

A PROBLEM ON FAMILY LAW

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Readers of the *Journal of Ethiopian Law* are invited to test their knowledge of the law and their skill in formulating answers to legal quizzes by submitting to the *Journal* written answers to the following problem. The best written answer submitted to the *Journal* in either Amharic or English will be printed in volume 9-2 of the *Journal*. Answers should be submitted before May 15, 1973. The participant whose answer is selected for publication will receive a free copy of the *Journal* issue in which his answer appears plus five off-prints of his answers.

Problem

In title I of the Ethiopian Civil Code there is a chapter on absence. If a person disappears and is not heard of for at least two years a declaration of absence may be given by a court. The effect of such a declaration on the marriage of the absentee will be its dissolution, according to Article 163(1). However Article 163 also contains the following sub-articles:

- "(2) The marriage contracted by the spouse after the day on which the last news of the absentee was received may be impugned only by the absentee.
- (3) Notwithstanding the provisions of sub-art. (2) it may also be impugned by the public prosecutor if he proves in an indisputable manner that the absentee is alive on the day on which the action is instituted."

Dr. Vanderlinden¹ interprets sub-article (2) to mean that the marriage dissolved by the judgment of absence is always open to resuscitation by the return of the absentee even when the spouse has re-married. Thus the validity of the second marriage is always left in doubt, and the spouse of the absentee is always a potential bigamist. This view accords with that of French law in which the return of the absentee causes the second marriage to become null.² One difficulty with the Ethiopian law is that Article 163(2) uses the words "after the day on which the last news of the absentee was received" instead of the words "the judgment declaring the absence which are used in sub-article (1).

But an even grater difficulty is caused by Articles 669 and 670 which deal with divorce. Under Article 669 (b) there is serious cause for divorce due to one of the spouses "when one of the spouses has deserted the conjugal residence and when, since at least two years, the other spouse does not know where he is." The financial consequences of such a divorce may be the award to the remaining spouse of the whole of the common property of the spouses and up to one third of personal property of the absentee. Under Article 670 (b) there is serious cause for divorce without fault "when the absence of one of the spouses has been judicially declared". The consequences of such divorce will be the equal division of common property.³

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1. J. Vanderlinden, *The Law of Physical Persons*, p. 128.

2. M. Planiol and G. Ripert, *Traité Pratique de Droit Civil Français*, vol. 1, p. 55.

3. Arts. 692-94 *cum* 689(1).

QUESTIONS:

- 1) Is a divorce obtained under Article 670 (b) open to attack under Article 163(2) and (3)?
- 2) How is the court to decide whether it is dealing with a case of absence or desertion when faced with a petition under Article 699 (b)? [And would not all sensible spouses opt for a divorce or desertion, given the advantageous financial provisions?]
- 3) If Article 163(2) is referring to a case in which no judgment declaring absence has been obtained, is this question not adequately covered by Article 612 (despite the defect in sub-article (2) in referring to "the time when the marriage was celebrated" instead of "the time when the action is instituted")?
- 4) Note that in Soviet law the return of the absentee will not affect a subsequent marriage of his spouse.⁴ Would this not be the approach the Ethiopian Law should take?

4. See *Revue Internationale de Droit Comparé* (1950), p. 349.