entire community.<sup>13</sup>

The objects and methods of trade in pre-colonial Gold Coast were relatively simple. Production was principally agrarian, mostly herding or gardening for subsistence. Furthermore, primitive production technologies limited the volume of output and therefore restricted the volume of surpluses to be traded. Additionally, bartering, a common means of exchange at the time, also imposed restrictions on the types of transactions. Therefore, it is not surprising that the prevailing enforcement mechanisms were relatively simple, taking into account the simple nature of trading, the limitations imposed by geography, and the lack of written laws and recorded transactions.

## II. The Free Market Economic System in Ghana

One of the major results of colonization and its aftermath was the development of a better infrastructure to move people and goods. Better infrastructure directly resulted in increasing the size of markets, both in terms of participants as well as the variety of goods traded. The increased market size rendered obsolete the pre-colonial era practice of trading between persons who knew each other. Similarly, the increased variety of goods now being traded brought new kinds of problems that could neither be anticipated nor properly handled during the pre-colonial era. For example, trading between strangers brought with it the opportunity as well as possibility of cheating because it became possible for fly-by-night operations to function. In many respects the family and community became incapable of providing a warranty for performance in this new era.

Reputation could still serve as an enforcement mechanism in the post-colonial period similar to the way it functions in any free market economic system. Yet the ability of a party's reputation to serve as an effective collateral depends on a market offering several sellers of similar products and where repeat purchase is common. The Ghanaian market system is free market-type, but the number of sellers of similar goods in the market is too few to allow reputation to work as a market behavior policing device.<sup>14</sup>

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<sup>13</sup> See Collier, *supra* note 9.

<sup>14</sup> See B. Klein & K. B. Leffler, *The Role of Market Forces in Assuring Contractual Performance*, 89 J. OF POLITICAL ECONOMY 615 (1981).

The free market economic system, as contrasted with a centrally planned economic system, prescribes minimum government intervention in the market. The behavior of market participants is therefore shaped by the forces of unfettered competition and self-interest. The argument for a free market economic system posits that when consumers and suppliers operate from self-interest, the market operates efficiently and economic Darwinism weeds out inefficient firms. Market forces not only determine the behavior of the market participants, but the behavior of the market also directly impacts the citizens' quality of life. A "well-behaved" market in which "good" firms operate delivers reasonably good quality of life, while markets in which bad firms operate will negatively impact the citizens' quality of life. In addition to the economic system, the type of governance (be it democracy or socialism), and the laws of the nation as they pertain to market behavior will also impact the citizens' quality of life.

To ensure a well functioning government and market system in the Gold Coast, the British established an elaborate legal system similar to the one that they had back home in the United Kingdom. Over forty years after independence the laws on contracts and torts in Ghana are still the same as the laws in the United Kingdom and Australia. There is no doubt that an effective legal system is needed to back the operations of the free market system. However, the systems currently in place in Ghana are so alien to the Ghanaian culture and social institutions that they failed to effectively police the market forty years ago, and they still fail to do so. At best, they end up creating a two-tier society: one tier for the well educated who understand and appreciate the British rule of law, and another tier for the uneducated who muse over the strangeness of the British system, but are resigned to "living within it."

### **III. The Interface Between the "Old" and "New" Systems**

Even forty years after independence Ghana could only boast of a gross national income of US\$ 380 per capita per year.<sup>15</sup> This severe lack of purchasing power dictates some of the market structures. For example, because a vast majority of the citizens who smoke cigarettes cannot afford to buy a packet of cigarettes, the local retailer who sells cigarettes sells them by the cigarette, and not by the pack. Depending on his income a smoker may smoke the same cigarette several times by intermittently outing a lighted cigarette and later re-lighting the butt. Similarly, a farmer suffering from headache may purchase a few tablets of aspirin (2 or 4) from the same retailer. These tablets are doled out from a bottle of perhaps 100 tablets, and are retailed incrementally until the bottle is completely sold out, without any regard for the expiration

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<sup>15</sup> The World Bank, *Development Indicators* (1996), <http://devdata.worldbank.org/data-query/SMResult.asp>.

date. A retailer in a village could buy a gallon of kerosene to sell to the villagers in smaller containers, or in beer bottles.<sup>16</sup>

It is usually impossible to establish a proximate cause of injury and make a negligence case stick should a hapless village farmer get seriously sick from consuming a contaminated aspirin, or an aspirin with an expired consumption date. A similar scenario occurs with antibiotics, which can be purchased easily without a prescription.

The current literacy rate in Ghana is only 64.5 percent.<sup>17</sup> Even this figure might be heavily inflated considering the fact that a large number of individuals who are barely able to read often pass minimal standards of literacy. The illiterate Ghanaians live and function in a world completely incomprehensible to them. The literate are familiar with the workings of the economic and the legal systems, but to the illiterate both are as incomprehensible as Greek is to an average American. The illiterates in Ghana generally regard the legal system with suspicion. Their attitude is that they do not have any legal recourse because the laws are not meant to protect them; the laws are meant only for the literate. The illiterates' general behavior underscores this perception.

The educated in Ghana know the law, understand the law's linkage to the market system, and are well versed in the rule of law. An illiterate trader in Ghana participates in the market system, but he knows and understands nothing about his rights under the Ghanaian laws of contracts, let alone torts. The tales that these illiterates have heard through third parties about the strange decorum of the courtrooms (men wearing wigs and bibs), and the seemingly "unnatural logic" of adjudicating cases only help in deepening skepticism. However, the illiterate regard the "new system" as the price that they have to pay for progress, because they appreciate the modern conveniences brought about through the new system. On the physical level, all Ghanaians operate in the so-called new and modern world of independent Ghana. But on the mental and psychic level, the illiterate operates in the old and familiar world, while the educated operates only in the new world. An examination of a celebrated Ghanaian tort case makes this point clear.

In *Acheampong v. Overseas Breweries Ltd.*<sup>18</sup> the plaintiff, one Mr. Acheampong, a Ghanaian barrister-at-law, alleged that on 24 April 1965, in accordance with his usual practice, he "bought a carton of Club beer," manufactured by the defendant, from the defendant's distributor in Kumasi. On or about April 26, 1965, the plaintiff allegedly took a bottle of beer from his refrigerator, poured a mug full and took it all down "as

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<sup>16</sup> In Ghana Kerosene, is frequently sold without any form of precaution.

<sup>17</sup> See *supra* note 5.

<sup>18</sup> 1971 1 G.L.R. 7.

the Germans do.”<sup>19</sup> Acheampong further alleged that after drinking the beer, he felt a burning sensation in his mouth and smelt the scent of kerosene. He then examined the bottle with the remaining beer. He smelled kerosene more strongly and saw that the “meniscus of the beer had an oily film.”<sup>20</sup>

The plaintiff reported that he then went to his chambers for a short siesta. However, he could not stay in his chambers for long because he was coughing and had a slight pain in his abdomen. The coughing and the urge to use the bathroom became incessant. Consequently, Acheampong went to see his doctor, who prescribed some medication at 7 p.m. that evening. Because of the cough and the frequent urge to use the bathroom, Acheampong missed work on the second and third days after the incident. Given the symptoms, his physician was of the opinion that he had suffered from kerosene poisoning. However, one Dr. Marbell, a pathologist testifying on behalf of the defendant, was of the opinion that the plaintiff may have had a case food poisoning because the plaintiff’s coughing did not start immediately after consuming the beer. Additionally, Dr. Marbell testified that it was uncommon for diarrhea to result from kerosene poisoning. Chemical analysis of the remaining beer showed that although the beer smelt of kerosene the quantity present was too small to be isolated through distillation.

The defendant argued that its manufacturing process was foolproof, making it impossible for its beer to be contaminated by kerosene. However, upon inspection of the facility and the process, the presiding judge observed that the production process relied on a combination of mechanical and human efforts. The mechanical process consisted of an inversion and suspension of bottles prior to filling to eliminate any foreign materials that may have been in the bottle. The human effort involved washing the bottles, some of which had been previously used. During the washing process, the trained cleaners relied on their sense of smell to detect if the bottle had been used as a receptacle for unacceptable liquid such as kerosene. As the judge noted, this detection process was not foolproof because a worker suffering from such ailments as the common cold might not be able to smell.<sup>21</sup>

After considering the evidence and similar cases, Judge Annan, ruled in favor of the plaintiff and awarded damages in the amount of “NC 800.00 as general damages as against the defendants with costs of NC 200.00 inclusive to the plaintiff.”<sup>22</sup> Judge Annan noted that the mere presence of foreign or deleterious matter was not *per se* enough to establish negligence. Negligence had to be established either by way of

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<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.*

<sup>21</sup> *See id.* at 11.

<sup>22</sup> *Id.* at 14. In 1970-71, one Cedi (Ghanaian currency) was equal to one U.S. dollar.

*res ipsa loquitur*, or by establishing facts which would raise an inference of negligence. Judge Annan relied upon six cases to decide *Acheampong: Chaproniere v. Mason*;<sup>23</sup> *Donoghue v. Stevenson*;<sup>24</sup> *Grant v. Australian Knitting Mills, Ltd.*;<sup>25</sup> *Daniels v. White & Sons, Ltd.*;<sup>26</sup> *Mayne v. Silvermere Cleaners, Ltd.*;<sup>27</sup> and *Aboagye v. Kumasi Brewery*.<sup>28</sup> Of the six cases Judge Annan relied upon, only one came from a Ghanaian court; the other five came from British courts.

In *Donoghue v. Stevenson*, the plaintiff alleged that he found a decomposed snail in a bottle of ginger beer manufactured by the defendant. The defendant, died before the case could come up for trial, and it was latter settled for 100 pounds. The *Donoghue* court determined:

A manufacturer of products, which he sells in such a form as to show that he intended them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care.<sup>29</sup>

In *Grant*, the court held that the presence of a chemical irritant in undergarments manufactured by the defendants was evidence of negligence. In *Mayne*, a British court ruled that that negligence on the part of the defendant could be inferred when the plaintiff suffered from dermatitis after wearing a suit that had just been cleaned by the defendants. In *Daniels*, the plaintiff consumed lemonade from a bottle of lemonade manufactured by the defendant. However, the bottle of lemonade contained a significant amount of carbolic acid. The presiding judge ruled in favor of the defendant on the particular facts of the case, stating that he was satisfied with the manufacturer's answer to the plaintiff's claims, and that the plaintiff had failed to prove that the manufacturers were guilty of a breach of the duty of care. In *Chaproniere v. Mason*, the court held that negligence could be inferred from the presence of a stone in a bun.

The *Aboagye* case was the only Ghanaian case that was cited by Judge Annan in deciding *Acheampong*. Indeed, *Aboagye* is very similar to *Acheampong*. In *Aboagye v. Kumasi Brewery*, the plaintiff was awarded NC 500.00 when he found a palm nut in a bottle of beer that he

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23 1904-05 21 Times. L. Rep. 633.

24 1932 All E. Rep. 1

25 1936 A. C. 85.

26 1938 1 All E. Rep. 258.

27 1939 1 All E. Rep. 693.

28 1964 G.L.R. 242.

29 *Id.* .

was drinking from. This beer was manufactured by the defendant Kumasi Brewery, which, incidentally, was a competitor to Overseas Breweries.

An analysis of *Acheampong* reveals a number of important points. Without the African-sounding name and without reference to *Aboagye*, any reader would have thought from reading *Acheampong* that he was either in the U.K. or Australia. This, amongst other things, shows how foreign the Ghanaian legal system is to Ghana. Deeper reading of the case shows that Mr. Acheampong himself is not an average Ghanaian. An average Ghanaian does not have a refrigerator, or enough income to buy cartons of beer, and certainly the average Ghanaian does not take a siesta.<sup>30</sup>

An average Ghanaian works from sunrise to sundown on his garden, or in the marketplace, or as a lowly paid civil servant, or as a worker in some factory, and thus lacks the luxury of a siesta. The average Ghanaian buys a bottle of beer only as a special treat on special occasions like Christmas. And instead of drinking the beer by himself, he will share the bottle with several others. He certainly would not know how to “take it all down at once like the Germans do.” An average Ghanaian waits for hours at the public hospital to see a physician. And, of course, an average Ghanaian would, out of ignorance, not even think of bringing a legal action against a manufacturer on the issue of negligence or warranty of merchantability.

It is incongruent that precedent from Australia and the United Kingdom is used to adjudicate cases in Ghana, where less than 50 percent of the population know where the U.K. or Australia are, or speak English.<sup>31</sup> The irony in modern Ghana and, in fact, all the former Sub-Saharan colonies is that the embrace of the Western judiciary and free market system, jointly needed to improve the quality of life for the citizens, has created an unintended schism in the society. Two unequal classes of citizens now exist in these former colonies. One class is educated and westernized, while the other is uneducated and still loyal to the institutions and the familiar traditions of the pre-colonial era.

Contrast *Acheampong* with a 1996 incident in which a farmer’s three children died after eating a local dish (“banku”) prepared from dough that the farmer’s wife allegedly bought from the local market.<sup>32</sup> Officials at the local hospital indicated that the children died of food poisoning. The children’s father collapsed, and was hospitalized for a heart attack, when news of the children’s death reached him on his farm.

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30 In West Africa, siesta is practiced only by the bourgeoisie.

31 Cf. *supra* at 19.

32 See *Death After Eating “Akple”*, GHANIAN NEWS RUNNER, (May 1996), at 17  
<http://www.newsrunner.com/archive/NW230596.htm>.

The victims of this sad incident (both the seller of the dough and the consumers) were illiterate and knew nothing about the duty of care or the warranty of merchantability. Naturally, the farmer did not bring any legal action, even though his children paid the ultimate price for someone else's negligence.

One may ask, "why did the government not pursue this case? The perpetrator may not have sufficient assets to pay a judgment, but the failure of the government to act prevents the laws from working in the same fashion for similar violations. This is a clear indication of a failure of the system.

It must be understood that the British did not set out to establish a system of double standards. Initially, the interest in the colonies was to further trade. However, that interest changed over time as the British also sought to convert the natives to Christianity and "civilize" them through the imposition of Western standards. Education was never explicitly factored into the equation. Education was treated as an incidental part of colonization and only initially used to "qualify" the natives for lowly bureaucratic civil service positions. Yet extensive education is necessary for the efficient functioning of the markets and the legal systems.

The British planted the seeds of democracy and the free market economic system in the Gold Coast. These institutions became part of the legacies bequeathed to Ghana. But there was no policy, either in the pre or post colonial periods, that sought to explicitly address the education problem. Post-colonial native leaders would argue that they made school attendance compulsory between the ages of 6 and 14. But what about the illiterate parents and older siblings of these pupils? And how effective is the policy of compulsory education when there are still thousands of villages without schools?

The failure to eradicate illiteracy leads to the failure of the market and legal systems. The failure of these systems results in a situation where one class of people are treated better than another. Apartheid was decried by everyone because that system sanctioned disparate treatments on the basis of the color of people's skin. Jim Crow and other racists laws were similarly decried in the United States because they treated people of the same nation, but of different skin color, differently. Yet there are no momentous cries over the absence of effective policies to educate the people of Ghana and other postcolonial countries in sub-Saharan Africa so that they too can enjoy the same basic rights that their educated countrymen enjoy.

The absence of cries might be explained by the outside world's fixation with the appealing modern notion of self-determination and the tenets of basic democracy, to the extent that the world has failed to appreciate the depths of the problems of illiteracy. The West still wields a lot of power in the affairs of the former

colonies. Because of the volume of aid the West gives, Western countries are satisfied that a semblance of democracy is being carried out in countries like Ghana, and hence do not do anything to upset the current situation. However, Ghanaian education is lacking, making current Ghanaian democracy nothing but an empty shell.

#### **IV. Remedy**

The remedy to this dysfunctional market condition lies in eradication of illiteracy. This means that the masses must not only be educated to read and write, but must also be educated on the rights of the consumer. This type of nation-wide education program will undoubtedly require a lot of resources, thus it will take no less than the total commitment from the leadership of the country for such a program to be successful. In a country that has a negative balance of payment position and is constantly torn between spending scarce foreign exchange to buy the so-called essential commodities, education does not seem to come close to the top of the priorities. However, such a program could culminate in a truly unified nation in which everyone is treated equally under the laws. Such an outcome may be priceless and worth more than the so-called “essential commodities.”

Furthermore, the Western donors that currently fund democracy in Ghana should be persuaded either to join with the Ghanaian government or to find their own avenues to invest in education at all levels. Investment in education will impact directly not only the level of political awareness, but also the rule of law, the forces of the free market economy, and ultimately the citizens' quality of life.<sup>33</sup>

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<sup>33</sup> See Julie Hearn, *Foreign Aid, Democratisation and Civil Society in Africa: A Study of South Africa, Ghana and Uganda* (May 11, 1999), at <http://www.ids.ac.uk/ids/publicat/dp/dp368.pdf>.