

SPECIAL CASES OF INHERITANCE AND SUCCESSION1. Bapedi.

Distribution of Households.



Seniority of wife is not determined by priority of marriage. It is the general principle that the head wife is the one who has sprung from the same root as her husband e.g. paternal cousin. This is over-ridden if a chief's daughter is married.

The husband arranges the rank of inferior wives.

In reckoning next of kin paternal relations take precedence of maternal.

Male relations always inherit in precedence to female.

Property of an unmarried man is looked upon as belonging to his father, or, failing him, to the elder brother.

If a woman inherits it is usually to lenyalo a wife to raise seed - but a mother or sister may so inherit.

Order of Succession.

1. Eldest son by chief's wife ^{order of}; other sons in succession ^{etc.}
2. Deceased's father
 - a) if unmarried absolutely
 - b) if married as guardian of son born or unborn though the guardianship is usually handed to deceased's younger brother.
3. Deceased's elder brother.
4. Through deceased's sister to her son.
5. Deceased's eldest paternal uncle.

N.B. In absence of foregoing succession may be arranged for by B) Maternal aunt may take the cattle and lenyalo a woman who raises seed to the house of the deceased ("to awaken the name of the deceased") through maternal aunt's son or one of the deceased's family approved by this aunt.

A) Paternal aunt may similarly take the cattle and lenyalo the daughter of the maternal uncle to raise seed through son of paternal aunt.

or C) Maternal uncle may take this duty of lenyalo with the cattle (failing aunts).

In the case of a particular lapa being heirless any particular cattle of that lapa may be used to lobola a wife for that lapa - if the head of a household is dead then a son of the next lapa may raise seed.

If all these fail (almost impossible) the estate is taken by the chief whose duty it is to lenyalo in this way if he cannot find next of kin.

As an absolutely final resort all reverts to the chief. Similarly in final resort chief must assume responsibility for orphan children. He administers their cattle if there are any - otherwise he must treat them as his own children.

In the case of a chief the eldest son of the chief house claims not only the goods of his own house but those of the other houses and may claim the lenyalo cattle of all his father's daughters. In the case of a commoner each lapa keeps its own lenyalo.

It is always possible however for certain property to be reserved and the cattle which come from a wife's father to her are in her power.

A family should never die once lenyalo has been paid.

Gifts:

If a father gives a gift during his lifetime to a younger son or other relative, the eldest son may seize this property and call on the claimant to produce proof of gift; proof must be supported by witnesses who were present when the gift was made. If proof is established this eldest son must hand over the donated property. On refusal the chief may compel him to do so.

Except in the case of chiefs every hut is entitled to retain
a) gifts donated to it by the head of a kraal during his lifetime,

b) Cattle derived from the daughters of the hut,

c) All fruits of personal effort.

Deceased's eldest son by wife of Ntlu e Kgulu hut succeeds to property of his own hut and unallotted property.

He may inherit the property of a heirless hut but this is subject to his raising seed to the hut.

Note: Letsoho huts do not inherit general property.

If a man dies leaving several lapas but no heir and no male relatives capable of being installed as head of the family, the widow of the Ntlu e Kgulu hut takes charge of the affairs of the kraal. The other wives have then some choice in the matter of a consort - all remain under the senior widow's charge until a son is old enough in rank to succeed.

If a man dies leaving a minor heir the father of the deceased can exercise guardianship, or he may hand this over to a younger brother of deceased, but usually the widow's consent must be given to disposal of any part of the estate.

Baperi Rules of Inheritance

(See Stories No. 42/45).

1. A family should never die once ~~because~~ ^{because} is ~~void~~ ^{void}.
1. Paternal Relatives take precedence of maternal relatives
2. Male ~~is~~ ^{relatives} always take precedence
3. "In most cases the property of an unmarried son is regarded as belonging to the father": hence a father (failing him, a brother) inherits an unmarried son's property; failing a parent, ^{the dearest} an elder brother inherits; failing him, a sister. Failing any of foregoing - then paternal uncle, paternal grandfather, ~~maternal grandfather~~ paternal aunt's eldest son, in order.
4. In the case of a married man
 - (a) Eldest son of Nthue Kyulu (Chief Son);
 - eldest son of "Nenge"; eldest son of

No Heir (Dapedi - Hannies p. 4+1/2)

Chief seeks legal heir, ~~at~~^{on} pasture to find
heir; estate goes to the Chief.

No Heir (Bapeti - Harris p. 40)

When a lapa is heirless, cattle belonging to the lapa are taken & with them a woman is married to the head of the lapa, or, ~~to the~~ if he is dead, to the eldest son of the next lapa. On the birth of a son, he becomes heir of the lapa, takes possession of the daughters & inherits all cattle of the lapa.

Orphans (Bapedi - Stammers p 42)

Orphans ^{are} ~~adopted~~ with their relatives
are adopted by chief & treated ~~in all~~
as children of chief.

(b) Married Man

Except in the case of chiefs, every hut is entitled to retain (a) gifts donated to it by the head of the kraal during his lifetime, (b) cattle derived from the daughters of the hut, (c) usually also the fruits of personal effort (e.g. pots).

Deceased's eldest son by ~~chief~~ wife of Mku-e Kgulu hut succeeds to the property of his own hut + the father's ~~unallotted~~ ^{unallotted} estate. This son may also inherit the property of an heirless hut subject to his raising seed for that hut.

The following is the order of inheritance by huts.

1. Eldest son of Mku-e-Kgulu (of his heirs?)
2. Eldest " " serupe or his heirs
3. Eldest son of first of inferior hut on serupe side.

Father's name?

Note. Letsoho huts do not inherit.

* If the ^{eldest} son of a hut dies heirless a younger son will raise "Hyo Igbanya" ~~seed for him~~ (ukungena) the widow + a son born to this union will inherit the ~~deceased's estate~~ ^{deceased's estate}.

In the absence of any of the foregoing the following order is observed

- (1) ^{through} paternal aunt, the paternal aunt's eldest son's son by maternal uncle's daughter (failing these latter a non-dominant relative can raise seed)

Succession + Inheritance of Chief.

The eldest son of "Tribal Candle" can claim not only the goods of his own house but also those of the other houses + the herds of cattle of all his father's daughters.

Inheritance of a chief (Bapedi - Harries p. 39.)

New chief exercises right of ownership over all goods & cattle which were the property of his father irrespective of house.

For a Commoner the rule is that he inherits all Kraal property, except what he has allocated to households & the lobola of ~~lapas~~ obtained with daughters of lapas; each lapa keeps its own lobola, which is inherited by the heir of the lapa.

Gifts (Bapedi - Harries p. 41).

If father gives a gift during his lifetime to a younger son or other relative, the eldest son seizes the property & then calls on the donee to produce proof of gift; proof must be supported by witnesses who were present when the gift was made. If proof established, eldest son must hand over the donated property - ^{on} refusal Chief will compel him to do so.

Order of Succession

(a) Unmarried Man

"In most cases the property of an unmarried son is regarded as belonging to the father" (Harries pp 42/3) Hence the father (failing him the mother) inherits an unmarried son's property; failing a parent, the eldest brother inherits; failing him, a sister. Failing any of the foregoing, then the paternal uncle, paternal grandfather, paternal aunt's eldest son, in order.

[According to Harries "a woman inherits when there is no male in her family capable of doing so". In such a case I believe the custom is for the woman to lelyalo a wife whom she hands over to as wife to a man selected by her: "the ~~she~~ eldest son of this marriage will inherit].

If an unmarried man dies leaving no relatives, the chief of the tribe takes the property.

^{first}
B Qadi House (Sitembu) of Indlu Potwe (2)
or Indlu enkulu

left hand side { Eldest son or male descends in order
next sons " " " " " " " " " " " "
Eldest son of }
Indlu enkulu } " " " " " " " " " " " "
and thenceforth as in Chief House

D
C Qadi House of Kohlo (a Mkunene)

right hand side { Eldest son or male descends in order
next sons " " " " " " " " " " " "
Eldest son of }
Qadi Houses }
affiliated to Kohlo }
in turn } " " " " " " " " " " " "
Eldest son of }
Indlu enkulu } " " " " " " " " " " " "
and thenceforth as in Chief House.

E
D Xiba House

Eldest son or male descends in order
next sons " " " " " " " " " " " "
Eldest son of }
Indlu enkulu } " " " " " " " " " " " "
A Thenceforth as in Chief House.

B. Affiliated Qadi to first Qadi with Kohlo

Notes to ask Mr. James.

In polygamous marriage, does the head but remain vacant until the correct wife is brought, & what happens when a chief's daughter is brought.

Can a man change the rank of his wives.

If only daughters in a house with the ^{wife of} ~~wife of~~ that house have no other by suitable cohabitation or will another woman invariably be lobolad for this cohabitation.

Can property be distributed from death bed with suitable witnesses present.

If a wife is "inherited" as her own always of the deceased husband's house.

If inheritance failing nearer kin is the ~~to a sister~~ through a sister to a male kin but does this not take it right into another family.

"If a man dies leaving several lapas but no heir and no male relative capable of being installed as head of the family, the widow of the Ntlu-e-Kyulu but ~~not~~ takes charge of the affairs of the brasil. Each ^{of the other wives} ~~but~~ may then choose ~~to~~ a husband to ~~raise seed~~ for her lapa, but all remain under the senior widow's charge until ~~or~~ a son becomes old enough to succeed.

If a married man dies leaving a minor heir his father ^{can} exercise guardianship over deceased's household, but he usually hands over guardianship to ^{one of} ~~the~~ deceased's younger brothers, subject to widow's consent as to disposal of any of the estate.

Orphans without relatives are adopted by the chief & treated as his children. (Haines, p 42.)

Bapedi General (Cont.)

When there is no next of kin the estate passes to the chief who is first expected to find next of kin if possible.

In reckoning next of kin paternal relations take precedence of maternal.

Order of Succession.

1. ~~A~~ ^{Deceased's} eldest son.
2. ~~B~~ Deceased's father
 - a) if unmarried absolutely
 - b) if named as guardian or guardianship usually handed to ^{deceased's} younger brother.
3. ~~C~~ ^{Deceased's} eldest brother
4. ~~D~~ ^{Through} Deceased's sister & her son.
5. Deceased's eldest paternal uncle
6. ~~E~~ Deceased's paternal aunt's son.

N.B. In absence of foregoing ^{succession} ~~may~~ be arranged for.

a) ~~Maternal~~ Maternal aunt may ~~inherit~~ take cattle & ~~let~~ lenyalo a woman who raises seed to the house ^{of deceased.} & when the name of the deceased ~~is~~ through maternal aunt's son or one of deceased's family approved by aunt.

or b) Paternal aunt may similarly take cattle & lenyalo daughter of maternal uncle ~~the~~ ^{to} raise seed ^{to deceased.} through son of ~~the~~ paternal aunt.

or c) Maternal uncle may take his duty of lenyalo with the cattle fairly aunts.

Bapedi. Chieftainship

In the case of a chief the eldest son of the chief will inherit not only from his own house but all goods & cattle of ~~the~~ ^{may claim} all ~~the~~ cattle of all his father's daughters.

LOBOLA

Payment of Lenyalo(Bapedi) or Ditsoa(Basuto)
cattle to Mother's brother.

Native Appeal Courtt (?) decision as to
compulsory character of the obligatio,
Ruled not obligatory.

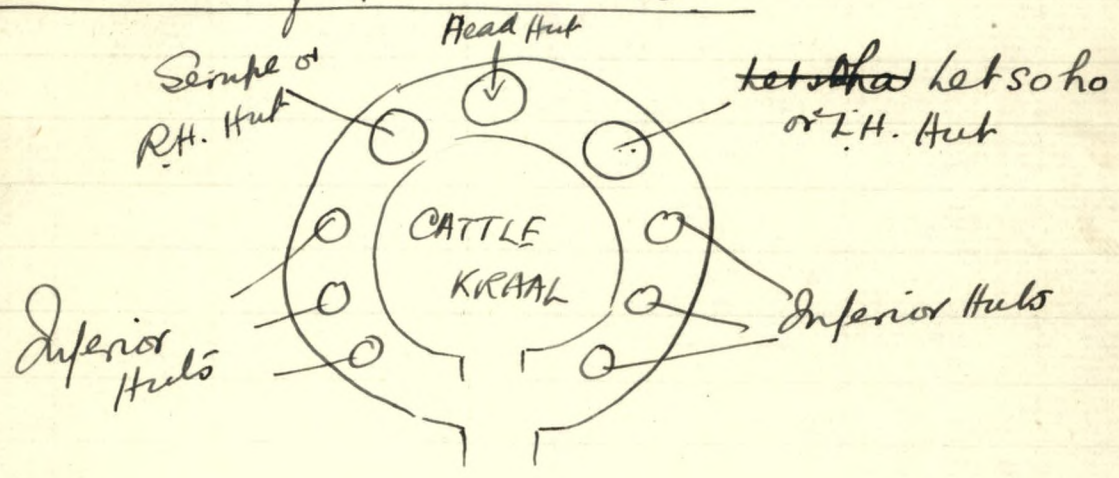
Radcliffe Brown , J1 S2A3 1924 p 553

Special cases of Bantu Succession r
NB: There is no testamentary disposition in Bantu Law.

Bapedi. (Hornes. Sepedi law. p. 26)

General

Distribution of Households



NB. Seniority of wife not necessarily by priority of marriage. It is the general principle that the head wife is the one who has sprung from the same root as her husband e.g. paternal cousin. (Hornes p. 20) except when a chief's daughter is married.

Husband arranges rank of superior wives.

Elders son of the head wife succeeds his father as head of family & inherits all cattle & goods specifically belonging to his own mother's hut & all unallocated personal assets & debts.

Elders son of each inferior house inherits all cattle & goods belonging to that house.

Elders son of head wife ~~inherits~~ exercises guardianship over brothers & half brothers. He must also help in providing cattle for ^{expenses of} lenyalo (= lobola) i.e. he takes the place of paterfamilias

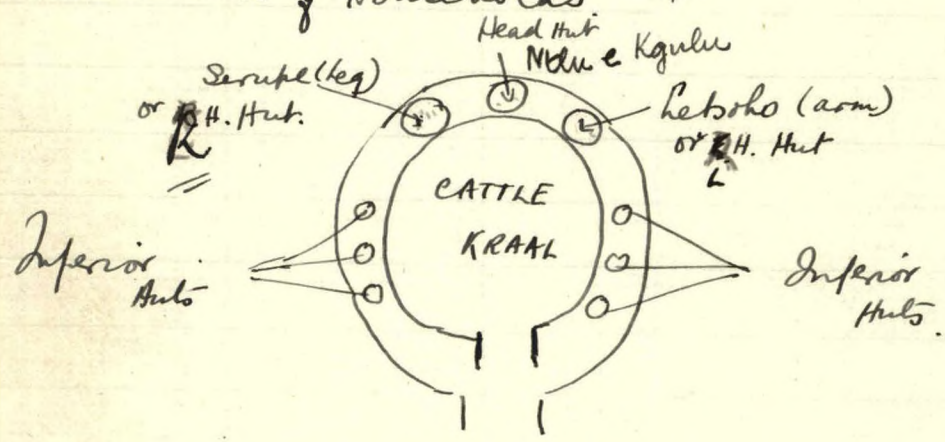
[If no son of a house on the father's death a woman may be lobolad with the cattle of the house. She will cohabit with correct male & a son born is the heir of the house]

Special Cases of Bantu Succession & Inheritance

1. Bapedi

General

Distribution of Households



NB. Seniority of wife not necessarily by priority of marriage "It is the general principle that the head wife is the one who has sprung from the same root as her husband eg. paternal cousin" This is overridden if a chief's daughter is married. (Inhab. Council)

Husband arranges rank of inferior wives.

Bafedi (continued)

When there is no next of kin (almost impossible) the estate passes to the chief.

In reckoning next of kin paternal relations take precedence of maternal.

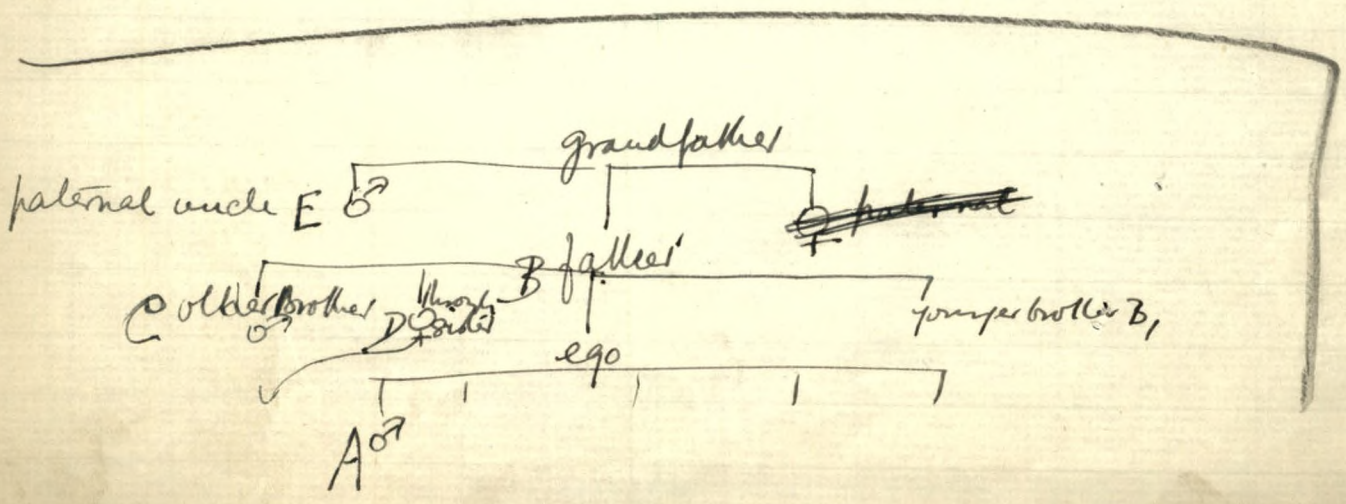
Order of succession.

1. Deceased's eldest son by chief wife (or other son in succession)
2. Deceased's father ? mother inherit. Harrie p 42
 - a) if unmarried, absolutely
 - b) if married as guardian though the guardianship is usually handed to deceased's younger brother.
3. Deceased's eldest brother.
4. Through deceased's sister to her son
5. Deceased's eldest paternal uncle.

2A. In absence of foregoing, succession may be arranged for by a) Maternal aunt may take the cattle & levyals a woman who raises seed to the house of the deceased ("to awaken the name of the deceased") through maternal aunt's son or one of deceased's family approved by this aunt.

b) Paternal aunt may similarly take the cattle & levyals the daughter of the maternal uncle to raise seed to deceased through son of paternal aunt.

c) Maternal uncle may take this duty of levyals with the cattle (failing aunts)



Bapedi (continued)

Chieftainship

In the case of a chief the eldest son of the chief wife claims not only the goods of his own house but those of the other houses & may claim the tanyaka cattle of all his father's daughters.

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