



Index Number; BL26012146

MountCrest University College

Faculty of Laws — LLB Law

COURSE CODE: MFL 151 GHANA LEGAL SYSTEM & ITS HISTORY

INTERIM ASSESSMENT (Intake: 2026 "A" Weekend)

SUBMISSION DATE: THURSDAY, 23RD JULY, 2026

QUESTION

The 1992 Constitution is the supreme law of Ghana but cannot be said to be the only source of law in Ghana. Explain and comment:

Introduction

In Ghanaian legal structure and jurisprudence, the 1992 constitution traditionally establishes the foundational principles for governance and justice delivery. This implies, laws in Ghana are built around 1992 Constitution. The constitution is therefore supreme in Ghana. This is clearly demonstrated in Article 1(2) of the 1992 Constitution of Ghana, which states that “This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void” (Constitution of Ghana, 1992). In other words, the constitution holds the utmost authority over all other laws, safeguarding that no conflicting law can prevail.

In this work, I will explore the notion that though the Constitution remains the highest law of Ghana, it is, nevertheless, not the only source of law in Ghana. Although the constitution is supreme, Chapter 4 article 11 of the 1992 constitution creates a diverse legal system to avoid a legal vacuum and respect Ghana’s local traditions, thus integrating multiple sources that interact dynamically. William Shakespeare illustrated this profoundly in *The Merchant of Venice*: “The brain may devise laws for the blood, but a hot temper leaps over a cold decree.”

This exemplification implies that written, “cold” decrees cannot contain the totality of human conduct or society’s rules on their own. An effective legal structure such as Ghana requires a varied ecosystem of rules to govern its citizens. The Ghanaian legal system is, formally centered on Constitution, which unambiguously admits its own supremacy while concurrently validating other of laws.

The Supremacy of the 1992 Constitution

This is summarized in the Latin saying *lex superior derogat legi inferiori* (a higher law overrides a lower law). The authority of the Constitution is rooted in Article 1(2) of the 1992 Constitution, which states: “This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void.” By implication, it means all customs, laws, and societal actions derive their legitimacy from the 1992 constitution of Ghana. In *Tuffuor v Attorney-General*, the Supreme Court held that the Constitution is the fundamental law from which all governmental

power flows and explains further that it is a living instrument capable of responding to the changing needs of society. Consequently, no enactment, customary practice or law, executive act, or judicial pronouncement can prevail over the Constitution. Professor Hood Philips sums this up by saying that, “To say that a Constitution is supreme is to describe its relation to the legislature’s power to alter the Constitution is either limited or non-existent.” It for this reason Date Bah JSC, in delivering the unanimous decision of the Supreme Court in the case of *Adofo v Attorney General* held; “this constitutional provision unequivocally and authoritatively establishes a doctrine of supremacy of the constitution in the Ghanaian jurisdiction. The doctrine implies that the supremacy of parliament is limited and that enactments by parliaments and those of previous legislatures are subject to the supremacy of the constitution”

The Scope of the Sources of Law Ghana: Article 11

Although the Constitution sits at the apex of the legal pyramid, it outlines the other operational sources of law in Ghana under Article 11(1). These sources include:

- (a) This Constitution;
- (b) Enactments made by or under the authority of the Parliament established by this Constitution.
- (c) Any Orders, Rules, and Regulations made by any person or authority under a power conferred by this Constitution;
- (d) The Existing Law; and
- (e) The Common Law.

1. Enactments and Acts of Parliament

One of the key sources of Ghanaian law is legislation passed by Parliament, recognized under Article 11(1) (b) of the 1992 Constitution. These laws, usually referred to as acts of parliament, enable the legislature to address evolving social, political, and economic issues through legal intervention. Parliament's legislative authority is guaranteed under Article 93(2), which allows it to pass laws for the peace, order, and good governance of Ghana

(Constitution of Ghana, 1992). An important illustration is the Criminal Offences Act, 1960 (Act 29), which continues to provide the primary legal framework governing criminal offences in Ghana (Daniels, 2016). Through this process, parliament can respond to modern developments such as cybercrime, financial crimes, and environmental protection. In *J.H. Mensah v Attorney-General* [1996-97] SCGLR 320, the Supreme Court recognized Parliament's constitutional mandate as the key law-making body. However, every act of parliament remains subject to constitutional interpretation, ensuring that legislative authority is exercised within constitutional limits.

2. Orders, Rules and Regulations

Another recognized source of law is delegated legislation, which consists of orders, rules, regulations, and other subsidiary instruments made under statutory authority. Article 11(1)(c) recognizes these forms of legislation, allowing specific public institutions and executive bodies to formulate detailed rules necessary for implementing Acts of Parliament. This delegation promotes administrative efficiency since Parliament cannot reasonably legislate on every procedural matter. For example, institutions such as the Electoral Commission are empowered to make regulations governing electoral processes. In *Mensah v. Attorney-General*, the Supreme Court affirmed the legitimacy of executive instruments provided they remained consistent with the Constitution and the enabling legislation (Bimpong-Buta, 2005). Consequently, delegated legislation complements parliamentary enactments while remaining subordinate to constitutional authority.

2. Existing Law

The Constitution also preserves laws that were already in force before the commencement of the Fourth Republic. Article 11(1) (d) recognizes these "existing laws," ensuring that the legal system continued to function smoothly after the adoption of the 1992 Constitution on 7 January 1993. Without this provision, significant legal uncertainty could have arisen. However, these pre-existing laws continue to operate only where they do not conflict with constitutional provisions. This principle was considered in *Republic v. High Court, Accra; Ex Parte Adjei* [1984–86],

where the courts examined the compatibility of earlier legal instruments with the constitutional order and held that such laws remain effective unless declared unconstitutional or repealed (Adinyira, 2012). The recognition of existing law therefore promotes continuity while allowing gradual constitutional development.

4. The Common Law of Ghana

The common law constitutes another significant source of law under Article 11(1) (e). Ghanaian common law consists of the received common law of England, equitable principles, customary law, and judicial precedent. English common law and equitable doctrines continue to influence the development of Ghanaian jurisprudence, particularly where legislation does not provide a complete solution. This was illustrated in *Edusei v. Attorney-General*, where equitable principles assisted the court in achieving a fair outcome (Bimpong-Buta, 2005).

Customary law equally occupies an important position within Ghana's legal system. Article 11(3) incorporates customary law into the common law and recognizes it as a question of law to be determined by the courts rather than merely a question of fact requiring proof through witnesses. This approach was confirmed in *Adjei v. Acquah*. Since customary law reflects the traditions and practices of Ghanaian communities, its constitutional recognition ensures that indigenous legal values remain relevant in contemporary legal practice.

Judicial precedent is another essential component of the common law. Article 129 requires lower courts to follow the decisions of the Supreme Court, thereby promoting consistency, predictability, and certainty within the legal system. A leading illustration is *New Patriotic Party v. Attorney-General* (the 31st December Case), where the Supreme Court declared the institution of a public holiday unconstitutional after interpreting the Constitution. The decision highlights the judiciary's central role in safeguarding constitutional supremacy while developing Ghanaian jurisprudence (Date-Bah, 2015).

Conclusion

In conclusion, although the 1992 Constitution is incontrovertibly the supreme law of Ghana, it works together with several recognized sources of law established under Article 11. These include Acts of Parliament, delegated legislation, existing laws, customary law, common law, equitable principles, and judicial precedent. Together, these sources create a comprehensive and flexible legal system capable of responding to changing societal needs while preserving Ghana's legal heritage. The Constitution remains the ultimate standard against which every other source of law is measured, ensuring coherence, accountability, and the rule of law. Therefore, while constitutional supremacy remains the defining feature of Ghana's legal order, the country's legal system depends on the interaction of multiple complementary sources that collectively sustain justice and effective governance.

References

Adinyira, S. (2012) Judicial Review in Ghana: Continuity and Change. *Ghana Journal of Law*, 15(2), pp. 45–67.

Bimpong-Buta, S.Y. (2005) *The Role of the Supreme Court in the Development of Constitutional Law in Ghana*. Accra: Advanced Legal Publications.

Constitution of Ghana (1992) *The Constitution of the Republic of Ghana*. World Intellectual Property Organization.

Daniels, W.C.E. (2016) *The Criminal Law in Ghana*. Accra: Black Mask Ltd.

Date-Bah, S.K. (2015) *Reflections on the Supreme Court of Ghana*. London: Wildy, Simmonds & Hill Publishing.

Kludze, A.K.P. (2008) 'Customary Law in Ghana: Post-Colonial Developments', *Journal of African Law*, 52(1), pp. 78–99.

Bibliography-List Of Cases Read

1. Tuffuor v Attorney-General [1980] GLR 637.
2. *Mensah v. Attorney-General* [1997–98]
3. New Patriotic Party v Attorney-General (31st December Case) [1993-94] 2 GLR 35
4. Nartey v Mechanical Lloyd Assembly Plant Ltd [1987-88] 2 GLR 314
5. J.H. Mensah v Attorney-General [1996-97] SCGLR 320
6. Asare v Attorney-General [2003-2004] SCGLR 823.
7. Quartey v Martey [1959] GLR 377.
8. NPP v Inspector-General of Police [1993-94] 2 GLR 45

