

THE DISSOLUTION OF RELIGIOUS MARRIAGES IN ETHIOPIA

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The judgment in the case of *Shewan Ghizaw Ingida Work v. Nigatu Yimer*¹ deals with a problem of great concern to Ethiopians, and of importance for the development of legal systems generally. It concerns the relationship between a newly promulgated code and the religious law that previously governed some of the matters dealt with by the code: how, if at all, is the religious law displaced by the new code?

The situation as it arises in the Ethiopian context is as follows: Prior to the promulgation of the Civil Code,² a body of laws known as the *Fetha Negast* was the basis of Christian Ethiopian law.³ It contained both religious and temporal laws, but with religious overtones throughout. The *Fetha Negast* makes specific references to the holiness of any marriage contracted under the authority of the Ethiopian Orthodox Church. Any Christian Ethiopian who entered into such a marriage understood that, according to the precepts embraced by the faith and embodied in the *Fetha Negast*, dissolution of his marriage would be possible in only a few limited cases, where grounds existed to justify annulment of the marriage bond.⁴ And, he understood, determination that such grounds existed could be made, and his marriage could be dissolved, only by Church authorities. Civil authorities would play no role.

This religious form of marriage was not the only one recognized in the Empire prior to the Code, however. One could also enter into a marriage by complying with the custom of a given community (a customary marriage), by following the prescribed rites of another religion, or by having the proper local governmental authority sanctify the marriage on behalf of the State (a civil marriage). Dissolution of these marriages, likewise, was governed by the institutions which had contributed to their formation.

In its articles relating to marriage, the Civil Code has drawn from the more stable rules of Ethiopian "customary"⁵ laws. In doing this the Code has recognized

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1 Journal of Ethiopian Law, Vol. III (1966) 390.

2 Proclamation No. 165 of 1960 *Negarit Gazeta* extraordinary issue.

3 See, Lowenstein, The Penal System of Ethiopia, Vol. II (1965) 383.

Graven J., The Penal Code of the Empire of Ethiopia, *Journal of Ethiopian Law*, Vol. I, (1964) 207.

4 Chapter XXIV Section 6. *The marriage which may be dissolved* (English translation Abba Paulos Tsadua, edited by Mr. Peter L. Strauss, under the auspices of Faculty of Law, Haile Sellassie I University, 1967) the grounds cited are

- 1) If the husband and wife choose a religious life;
- 2) If one of the spouses refused to perform the marital union;
- 3) A marriage in which mutual help is not attained, that is:
 - a) performance of adultery;
 - b) damage to the life of one of the spouse.

5 See Arts. 666, 668 and 676-680. These are the Articles that introduce the family arbitrators. The arbitrators were a strong institution under the customary law of Ethiopia, known as the "shimaglieoch" literally, "old men," but implying older men of the community who knew how decisions involving personal status should be made.

all three of the above-mentioned forms of marriage,⁶ set down specific conditions common to all forms of marriage,⁷ and dealt with the problem of dissolution of a marriage.

In dealing with the problem of dissolution, the Code has incorporated what may appear to be contradictory principles regarding the continued function of religious bodies and rules. Art. 662 states.

- (1) The causes and effects of dissolution of marriage shall be the same whichever the form of celebration of the marriage.
- (2) In this respect, no distinction shall be made as to whether the marriage was celebrated before an officer of civil status or according to the formalities prescribed by religion or custom.

This provision, read alone, seems to state that religious authorities have no role whatsoever when issues regarding dissolution of marriage arise. It also seems to state that any married person, whatever the origin of his marriage bond, can avail himself of the grounds and procedures for dissolution set out in the Code. These grounds and procedures would lead to dissolution of marriage in a far greater number of cases than those of, for example, the Ethiopian Orthodox Church.

On the other hand, in Art 671, it has provided that

"There is also a serious cause for divorce when a marriage contracted according to the formalities of a religion has been declared null by the religious authority."

This might be taken to suggest that the relevant religious authorities are the ones who must decide any issue of dissolution regarding a religious marriage, and that they may do so in accordance with the relevant religious rules.

The apparent conflict between these provisions was before the Supreme Imperial Court in the *Shewan Ghizaw Ingida Work* case. The petitioner filed her

6 David, *Le Droit de la Famille dans le Code civil éthiopien* (1967) p. 5.

Art. 577. Various kinds of marriage.

1) Marriages may be contracted before an officer of civil status.

2) Marriages contracted according to the religion of the parties or to local custom shall also be valid under this Code.

Art. 578. Civil marriage.

A civil marriage shall take place when a man and a woman have appeared before the officer of civil status for the purpose of contracting marriage and the officer of civil status has received their respective consent.

Art. 579. Religious marriage.

A religious marriage shall take place when a man and a woman have performed such acts or rites as are deemed to constitute a valid marriage by their religion or the religion of one of them.

Art. 580. Marriage according to custom.

A customary marriage shall take place when a man and a woman perform such rites as constitute a permanent union between such man and woman under the rules of the community to which they belong or to which one of them belongs.

7 Arts. 581-596 Civil Code. These provisions include references to age, relationship (consanguinity or affinity), bigamy etc.

petition for the termination of her marriage with the High Court.⁸ On disputed facts, the court found that her marriage, celebrated before the Invasion, had been in accordance with the rites of the Ethiopian Orthodox Church. From this, the Court held, it followed that she must go to the religious authorities, who, in its view, had the power to deal with dissolution issues. Only if these authorities found religious grounds for action would a divorce be possible. On appeal the Supreme Imperial Court affirmed the High Court's decision, with one judge dissenting.

The court dealt eloquently with the problem at hand, and in fact went beyond the petition for divorce to consider the general problem of what law now controls a matter previously considered as coming under the jurisdiction of the religious authorities, but presently treated in detail in the Civil Code. The majority took the position that where a petition for divorce involves a religious marriages, Art. 671 controls. Its interpretation was thus the second mentioned above, that one who enters a religious marriage is required by Art. 671 to take his case for dissolution to the religious authorities and establish his right to dissolution in terms of the governing religious dogma. In the case of Woizero Shewan Ghizaw, married under the rites of the Ethiopian Orthodox Church, this meant that she must go to the Ecclesiastical Council and seek to obtain an annulment. Then and only then could she seek through the High Court, and the family arbitrators she would appoint, to obtain a civil dissolution, or divorce, under Art. 671. Art. 671 was thus interpreted as bringing pre-Code religious practice bodily into the Code, and continuing it as the only source of dissolution for one who had contracted his marriage in religious rites. The Court phrased this conclusion in terms of jurisdiction, stating that, at least in the first instance, it is to the religious authorities — here the Ecclesiastical Council — rather than the High Court that the petitioner for dissolution of a religious marriage must go.

The presiding Justice in his dissent, on the other hand, argued that no matter what the previous law had been, one now must go directly to the most relevant articles of the Civil Code, which in his view were Art. 673 and those following it.⁹ He, too, based his opinion on a concept of "jurisdiction," but his conclusion, based in large part on Art. 662, quoted above, was that only the courts have jurisdiction over issues of dissolution. Knowing that this conclusion, that Civil Law predominates over religious dogma on issues of dissolution, might offend many, he was at pains to note that it was the law — and not his own personal prejudices — which required the conclusion he reached.

The jurisdictional aspects of the dispute permeate the arguments. The majority opinion refers¹⁰ to that part of the *Fetha Negast* which gives priests the authority to make judicial decisions. However, as the *Fetha Negast* and the Civil Code both refer to the dissolution of marriages, it is not clear on its face whether the religious authorities still have the authority to dissolve a marriage for civil purposes. The minority also makes reference to the *Fetha Negast*, but only to illustrate the

8 It would have seemed that the petitioner should have filed with the family arbitrators in accordance with Arts. 674-676, but it also seems that the reason the petitioner filed with the High Court immediately was to ask the court as a matter of law where she should institute the petition for divorce.

9 Art. 673 ff. refer to the functions of the family arbitrators and the procedures through which one must go in order to dissolve a marriage.

10 Journal of Ethiopian Law, Vol. III (1966) p. 393.

limited type of jurisdiction that, in the view of the dissenting Justice, the religious authorities may assume over a case involving the dissolution of a marriage. The minority opinion states that only where a religious issue — such as, for example, marriage within a religiously prohibited degree — is involved may the religious authorities assume jurisdiction. But even then the religious authorities may annul the marriage only for the purposes of the Church; it must still be considered by the temporal authority if it is to be dissolved for civil purposes. Once the religious authorities do annul, their action is to be considered a serious cause for divorce¹¹ and dealt with immediately.¹² However if a petitioner can satisfy some other conditions for divorce, he is not required to obtain an order of annulment, even though his marriage is a religious one.

The majority also refer to Art. 10 of Decree 2 of 1942¹³ to show that "the Church has a private jurisdiction over the congregation under which it can deal with the members by way of confession and inflict penalties." They interpret this to mean that in any dispute involving the Church, the religious authority has exclusive jurisdiction. However, the majority refused to interpret a later part of the same article, which refers matters of civil (temporal) jurisdiction to the government courts. The majority dismisses that passage by saying that the petition at hand is not the type of conflict that is meant by that passage, even though in other types of conflicts that are truly temporal but have religious overtones, "the Ecclesiastical Council may propose men who are capable of civil (temporal) jurisdiction but they shall be appointed by the Emperor."

This last-quoted language would seem by itself to destroy the argument of the majority. It seems to mean that there are problems that arise in the Ethiopian law for which the basic jurisdiction is the government-appointed court, but in which a special knowledge of the religious sources of the law is most relevant; in such cases the Ecclesiastical Council may exercise their power to recommend persons for judicial positions where they might exercise this special knowledge, but it is the temporal law and the temporal courts which govern. In thus relieving the Church of its former judicial power, Art. 10 formed part of the complete judicial reform that started when Emperor Haile Sellassie I returned from his Fascist-imposed exile in the United Kingdom. It was soon after his return — early in a period of reform which has extended through the promulgation of the Revised Constitution of 1955 and following Codes to the present¹⁴ — that the Church lost

11 Art. 671, Civ. C.

12 Under a serious cause for divorce the family arbitrators have only one month within which to make an order for divorce; whereas if it is an "other cause" for divorce, which would be anything that is not "serious," the arbitrators can take up to a year before acting.

13 Regulations for the administration of the Church, Dec. No. 2 of 1943 Art. 10, *Negarit Gazeta* of November 30, 1942. This Article is entitled "Legal Jurisdiction"; it then goes on to say that "private" jurisdiction exists over the congregation, but differentiates this from jurisdiction in matters that they call "civil (temporal) jurisdiction."

14 Penal Code of 1957.
Civil Code of 1960,
Commercial Code of 1961,
Maritime Code of 1961,
Criminal Procedure Code of 1961,
Civil Procedure Code of 1965 and
Code of Evidence now in preparation.

a great deal of its former power. The above mentioned Art. 10 seems to be the single most important factor in this withdrawal of power. The fact that the majority opinion merely questions what that Article did cannot obscure that the courts were abiding by its language long before this case was decided. It seems clear that the purely religious jurisdiction left to the Church would only be over those matters that could be classified as religious in nature, where the Church imposes only spiritual penalties, such as prayer, fasts, meditation and the like.¹⁵

The basic issue is complicated by the special legal recognition which had been given in Ethiopia to a religious minority, Islam. Special courts were set up to deal with disputes involving the personal relations of a Muslim.¹⁶ The special rules of Islam were incorporated into the law of Ethiopia because of the number of Muslims who are nationals of the Empire. The majority in *Shewan Ghizaw* argued that, because special religious oriented rules were allowed for Muslims, Christians should equally be allowed to fall back upon their religious dogma in legal matters. It may be noted, however, that the Court's equal treatment logic may be correct, and yet not support its result. The articles we have been referring to refer even-handedly to "religious marriages." They do not specify the Ethiopian Orthodox Religion, the Islamic Religion or any other. Thus, the Code probably does have equal respect for all religions. This is not to say, however, that the rule the Code adopts regarding religious practice is the one the majority chooses — that religious grounds and procedures are the only bases for dissolution of religious marriages. It is perfectly consistent with the equality notion to argue, as did the dissent, that all persons, whatever their religion, may obtain a dissolution not only when an annulment has been proclaimed by the relevant religious authority, but also on any other basis recognized by the Civil Code. This, indeed, is exactly what Art. 662 appears to mean when it states

- (1) The causes and effects of dissolution of marriage shall be the same whichever the form of celebration of the marriage.
- (2) In this respect, no distinction shall be made to whether the marriage was celebrated before an officer of civil status or according to the formalities prescribed by religion or custom.

One would think that this language would put an end to the assertion that only the Church authorities can exercise authority over dissolution of religious marriages. However, the religious authorities feel that the basis of their authority comes from a set of religious law (*Fetha Negast*) that remains supreme. One must agree with their contention that the religious dogma does have a certain "mystical" quality which controls the actions of its adherents; but it is the government's body of laws that declares the legal effect of dissolution of marriage and this same body of laws declares through the whole of these provisions, that dissolution is in the competence of the civil authority.¹⁷

15 Journal of Ethiopian Law, Vol. III (1966) p. 396. This is as the minority considers it.
 16 Naibas and Kadis Councils Proclamation No. 62 of 1944, *Negarit Gazeta* of May 29, 1944. Art. 2 determined jurisdiction:

a) any question regarding marriage, including divorce and maintenance, guardianship of minors, and family relationship, provided that the marriage to which the question related was concluded in accordance with Mohammedan law or the parties are all Mohammedans.

17 Art. 10 of Decree No. 2 of 1942 and Art. 662 Civ. C.

With all respect, the author feels that "jurisdiction" as such is not the dispositive issue. In his view, Art. 662 and 671 can be reconciled in a way that gives appropriate scope to both civil and religious authority. Art. 662, establishes the primacy of the temporal legal system and its agencies, in governing what is, at least insofar as that system is concerned, a temporal legal relationship — marriage. It creates rules of general applicability to all, and establishes the important principle, recognized by the majority, of equal treatment under the law. In Art. 671, on the other hand, there is embodied a recognition that parties to religious marriages may on occasion wish to seek dissolution on religious grounds — that these grounds, reflecting the deepest of human feelings, are deserving of recognition by temporal as well as religious authorities *and* that the presence or absence of such grounds is most appropriately to be determined by a religious tribunal rather than a temporal court.

It is to be remembered that the Decree which withdrew power over temporal affairs from the Ethiopian Orthodox Church reaffirmed its powers in spiritual affairs. If the Church is unable to prevent its members from obtaining legally effective divorces on grounds that are not spiritually recognized, it is in no way required to recognize these temporally valid dissolutions as effective for spiritual purposes. That is, it is free to condemn such dissolutions as "invalid" and to inflict "penalties" within its private spiritual jurisdiction over what it considers to be erring members of the Church. The temporal law, even if it validates the dissolution for temporal purposes, requires no contrary conclusion.

What one comes to ultimately, is the conclusion that the previous hegemony of the Ethiopian Orthodox Church (or any other religious body) over the marital status of its members has been replaced by the provisions of the Civil Code — in case of dissolution, by Arts. 662 ff. This does not affect the Church authorities' power to annul marriage where the parties deem it proper to bring their case to these church authorities. However, it must also be understood that, according to the Civil Code, even when the Church authorities are called on to annul a religiously celebrated marriage, the parties must still go to the judiciary exercising temporal jurisdiction, who have the final say on whether the marriage is dissolved for civil purposes.¹⁸ In Ethiopia today if a person who has been married according to his religion (in the case discussed the Ethiopian Orthodox Church) wants to dissolve his marriage, the ultimate power for the dissolution rests with the temporal authorities and the ultimate basis for the dissolution will be a temporal rule. In the eyes of the law, marriage under Ethiopian law today is primarily a temporal rather than a spiritual relationship.

¹⁸ One could argue that if a person consults the Church authorities, who give him a decision, that decision if abided by in society has a binding effect that would be legal. However, it is inevitable that corollary questions that arise would in some way come before the temporal authorities who have actually been vested with the power to make legal decisions. Thus, it would only be a matter of time until the authority of the church would be diluted by the activity of the Civil Courts.

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ከማይክል ፡ ጄ ፡ ኪንድረድ ፡ *

መግቢያ ፤

ያ፲፱፻፶፪ቱ ፡ ዓ ፡ ም ፡ የፍትሐ ፡ ብሔር ፡ ሕግ ፡ በቃልም ፡ ሆነ ፡ በጽሑፍ ፡ የተመሠረቱ ፡ ውሎች ፡ የጸኑ ፡ እንደሚሆኑ ፡ በጠቅላላው ፡ ይናገራል ² ። በዚሁ ፡ ዓይነት ፡ በአንድ ፡ ውል ፡ ላይ ፡ የሚደረጉ ፡ ለውጦች ፡ ይጸኑ ፡ ዘንድ ፡ በጽሑፍ ፡ መሆን ፡ አያሻቸውም ። ይሁን ፡ እንጂ ፡ አንዳንድ ፡ ጊዜ ፡ ውል ፡ ወይም ፡ የውል ፡ መለዋወጥ ፡ ዋጋ ፡ እንዲኖረው ፡ ከተፈለገ ፡ በጽሑፍ ፡ እንዲፈጸም ፡ የፍትሐ ፡ ብሔሩ ፡ ሕግ ፡ ያስገድዳል ። በዚህ ፡ ረገድ ፡ ጠቅላላው ፡ ደንብና ፡ ደንቡ ፡ የማይመለከታቸው ፡ ሁኔታዎች ፡ ከቀጥሮ ፡ ሺ፯፻፲፱ ፡ እስከ ፡ ሺ፯፻፳፯ ፡ ባሉት ፡ አንቀጾች ፡ ተገልጠዋል ።

ከዚህ ፡ በፊት ፡ በወጣው ፡ የኢትዮጵያ ፡ ሕግ ፡ መጽሔት ፡ ፡ ላይ ፡ በታተመው ፡ በባይሳ ፡ ጃሞ ፡ ከሳሽ ፤ አስፋ ፡ ወልደጊዮርጊስ ፡ መልስ ፡ ሰጪ ፡ ጉዳይ ፡ ላይ ፡ ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡ ውል ፡ ለመለዋወጥ ፡ ስለሚያስፈልገው ፡ ፎርም ፡ የሚያወሳውን ፡ አንቀጽ ፡ ሺ፯፻፳፱ን ፡ ተርጉሞታል ። በዚህ ፡ ጉዳይ ፡ ላይ ፡ የተሰጠው ፡ ፍርድ ፡ የሚያስከትለው ፡ ፍች ፡ ፍጹም ፡ ግልጽ ፡ ባይሆንም ፤ በቀጥታ ፡ ሺ፯፻፲፱ ፡ እስከ ፡ ሺ፯፻፳፯ ፡ ያሉትን ፡ አንቀጾች ፡ ለመመርመርና ፡ በዚያውም ፡ ስለ ፡ ባይሳ ፡ ጃሞ ፡ ጉዳይ ፡ ባጭሩ ፡ ለማውሳት ፡ እንፈቅዳለን ።

በመጀመሪያ ፡ ውል ፡ ለመዋዋል ፡ ሕጉ ፡ የሚያዛቸውን ፡ የፎርም ፡ ግዴታዎች ፡ በአራት ፡ ዓይነት ፡ የውል ፡ ሁኔታዎች ፡ አማካይነት ፡ እናቀርባለን ። ከዚያም ፡ በነዚሁ ፡ ዓይነቶች ፡ የውል ፡ ሁኔታዎች ፡ አማካይነት ፡ ውል ፡ ለመለዋወጥ ፡ የሚያስፈልጉትን ፡ ግዴታዎች ፡ እንመረምራለን ። እነዚህንም ፡ ጠቅላላ ፡ አሳቦች ፡ መሠረት ፡ በማድረግ ፡ የባይሳ ፡ ጃሞን ፡ ጉዳይ ፡ እንመለከታለን ።

(ሀ) ውል ፡ ለመዋዋል ፡ የሚያስፈልጉት ፡ የፎርም ፡ ግዴታዎች ።

የፍትሐ ፡ ብሔር ፡ ሕግ ፡ ቀጥታ ፡ ሺ፯፻፲፱ ፡ (፩) ፡ “በጠቅላላው ፡ ሥርዓት ፡ በሁለቱ ፡ ወገን ፡ ተዋዋሉት ፡ በማናቸውም ፡ ሁኔታ ፡ የተደረገ ፡ ስምምነት ፡ ውል ፡

* የቀዳማዊ ፡ ኃይለ ፡ ሥላሴ ፡ ዩኒቨርሲቲ ፡ የሕግ ፡ ፋኩሊቲ ።

1. ከዚህ ፡ በታች ፡ በተመለከተው ፡ የአማርኛ ፡ የቋንቋ ፡ የቃላት ፡ አገባብ ፡ ችግር ፡ ረገድ ፡ ስለ ፡ ሰጡት ፡ እርዳታ ፡ ጽሑፊው ፡ ላቶ ፡ ኃይሉ ፡ መኩንን ፡ (በቀዳማዊ ፡ ኃይለ ፡ ሥላሴ ፡ ዩኒቨርሲቲ ፡ የሕግ ፡ ትምህርት ፡ ቤት ፡ የመጨረሻ ፡ ዓመት ፡ ተማሪ) ፡ ምስጋና ፡ ያቀርባሉ ።
2. የፍትሐ ፡ ብሔር ፡ ቀጥሮ ፡ ሺ፯፻፲፱ ፡ (፩) ።
3. (ከፍተኛ ፡ ፍርድ ፡ ቤት ፡ ፲፱፻፶፯) ፡ የኢትዮጵያ ፡ ሕግ ፡ መጽሔት ፡ ፫ኛ ፡ ሾልዩም ፡ ገጽ ፡ ፫፻፺፱ ።

ለማድረግ፡ በቂ፡ ነው። ይላል። የቀሩት፡ ከቀኑ፡ ሺ፯፻፲፱፡ እስከ፡ ሺ፯፻፳፯፡ ያሉት፡ አንቀጾች፡ ሕጉ፡ ልዩ፡ ፎርም፡ የሚያዝበትን፡ * ወይም፡ ተዋዋሮቹ፡ ልዩ፡ ፎርም፡ እንዲኖር፡ በቅድሚያ፡ ተስማምተው፡ እንደሆነ፡ ይህንን፡ መነሻ፡ ስምምነት፡ ሕጉ፡ የሚያስፈጽምበትን፡ ሁኔታዎች፡ የሚመለከቱ፡ ናቸው። 5

አሁን፡ እነዚህን፡ አንቀጾች፡ ምሳሌነት፡ ባላቸው፡ አራት፡ ዓይነት፡ የውል፡ ሁኔታዎች፡ አማካይነት፡ እንመልከት፡-

(፩) ሀና፡ ለ፡ የኢንሹራንስ፡ ውል፡ ይዋዋላሉ። በዚህም፡ ረገድ፡ ቀኑ፡ ሺ፯፻፲፱፡ (፫)፡ ቀኑ፡ ሺ፯፻፳፯፡ (ለ)፡ እና፡ ቀኑ፡ ሺ፯፻፳፯፡ (፪)፡ በተዋዋይዎቹ፡ የተፈረመ፡ በሁለት፡ ምስክሮች፡ የተረጋገጠ፡ የጽሑፍ፡ ሰነድ፡ እንዲኖር፡ ያስገድዳሉ። 6

(፪)፡ የሀን፡ ፈረስ፡ ለለ፡ ለመሸጥ፡ ሀና፡ ለ፡ በቃል፡ ተዋዋሉ። ተዋዋይዎቹ፡ በማናቸውም፡ (ሁኔታ)፡ ፎርም፡ ሊዋወሉ፡ ይችላሉ፡ በሚለው፡ በፍትሕ፡ ብሔር፡ ቀኑ፡ ሺ፯፻፲፱፡ (፩)፡ መሠረተ፡ አሳብ፡ መሠረት፡ ይህ፡ ብቁ፡ የሆነ፡ የቃል፡ ውል፡ ነው። ሕጉ፡ ግን፡ እዚህ፡ ላይ፡ የውሉ፡ ፎርም፡ በቃል፡ እንዲሆን፡ በምንም፡ ዓይነት፡ አያስገድድም።

(፫) የሀን፡ ፈረስ፡ ለለ፡ ለመሸጥ፡ ሀና፡ ለ፡ በጽሑፍ፡ ተዋዋሉ። ይህ፡ ብቁ፡ የሆነ፡ የጽሑፍ፡ ውል፡ መሆኑ፡ ግልጽ፡ ነው። ለፈረስ፡ አሻሻጥ፡ ሕጉ፡ የተለየ፡ ፎርም፡ ስለማይጠይቅ፡ ተዋዋሮቹ፡ እንደፈለጉት፡ በቃል፡ ወይም፡ በጽሑፍ፡ ለመዋወል፡ ነጻነት፡ አላቸው። ሕጉ፡ በ፪ኛው፡ ዓይነት፡ ውል፡ ላይ፡ የውሉ፡ ፎርም፡ በቃል፡ እንዲሆን፡ እንዳላስገደደ፡ ሁሉ፡ በዚህም፡ ውል፡ ላይ፡ በጽሑፍ፡ ፎርም፡ እንዲሆን፡ አያስገድድም።

(፬) አንድ፡ የንግድ፡ ድርጅት፡ ለማቋቋም፡ ሀና፡ ለ፡ የተወሳሰበ፡ ንግግር፡ በማድረግ፡ ላይ፡ ናቸው። ወደፊት፡ የሚያደርጉት፡ ስምምነት፡ ሁሉ፡ በጽሑፍ፡ በውል፡ ሰነድ፡ ካልሆነ፡ የተሟላ፡ አይሆንም፡ ብለው፡ በቅድሚያ፡ ተዋዋሉ። ይህ፡ መነሻ፡ ውላቸው፡ ብቁ፡ የቃል፡ ውል፡ ሊኖር፡ እንዳይችል፡ ያደርጋል፡

4. የፍ፡ ብ፡ ሕ፡ ቀኑ፡ ሺ፯፻፲፱፡ (፪)፡ ሺ፯፻፳፯፡ (፪)፡ ሺ፯፻፲፱—ሺ፯፻፳፯፡ እና፡ ሺ፯፻፳፯።

5. የፍ፡ ብ፡ ሕ፡ ቀኑ፡ ሺ፯፻፲፱፡ (፫)፡ እና፡ ሺ፯፻፳፯።

6. በሕግ፡ ፊት፡ የሚጻፍ፡ ውል፡ ለመዋወል፡ ልዩ፡ ፎርም፡ የሚያስፈልጉበት፡ ሌሎች፡ ሁኔታዎች፡ በማይንቀሳቀስ፡ ንብረት፡ ላይ፡ አንዳንድ፡ መብቶችን፡ የሚፈጥሩ፡ የሚቀንሱ፡ ወይም፡ የሚያዛውሩ፡ ውሎች፡ (ቀኑ፡ ሺ፯፻፳፯)፡ የመንግሥት፡ ወይም፡ የሕዝብ፡ አገልግሎት፡ መሥሪያ፡ በቶች፡ የግዴታ፡ ውሎች፡ (ቀኑ፡ ሺ፯፻፳፱)፡ እና፡ የዋስትና፡ ውሎች፡ (ቀኑ፡ ሺ፯፻፳፯፡ (ሀ))፡ ናቸው። የንግድ፡ ሁኔታዎች፡ ላይ፡ በአንድ፡ የተወሰነ፡ ድርጅት፡ ዘንድ፡ ውሉ፡ እንዲመዘገብ፡ ስለሚያስፈልግና፡ በሌሎች፡ ሁኔታዎች፡ ላይ፡ እንዲህ፡ ያለ፡ ግዴታ፡ ስለሌለ፡ ተፈላጊው፡ ፎርም፡ ሁልጊዜ፡ አንድ፡ ዓይነት፡ አይደለም። የምዝገባው፡ ግዴታ፡ “ለማስታወቂያ፡ ያህል፡ ነው”፡ (የፍ፡ ብ፡ ሕ፡ ቀኑ፡ ሺ፯፻፳፯፡ ተመልከት)፡ ካልተባለ፡ የውሉን፡ የጻፍ፡ መሆኑ፡ ያሰጋል።

አንድ፡ ውል፡ በጽሑፍ፡ እንዲሆን፡ ሕጉ፡ በሚያስገድድበት፡ ሁኔታዎች፡ ሁሉ፡ ላይ፡ ውሉ፡ በሁለት፡ ምስክሮች፡ እንዲረጋገጥ፡ ቀኑ፡ ሺ፯፻፳፯፡ (፪)፡ በተጨማሪ፡ የሚያዝ፡ መሆኑንም፡ ማስተዋል፡ ይጠቅማል። ሕጉን፡ ላይ፡ ላዩን፡ የሚያነቡ፡ ሰዎች፡ እንዳይሳሳቱ፡ ውል፡ በጽሑፍ፡ እንዲሆን፡ እስገዳጅ፡ በሆነው፡ በየአንዳንዱ፡ ቁጥር፡ ላይ፡ ቀኑ፡ ሺ፯፻፳፯፡ (፪)፡ የሚያዝዘው፡ ተጨማሪ፡ ግዴታ፡ እንዲገለጽ፡ ሆኖ፡ እርማት፡ በደረግ፡ መልካም፡ ነገር፡ መሆኑ፡ ግልጽ፡ ነው።

ተብሎ ፡ በቀ፡ ሺ፯፻፲፱ ፡ (፫) ፡ እና ፡ ሺ፯፻፳፯ ፡ የተደነገገው ፡ ሁኔታ ፡ መሆኑ ፡ ግልጽ ፡ ነው ። የመጨረሻ ፡ ውላቸው ፡ በጽሑፍ ፡ መሆን ፡ አለበት ።

(ለ) ውሎችን ፡ ለመለዋወጥ ፡ የሚያስፈልጉት ፡ የፎርም ፡ ግዴታዎች ።

በባይሳ ፡ ጃሞ ፡ ከሳሽ ፡ አስፋ ፡ ወልደ ፡ ጉጌያርጊስ ፡ መልስ ፡ ሰጪ ፡ ጉዳይ ፡ ላይ ፡ ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡ በጽሑፍ ፡ የተፈጸመ ፡ ውልን ፡ ለመለዋወጥ ፡ ልዩ ፡ ፎርም ፡ ያስፈልጋል ፡ ወይስ ፡ አያስፈልግም ፡ በሚለው ፡ ጥያቄ ፡ ውሳኔ ፡ ሰጥቶበታል ። በመጀመሪያ ፡ የቀጥር ፡ ሺ፯፻፳፻ን ፡ ቋንቋ ፡ ተመልክተን ፡ ቀጥሎም ፡ ከፍ ፡ ብለው ፡ በተሰጡት ፡ የውል ፡ ዓይነቶች ፡ አማካይነት ፡ ትርጉሙን ፡ በመመርመር ፡ ይህን ፡ ጥያቄ ፡ እንተነትናለን ።

በፈረንሳይኛ ፡ “Les modifications au contrat originaire doivent être faites dans la forme prescrite pour ce contrat.”

በአማርኛ ፡ “ዋናውን ፡ ውል ፡ የመለወጥ ፡ ጉዳይ ፡ ለዚህ ፡ ውል ፡ በተደነገገው ፡ አጻጻፍ ፡ (ፎርም) ፡ መሠራት ፡ አለበት ።”

በእንግሊዝኛ ፡ “A contract made in a special form shall be varied in the same form.”

በፈረንሳይኛው ፡ እትም ፡ ፎርም ፡ ፕሬስክሪት ፡ (forme prescrite) በሚለው ፡ ሐረግና ፡ በአማርኛውና ፡ በእንግሊዝኛው ፡ እትሞች ፡ የዚህ ፡ ሐረግ ፡ ፍች ፡ በሆኑት ፡ ማለት ፡ በተደነገገው ፡ አጻጻፍ ፡ እና ፡ ስፔሺያል ፡ ፎርም ፡ (special form) በሚሉት ፡ ሐረጎች ፡ ላይ ፡ ሐሳባችን ፡ ሰፍፎ ፡ ማተኮር ፡ አለበት ። ጥያቄው ፡ ውሎችን ፡ ለመለዋወጥ ፡ አንድ ፡ የተለየ ፡ ፎርም ፡ እንዲፈጸም ፡ ሕጉ ፡ የሚያስገድደው ፡ በእንዴት ፡ ያለ ፡ ሁኔታዎች ፡ ላይ ፡ ነው ፡ የሚለው ፡ ሲሆን ፡ መልሱም ፡ ዋናውን ፡ ውል ፡ ለመዋዋል ፡ ፎርም ፡ ፕሬስክሪት ፡ (forme prescrite) ወይም ፡ የተደነገገ ፡ አጻጻፍ ፡ (ፎርም) ፡ ባለበት ፡ ሁኔታዎች ፡ ላይ ፡ ነው ፡ የሚል ፡ ነው ። ስለዚህ ፡ የነዚህን ፡ ሐረጎች ፡ ፍች ፡ መወሰን ፡ አለብን ።

የእንግሊዝኛው ፡ እትም ፡ ይህን ፡ ሐረግ ፡ “ልዩ ፡ ፎርም” (special form) ይለዋል ። ይህ ፡ ግልጽ ፡ የሆነ ፡ መጥፎ ፡ አተረጓጎም ፡ ነው ። በፈረንሳይኛውና ፡ በአማርኛው ፡ እትሞች ፡ ከተሠራባቸው ፡ ሐረጎች ፡ የሚመሳሰል ፡ ትርጉም ፡ አላዘለም ። ከፈረንሳይኛው ፡ ሊፈለግ ፡ ይገባው ፡ የነበረው ፡ የተሻለ ፡ ትርጉም ፡ “አስፈላጊ ፡ በሆነ ፡ ወይም ፡ (በሕግ) ፡ በታዘዘ ፡ አጻጻፍ ፡ (ፎርም) ፡ የተፈጸመ ፡ ውል ፡ በዚያው ፡ ዓይነት ፡ አጻጻፍ ፡ (ፎርም) ፡ መለወጥ ፡ አለበት” በሆነ ፡ ነበር ። እንዲያውም ፡ በእንግሊዝኛውና ፡ በፈረንሳይኛው ፡ እትም ፡ መካከል ፡ ካለው ፡ ልዩነት ፡ በእንግሊዝኛውና ፡ በአማርኛው ፡ እትም ፡ መካከል ፡ ያለው ፡ ልዩነት ፡ ይበልጥ ፡ የጎላ ፡ ይሆናል ።

በተደነገገው ፡ የሚለው ፡ ቃል ፡ ድንጋጌ ፡ ከሚለው ፡ ስም ፡ የፈለቀ ፡ ግሥ ፡ ነው ። ድንጋጌም ፡ በእንግሊዝኛ ፡ “ዲክሪ” (decree) ማለት ፡ ነው ። ስለዚህ ፡ የአማርኛው ፡ እትም ፡ ወደ ፡ እንግሊዝኛ ፡ ሲተረጎም ፡ “Contracts made in a legally required (or decreed) form shall be modified in the same form” ቢል ፡ ምና

7. የተሻሻለውን ፡ ሕገ ፡ መንግሥት ፡ አንቀጽ ፡ ፳፱ ፡ ይመለከታል ።

ልባት፡ የተሻለ ፡ በሆነ ፡ ነበር ። በቀረው ፡ ውይይታችን ፡ ላይ ፡ በተደነገገው ፡ አጻጻፍ ፡ (ፎርም) ፡ ። በሚለው ፡ በፈረንሳይኛው ፡ እትም ፡ ሐረግ ፡ እንገለገላለን ።

አሁን ፡ ከፍ ፡ ብሎ ፡ በተነደፉት ፡ አራት ፡ የውል ፡ ሁናቱዎች ፡ ወዲያውም ፡ ፍርድ ፡ ቤቱን ፡ ባጋጠመው ፡ በባይሳ ፡ ጃም ፡ ጉዳይ ፡ ላይ ፡ የፍ ፡ ብ ፡ ሕ ፡ ቀ ፡ ሺ፯፻፳፱ን ፡ አሠራር ፡ ወደሚመለከተው ፡ ጥያቄ ፡ እንመለስ ። ከአራቱ ፡ የውል ፡ ሁናቱዎች ፡ አንድ ፡ የተደነገገ ፡ አጻጻፍ ፡ (ፎርም) ፡ የሚገኘው ፡ በየትኛው ፡ ነው ፡ ሕጉ ፡ በጽሑፍ ፡ የሆነ ፡ ፎርም ፡ ስለሚያዝ ፡ በመጀመሪያው ፡ ዓይነት ፡ የውል ፡ ሁናቱ ፡ ማለት ፡ በኢንቴራንሱ ፡ ውል ፡ የተደነገገ ፡ አጻጻፍ ፡ (ፎርም) ፡ እንዳለ ፡ ግልጽ ፡ ነው ። እንዲሁም ፡ በሁለተኛው ፡ ዓይነት ፡ የውል ፡ ሁናቱ ፡ ማለት ፡ ፈረስ ፡ ለመሸጥ ፡ በቃል ፡ በተፈጸመው ፡ ውል ፡ የተደነገገ ፡ አጻጻፍ ፡ (ፎርም) ፡ አለመኖሩ ፡ ግልጽ ፡ ነው ። ይህ ፡ ውል ፡ በቃል ፡ ፎርም ፡ መሆን ፡ ነበረበት ፡ ለማለት ፡ የሚቻልበት ፡ መንገድ ፡ የለም ።

ሦስተኛው ፡ ዓይነት ፡ የውል ፡ ሁናቱ ፡ ማለት ፡ ፈረስ ፡ ለመሸጥ ፡ በጽሑፍ ፡ የተፈጸመው ፡ ውል ፡ ከሁለተኛው ፡ ዓይነት ፡ ውል ፡ ይበልጥ ፡ ማስቸገር ፡ አልነበረበትም ፤ ይሁን ፡ እንጂ ፡ የተማታ ፡ ነገር ፡ የፈጠረ ፡ ይመስላል ። ይህን ፡ መሳይ ፡ ውል ፡ ለመፈጸም ፡ በጽሑፍ ፡ የሆነ ፡ የውል ፡ ፎርም ፡ እንዲኖር ፡ ሕጉ ፡ አያስገድድም ። የፈረስ ፡ (ተንቀሳቃሽ ፡ የሆነ ፡ ነገር) ፡ ሽያጭ ፡ ውል ፡ በጽሑፍ ፡ መሆን ፡ አለበት ፤ የሚል ፡ ሕግ ፡ የለም ። ውላቸው ፡ ባንድ ፡ የተለየ ፡ ፎርም ፡ እንዲሆን ፡ ተዋዋሮቹ ፡ አስቀድመው ፡ ያልተዋዋሉ ፡ ስለ ፡ ሆነም ፡ ቍጥር ፡ ፲፯፻፲፱ ፡ (፫) ፡ እና ፡ ፲፯፻፳፱ ፡ በዚህ ፡ ውል ፡ ላይ ፡ ተፈጻሚ ፡ አይሆኑም ። ተዋዋሮቹ ፡ እንዲሁ ፡ ውላቸውን ፡ በጽሑፍ ፡ አድርገውታል ። የቀ ፡ ፲፯፻፳፱ ፡ ፍች ፡ ሲሰጥም ፡ በጽሑፍ ፡ የተፈጸመ ፡ ውል ፡ መለዋወጥ ፡ የሚገባው ፡ በጽሑፍ ፡ ብቻ ፡ ነው ፡ ከተባለ ፡ በቃል ፡ የተፈጸመው ፡ ውል ፡ መለዋወጥ ፡ የሚገባው ፡ በቃል ፡ ብቻ ፡ ነው ፡ ለማለት ፡ ያስችላል ። ስለውሉ ፡ አጻጻፍ ፡ (ፎርም) ፡ በቅድሚያ ፡ የተደረገ ፡ ስምምነት ፡ ከሌለ ፡ ይህን ፡ ዓይነቱን ፡ ውል ፡ ለመዋዋል ፡ አንድ ፡ የተለየ ፡ አጻጻፍ ፡ (ፎርም) ፡ እንዲኖር ፡ ሕጉ ፡ ያስገድዳል ፤ ለማለት ፡ በምንም ፡ መንገድ ፡ አይቻልም ። ስለዚህም ፡ ቍጥር ፡ ፲፯፻፳፱ ፡ ይህን ፡ ዓይነቱን ፡ ውል ፡ ለመለዋወጥ ፡ ባንድ ፡ ልዩ ፡ የሆነ ፡ አጻጻፍ ፡ (ፎርም) ፡ መገልገልን ፡ አይጠይቅም ።

ይህ ፡ ሦስተኛው ፡ ዓይነት ፡ የውል ፡ ሁናቱ ፡ ፍርድ ፡ ቤቱ ፡ በባይሳ ፡ ጃም ፡ ጉዳይ ፡ ላይ ፡ የተመለከተው ፡ ሁናቱ ፡ ዓይነት ፡ ነው ። የዚህ ፡ ጉዳይ ፡ ፍሬ ፡ ነገር ፡ መስሎ ፡ የሚታየው ፡ ስለ ፡ ተንቀሳቃሽ ፡ ንብረት ፡ በጽሑፍ ፡ በተፈጸመ ፡ የሥራ ፡ ውል ፡ ላይ ፡ በሕግ ፡ የሚጸና ፡ የቃል ፡ ለውጥ ፡ ለማድረግ ፡ ስለ ፡ መቻሉና ፡ አለመቻሉ ፡ ነበረ ። ይህን ፡ መሳይ ፡ ውል ፡ ለመዋዋል ፡ አንድ ፡ የተለየ ፡ አጻጻፍ ፡ (ፎርም) ፡ እንዲኖር ፡ በሕጉ ፡ አልተጠየቀም ።⁸ ፍርድ ፡ ቤቱም ፡ ውሉ ፡ በጽሑፍ ፡ እንዲሆን ፡ ቀደም ፡ ብለው ፡ ተዋዋሮቹ ፡ የተስማሙበት ፡ በመሆኑ ፡ ውሉ ፡

8. አማርኛ ፡ የኢትዮጵያ ፡ መደበኛ ፡ ቋንቋ ፡ ስለ ፡ ሆነ ፡ (ሕገ ፡ መንግሥት ፡ እንቀጽ ፡ ፻፳፭) ፡ የአማርኛው ፡ የፍትሕ ፡ ብሔር ፡ ሕግ ፡ መጽሐፍ ፡ የበላይ ፡ ማንጸጸሪያ ፡ መሆን ፡ ይገባዋል ። በፍርድ ፡ ቤቶቹም ፡ የሚሠራበት ፡ ይኸው ፡ መጽሐፍ ፡ ነው ። ሕጉ ፡ የተረቀቀበት ፡ ቋንቋ ፡ ስለ ፡ ሆነ ፡ የፈረንሳይኛው ፡ መጽሐፍ ፡ በአንዳንድ ፡ ሁኔታዎች ፡ ላይ ፡ ያገለግል ፡ ይሆናል ። ከሁለቱም ፡ ማለት ፡ ከአማርኛውና ፡ ከፈረንሳይኛው ፡ መጽሐፍት ፡ በሚጋጩበት ፡ ጊዜ ፡ የእንግሊዝኛው ፡ መጽሐፍ ፡ ሥልጣን ፡ እንደማይኖረው ፡ ግልጽ ፡ ነው ።

9. የፍ ፡ ብ ፡ ሕ ፡ ቀ ፡ ፲፯፻፲፱ ፡ (፩) ፡ ቀ ፡ ፫፻፳ ፡ (፩)ን ፡ ይመለከታል ።

በጽሑፍ ፡ ተፈጽሟል ፡ አላለም ፡ ውሉ ፡ በጽሑፍ ፡ የሆነው ፡ እንዲሁ ፡ (በአጋ ማሚ) ፡ ነው ፡ ይህ ፡ ሆኖ ፡ ሳለ ፡ ፍርድ ፡ ቤቱ ፡ ከሰጠው ፡ የፍሬ ፡ ነገር ፡ ሐተታ ፡ ውስጥ ፡ ተዘንግተው ፡ የተተዉ ፡ ግድፈቶች ፡ ካልኖሩ ፡ በቀር ፡ የውሉ ፡ መለዋወጥ ፡ በጽሑፍ ፡ እንዲሆን ፡ ሕጉ ፡ ያስገድዳል ፡ ለማለት ፡ የሚያ ፡ ስችል ፡ ምክንያት ፡ የለም ፡ ፍርድ ፡ ቤቱ ፡ ግን ፡ “ዋናው ፡ ውል ፡ በጽሑፍ ፡ ከሆነ ፡ የሚደረገውም ፡ ለውጥ ፡ በጽሑፍ ፡ መሆን ፡ አለበት” ፡ በማለት ፡ በቃል ፡ የተደረገ ፡ ለውጥ ፡ ለመኖሩ ፡ ማስረጃ ፡ ለማቅረብ ፡ አይፈቀድም ፡ ሲል ፡ በይደል ።

አሁን ፡ የቀጥር ፡ ሺ፯፻፳፪ ፡ ፍች ፡ አጠራጣሪ ፡ ሊሆን ፡ ወደሚችልበት ፡ ብቸኛ ፡ ሁኔታ ፡ ወደ ፡ ሆነው ፡ ወደ ፡ አራተኛው ፡ የውል ፡ ዓይነት ፡ እንዛወር ፡ ይህም ፡ ቢሆን ፡ ለዚህ ፡ ጽሑፍ ፡ ጸሐፊ ፡ በጣም ፡ አጠራጣሪ ፡ መስሎ ፡ አይታይም ።

አንድ ፡ የንግድ ፡ ድርጅት ፡ ለማቋቋም ፡ በመወያየት ፡ ላይ ፡ ያሉት ፡ ሀ ፡ ና ፡ ለ ፡ በጽሑፍ ፡ ሆኖ ፡ ባንድ ፡ የተፈረመ ፡ ሰነድ ፡ ላይ ፡ ከመስፈሩ ፡ በፊት ፡ ስምምነታችን ፡ ሁሉ ፡ ዋጋ ፡ ያለው ፡ ውል ፡ አይሆንም ፡ ብለው ፡ በቅድሚያ ፡ ተዋዋሉ ። ይህን ፡ መሳይ ፡ መነሻ ፡ ስምምነት ፡ ሳይኖር ፡ ለእንዲህ ፡ ዓይነቱ ፡ ውል ፡ ልዩ ፡ ፎርም ፡ እንዲኖር ፡ ሕጉ ፡ አያስገድድም ። ነገር ፡ ግን ፡ በኋላ ፡ የተደረገ ፡ የቃል ፡ ስምምነትን ፡ ዋጋ ፡ እንደሌለው ፡ በመቁጠር ፡ መነሻው ፡ ስምምነት ፡ እንዲፈጸም ፡ ቀ፡ ሺ፯፻፳፪ ፡ (፫) ፡ እና ፡ ሺ፯፻፳፮ ፡ በግልጽ ፡ ያወሳሉ ። ስለዚህ ፡ ባንድ ፡ በኩል ፡ ምንም ፡ ልዩ ፡ ፎርም ፡ ሕጉ ፡ የማይሻ ፡ ሲሆን ፡ በሌላ ፡ በኩል ፡ ግን ፡ ተዋዋሮቹ ፡ ቀደም ፡ ብለው ፡ በተስማሙበት ፡ ፎርም ፡ እንዲዋወሉ ፡ በማስገደድ ፡ ልዩ ፡ ፎርም ፡ ይጠይቃል ፡ ማለት ፡ ነው ። አንቀጽ ፡ ሺ፯፻፳፪ ፡ ተዋዋሮቹ ፡ ቀደም ፡ ብለው ፡ የተስማሙበትንና ፡ በሕግ ፡ ተፈጻሚነት ፡ ያለውን ፡ አጻጻፍም ፡ (ፎርም) ፡ ይጨምራል ፤ ተብሎ ፡ መተርጎም ፡ አለበት ፡ ወይስ ፡ ሕጉ ፡ ራሱ ፡ አንድ ፡ የተለየ ፡ የውል ፡ አጻጻፍ ፡ (ፎርም) ፡ የሚያዝባቸውን ፡ ሁኔታዎች ፡ ብቻ ፡ ነው ፡ የሚያጠቃልለው ፡ ተብሎ ፡ መተርጎም ፡ አለበት ?

የቀጥር ፡ ሺ፯፻፳፪ ፡ አነጋገር ፡ ለዚህ ፡ ጥያቄ ፡ መልስ ፡ ያልያዘ ፡ መሆኑ ፡ ግልጽ ፡ ነው ። ፍርድ ፡ ቤቱም ፡ በባይሳ ፡ ጃም ፡ ጉዳይ ፡ ላይ ፡ የዚህ ፡ ዓይነት ፡ ሁኔታ ፡ ቀርቦለት ፡ እንደሆነ ፡ አከራካሪ ፡ ቢሆንም ፡ በትክክል ፡ በይደል ፡ ይሁን ፡ እንጂ ፡ ይህ ፡ ጸሐፊ ፡ ጠበብ ፡ ያለውን ፡ አተረጓጎም ፡ (ቀ፡ ሺ፯፻፳፪ ፡ ተዋዋሮች ፡ የተስማሙበትን ፡ አጻጻፍ ፡ አይጨምርም ፡ የሚለውን) ፡ ይመርጣል ።

ከዚህ ፡ በሚከተለው ፡ ምክንያት ፡ ቀጥር ፡ ሺ፯፻፳፪ ፡ ከፍ ፡ ብሎ ፡ ከተጠቀሱት ፡ የውል ፡ ሁኔታዎች ፡ የመጀመሪያውን ፡ ብቻ ፡ ያጠቃልላል ፡ ብሎ ፡ በጠባቡ ፡ መተርጎም ፡ የተሻለ ፡ መስሎ ፡ ይታያል ። በመጀመሪያው ፡ የውል ፡ ዓይነት ፡ (በአንሹራንስ ፡ ውል) ፡ አጋጧው ፡ ዋናው ፡ ውል ፡ በጽሑፍ ፡ መሆን ፡ አለበት ፤ እንዲል ፡ ያሰኙት ፡ መሠረታዊ ፡ ምክንያቶች ፡ (ማለት ፡ ተገቢ ፡ ያልሆነ ፡ መጫን ፡ እንዳይኖር ፤ የየአንዳንዱ ፡ ተዋዋይ ፡ ግዴታ ፡ ይበልጥ ፡ የተረጋገጠ ፡ እንዲሆን ፡) በዚያው ፡ በዋና ፡ ውል ፡ ላይ ፡ የሚደረጉ ፡ ለውጦችንም ፡ ያንኑ ፡ አጻጻፍ ፡ (ፎርም) ፡ እንዲከተሉ ፡ እንዲያደርግ ፡ ያስገድዱታል ። ባራተኛው ፡ የውል ፡ ዓይነት ፡ ግን ፡ ዋናውን ፡ ውል ፡ ወይም ፡ በዋናው ፡ ውል ፡ ላይ ፡ የሚደረጉ ፡ ለውጦችን ፡ በአንድ ፡ የተለየ ፡ አጻጻፍ ፡ (ፎርም) ፡ ተዋዋሮቹ ፡ እንዲፈጽሙ ፡ የሚያስገድድበት ፡ የራሱ ፡ የሆነ ፡ መሠረታዊ ፡ ምክንያት ፡ ሕጉ ፡ የለውም ። የቀ፡ ሺ፯፻፲፱ ፡ (፫) ፡ እና ፡ የቀ፡ ሺ፯፻፳፮ ፡ ተግባርም ፡ የተዋዋሮቹን ፡ ፍላጎት ፡ ማስ

ፈጸም ፡ ብቻ ፡ ነው ። ስለዚህ ፡ በዚህ ፡ ዓይነቱ ፡ የውል ፡ ሁኔታ ፡ ላይ ፡ ውሉን ፡ ለመለዋወጥ ፡ ልዩ ፡ ፎርም ፡ ያስፈልጋል ፤ ብሎ ፡ ማስገደድ ፡ ተገቢ ፡ የሚሆነው ፡ ስለ ፡ ውላቸው ፡ ፎርም ፡ በቅድሚያ ፡ በተስማሙት ፡ ስምምነት ፡ ውስጥ ፡ ተዋዋዮቹ ፡ ራሳቸው ፡ የውላቸውን ፡ ፎርም ፡ ለመምረጥ ፡ ያላቸውን ፡ ነጻነት ፡ በዋናው ፡ ውል ፡ ፎርም ፡ ረገድ ፡ ብቻ ፡ ሳይሆን ፡ በማናቸውም ፡ የውሉ ፡ መለዋወጥ ፡ ፎርም ፡ ረገድም ፡ እንዲወሰን ፡ ፈልገዋል ፤ ለማለት ፡ የሚያስችል ፡ ምልክት ፡ ያለ ፡ እንደሆነ ፡ ብቻ ፡ ነው ።

አንድ ፡ ውል ፡ ባንድ ፡ የተለየ ፡ ፎርም ፡ እንዲፈጸም ፡ በቅድሚያ ፡ ከተደረገ ፡ ስምምነት ፡ ውስጥ ፡ የተዋዋዮቹን ፡ ፍላጎት ፡ አዝማሚያ ፡ ለማወቅ ፡ ተዋዋዮቹ ፡ ይህን ፡ መሳይ ፡ ውል ፡ ባደረጉበት ፡ ሁኔታ ፡ ላይ ፡ በሐሳብ ፡ መድረስ ፡ ያስፈልጋል ። ይህም ፡ አብዛኛውን ፡ ጊዜ ፡ የተወሰነበት ፡ ንግግር ፡ ያለበት ፡ ወይም ፡ በተዋዋዮቹ ፡ መካከል ፡ የውል ፡ ግንኙነት ፡ መኖሩን ፡ ለማመልከት ፡ ብቁ ፡ ሆነው ፡ ሊገኙ ፡ የሚችሉ ፡ የሰነድ ፡ መቀባበልን ፡ የያዙ ፡ ወይይቶች ፡ የሚፈጸሙበት ፡ ሁኔታ ፡ ነው ። ተዋዋዮቹ ፡ የተጻጻፉዋቸው ፡ ደብዳቤዎችና ፡ እነዚህ ፡ ቀደምት ፡ ወይይቶቻቸው ፡ ውል ፡ በመካከላቸው ፡ ተፈጥሯል ፤ ወደሚያስኝ ፡ ስህተት ፡ እንዳያደርሱ ፡ ተዋዋዮቹ ፡ እርግጠኞች ፡ ለመሆን ፡ ይፈልጋሉ ። ይህንንም ፡ በጽሑፍ ፡ ካልሆነ ፡ በስተቀር ፡ ውል ፡ በመካከላቸው ፡ ሊኖር ፡ አይችልም ፤ በሚል ፡ በአንድ ፡ መነሻ ፡ ስምምነት ፡ ያረጋግጣሉ ።

ይህን ፡ ዓይነቱ ፡ መነሻ ፡ ስምምነት ፡ ውሉን ፡ በቃል ፡ ከመለዋወጥ ፡ እንደሚከለክል ፡ መቆጠር ፡ ይገባዋልን ? ሁልጊዜ ፡ እንዲህ ፡ ሆኖ ፡ ሊቆጠር ፡ የሚገባበትን ፡ ምክንያት ፡ ማግኘት ፡ አዳጋች ፡ ነው ። እርግጥ ፡ ተዋዋዮቹ ፡ የውላቸው ፡ መለዋወጥ ፡ በአንድ ፡ የተለየ ፡ ፎርም ፡ እንዲሆን ፡ በውላቸው ፡ ውስጥ ፡ ምንጊዜም ፡ መግለጥ ፡ ይችላሉ ። ወይም ፡ ባንድ ፡ የተወሰነ ፡ ጉዳይ ፡ ላይ ፡ ፍርድ ፡ ቤቱ ፡ ይህን ፡ ዓይነቱን ፡ ፍላጎት ፡ የጉዳዩ ፡ አካባቢ ፡ ነገሮች ፡ ከሆኑ ፡ ልዩ ፡ ሁኔታዎች ፡ ይፈልጋሉ ፤ ሲል ፡ በሚገባ ፡ ሊበይን ፡ ይችላል ። ነገር ፡ ግን ፡ ይህን ፡ የሚያስኝ ፡ ልዩ ፡ ሁኔታ ፡ በሌለበት ፡ ጊዜ ፡ ዋናው ፡ ውል ፡ ከተፈጸመ ፡ በኋላ ፡ ውሉን ፡ ለመለዋወጥ ፡ የተደረገ ፡ የቃል ፡ ስምምነት ፡ ለመኖሩ ፡ በቂ ፡ ማስረጃ ፡ ማቅረብ ፡ ከተቻለ ፡ ስለ ፡ ዋናው ፡ ውል ፡ ፎርም ፡ በቅድሚያ ፡ የተደረገው ፡ ስምምነት ፡ ውሉንም ፡ ለመለዋወጥ ፡ ያንኑ ፡ ፎርም ፡ እንዲጠይቅ ፡ የታቀደ ፡ ነው ፤ የሚያስኝ ፡ ምክንያት ፡ የለም ። የመነሻው ፡ ስምምነት ፡ ተግባር ፡ ዋናው ፡ ውል ፡ የተፈጸመበትን ፡ ጊዜና ፡ በዋናው ፡ ውል ፡ ውስጥ ፡ የሚገኙትን ፡ ጉዳዮች ፡ ፍጹም ፡ ግልጽ ፡ የሆኑ ፡ እንዲሆኑ ፡ ማድረግ ፡ ነው ። በተለይም ፡ ተዋዋዮቹ ፡ ረዥም ፡ ጊዜ ፡ የፈጀ ፡ ወይይት ፡ ሊያስነሳው ፡ የሚችለውን ፡ የሐሳብ ፡ ዝብርቅርቅ ፡ ለማስወገድ ፡ ይሻሉ ፡ ወይይቱ ፡ አልቆ ፡ ዋናው ፡ ውል ፡ ከተፈረመ ፡ በኋላ ፡ ግን ፡ የመነሻው ፡ ስምምነት ፡ አገልግሎት ፡ ይፈጸምና ፡ ተፈላጊነቱ ፡ ይበቃል ።

በጽሑፍ ፡ ፎርም ፡ ያለ ፡ ውል ፡ በቃል ፡ የተለወጠ ፡ ስለ ፡ መሆኑ ፡ የሚቀርብ ፡ ማስረጃ ፡ እርግጥ ፡ በጥንቃቄ ፡ ሊታይ ፡ ይገባዋል ፤ ነገር ፡ ግን ፡ ማስረጃውን ፡ ፈጽሞ ፡ ላለመቀበልና ፡ ዋናው ፡ ውል ፡ የተለወጠበት ፡ የማያጠራጥር ፡ የቃል ፡ ውል ፡ ቢኖርም ፡ በቅጥር ፡ ሺ፯፻፳፪ ፡ አሳብቦ ፡ ዋጋ ፡ አይኖረውም ፤ ለማለት ፡ የሚያስችል ፡ ተገቢ ፡ ምክንያት ፡ የለም ።

እነዚህ ፡ የፍትሐ ፡ ብሔር ፡ ሕግ ፡ ቍጥሮች ፡ ረቂቅ ፡ መሆናቸውን ፡ በድ
ጋሚ ፡ መግለጽ ፡ አስፈላጊ ፡ ነው ። እንዲሁም ፡ የባይሳ ፡ ጃሞ ፡ ከሳሽ ፤ አሰፋ ፡
ወልደጊዮርጊስ ፡ ተከላሽ ፡ ጉዳይ ፡ ከሦስተኛው ፡ ዓይነት ፡ የውል ፡ ሁናቴ ፡ ይልቅ ፡
አራተኛውን ፡ ዓይነት ፡ የውል ፡ ሁናቴ ፡ የተመለከተ ፡ ሊሆን ፡ እንደሚችልና ፡ ይ
ህም ፡ ከሆነ ፡ ፍርዱ ፡ ትክክል ፡ መሆኑን ፡ ልብ ፡ ማለት ፡ ይጠቅማል ። ይሁን ፡
እንጂ ፡ የፍርድ ፡ ቤቱ ፡ ውሳኔ ፡ ጉዳይ ፡ ከፍ ፡ ብሎ ፡ ከተጠቀሰው ፡ ከሦስተኛው ፡
ዓይነት ፡ የውል ፡ ሁናቴ ፡ መመሳሰሉን ፡ ያመለክታል ፤ ይህም ፡ ከሆነ ፡ በጸሐ
ፊው ፡ አስተያየት ፡ የፍርድ ፡ ቤቱ ፡ ብይን ፡ የተሳሳተ ፡ መሆኑ ፡ አይካድም ።