

## Extract from law report:

**New Patriotic Party v Attorney General,  
Ghana Supreme Court [1999] 2 LRC 283  
Atuguba JSC.**

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[1999] 2 LRC 283 at 327

Archer JA in [*Youhana v Abboud* [1974] 2 GLR 201] also said (at 218):

'What was the origin of these rules in s 49 of the Courts Act 1971? When Ghana opted for a Republican Constitution in 1960, it became necessary to define the laws of the country and to retain what English law appeared to be acceptable to the needs of the country. When the Courts Act 1960 (CA 9), was passed, it was found expedient to provide certain rules for the guidance of the courts when adjudicating on matters involving parties who are not subject to the same customary law—a problem usually referred to as the internal conflict of laws. As far back as 1956, attempts had been made in Nigeria to provide rules to regulate the choice of law in customary and native courts (see Customary Courts Law 1957 (WR No 6 of 1957) and Native Courts Law 1956 (NR No 6 of 1956) of the Western and Northern Regions of Nigeria respectively quoted in Allott *Essays in African Law* p 174). Ghana thought it wise to have similar but less complicated rules for the guidance of all the courts and accordingly the first rules were enacted in s 66 of the Courts Act 1960 (CA 9). In this connection I wish to quote what Bennion says in his textbook *The Constitutional Law of Ghana* at p 452 as follows: "The opening words of sub-s (1) provide that the court shall be guided by the following rules. This wording is intended to show that the

[1999] 2 LRC 283 at 328

rules are laying down principles rather than rigid instructions. There may well be cases where the rules will not fit exactly as they stand ... Nevertheless, in a case where the rules do not fit exactly, the court, in being guided by the principles they lay down, should find no difficulty in extending them by analogy.'" (My emphasis.)

Then Archer JA lamented as follows (at 226): 'Rules that were originally intended to play the role of a guiding star, now have the proclivity of leading us into an unnecessary skein.'

In my opinion, the above passage quoted from Bennion correctly states the legal position. This applies, mutatis mutandis, to the Directive Principles of State Policy, which do not indicate rules of law as such for application to disputes but rather provide rules of construction to be applied when interpreting other provisions of the Constitution, just as at common law there is a great body of rules for the construction of statutes, one of which I will presently apply (though these common law rules suffer the theoretical deficiency that they are not rules of law, *strictissimi juris*).