FAMILY LAW FOR EXIT EXAM

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Family Law is the branch of law that governs the relationships between children and parents, and between adults in close emotional relationships. It sets rules for responsibilities within families, both when they are formed and when relationships dissolve.

The **family** is considered the basic unit of society, having social and economic importance. The state is interested in regulating family organisation through legislation.

Family law aims to **protect and regulate the family**. The rationale for protection includes the family's importance as the nucleus of society, upon which much depends for safety and security.

✓ Sources of Family Relationships

Family relationships originate from three sources: marriage, filiation, and adoption.

Consanguinity (blood relationship) results from birth and is a natural fact. It exists between persons descending from a common ancestor.

Affinity (relationship by marriage) is created through marriage, uniting persons who were not previously relatives.

Adoption is a fictitious relationship created by a special contract between the adopter and the adopted child's original families.

✓ Effects of Family Relationships

Family relationships create **rights and obligations**.

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Rights include the right of relatives to inherit property (succession), the right of destitute relatives to receive maintenance, and parents' rights over the person and estate of their children.

Obligations include the duty to provide alimony (maintenance) for destitute relatives and the duty of parents to take custody and raise their children, involving decisions on health, education, and social contacts.

✓Marriage

Marriage can be viewed as a **status** (legal consequences flow automatically regardless of party intention) or a **contract** (legal consequences flow from party intentions). The Ethiopian system seems to align with the status view, although it allows for marriage contracts regulating certain effects.

The Revised Federal Family Code (RFC) and Regional Family Codes recognize three **modes of conclusion of marriage**: Civil, Religious, and Customary. Marriages celebrated abroad are also recognized if not contrary to public morality.

- ✓ **Essential conditions for a valid marriage** must be fulfilled regardless of the mode of celebration. These conditions include:

Consent: Full and free consent of both parties, not vitiated by fundamental error or violence. Judicial interdiction requires court authorization for marriage.

Age: Minimum marriageable age is 18 years for both sexes, though exceptions exist.

Relationship: Prohibitions based on consanguinity (direct line ascendants/descendants) and affinity (direct line).

Bigamy: Absence of a prior valid marriage.

Period of Widowhood: A woman is prohibited from remarrying within 180 days of her former marriage dissolution to avoid conflict of paternity.

Violation of essential conditions generally results in **voidable marriages** under Ethiopian law. The marriage is valid until invalidated by a court, ceasing to exist *ex nunc* (from the date of invalidation). Violations may also entail criminal responsibility. Some impediments are "absolute" (e.g., relationship by consanguinity/affinity) meaning the marriage cannot be cured and remains voidable, subject to dissolution at any time.

Opposition to marriage can be made by specific persons (e.g., parents of a minor, public prosecutor, previous spouse) to the celebrating officer, usually in writing and within a time limit.

✓ Effects of Marriage

Effects of marriage are classified as personal and pecuniary. All valid marriages produce the same legal effect regardless of the celebration mode.

Personal effects: Include mutual respect, support, and assistance; shared family management and child care; duty of cohabitation; and duty of fidelity.

Pecuniary effects: Relate to property ownership and debts. Property existing before or acquired during marriage by succession/donation is **personal property**. Property acquired during marriage by onerous title (e.g., purchase) and spouse income is **common property**. Each spouse administers their personal property. Personal debts are first recovered from personal property, then common property; debts incurred for the household are joint/several, recovered primarily from common property. Spouses can regulate these effects via a **contract of marriage**, distinct from the marriage certificate, but cannot derogate from mandatory law provisions.

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✓ Proof of marriage

Proof of marriage is primarily by a certificate of marriage issued by the officer of civil status after mandatory registration. As an exception, marriage can be proven by **possession of status**, where a cohabiting couple is deemed married by those who know the

✓ Dissolution of Marriage

Dissolution of marriage can occur by operation of law (death or declaration of absence) or by divorce. Divorce requires court application. Ethiopia follows a **no-fault divorce system** under the RFC, unlike the previous Civil Code. Divorce can be by mutual consent or by petition.

Effects of dissolution include determining child custody based on the **best interest of the child** and liquidation of pecuniary relations (property division, debt settlement).

✓ Irregular Union

An **irregular union** is a union of a man and woman established solely by their consent, involving actual domestic cohabitation and the running of a common household, analogous to marriage but without formal conclusion.

Reasons for choosing irregular union over formal marriage include perceived burdens of marriage, avoiding costly legal procedures, the opportunity to define relationship terms freely, financial constraints, or legal impediments to marriage (like an indissoluble prior marriage).

Ethiopian family laws give **recognition and protection to irregular union**, particularly for the rights of children and women, although protection is not equal to that in marriage.

Legal effects of irregular union include creating **community property** if the parties have lived together for at least three years, the duty to contribute to common expenses, and the obligation to discharge debts incurred for the family.

The paternity of a child conceived or born in an irregular union is **presumed** to be the man's. Irregular union is primarily **proved by possession of status**, unlike marriage which relies primarily on the certificate.

It can be **terminated by one partner without reason**, although fault may lead to compensation. Conditions like consent and potentially age and relationship prohibitions should ideally apply to irregular unions too.

✓ Filiation

Filiation establishes the parent-child relationship. Ascertaining maternity is necessary before attributing a child to a father.

Maternal filiation results solely from the fact that a woman has given birth to a child. It cannot be derogated from by agreement.

Paternal filiation can be established in three ways:

Presumption of paternity: A child conceived or born in marriage or irregular union has the husband or the man in the union as father. This presumption can be rebutted through a process called **disowning**.

Acknowledgement of paternity: A man voluntarily declares he is the father before a civil status officer, in a will, or attested document. This is important for children born outside formal unions. Acknowledgement requires the mother's or relevant maternal relative's acceptance. It is generally non-revocable.

Judicial declaration: The court declares a man to be the father based on specific grounds.

The **proof of filiation** is primarily by **record of birth**. In its absence, or if lost/destroyed, filiation can be proven by **possession of status**.

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✓ Adoption

Adoption establishes an artificial filiation, serving as a way to find homes for children who have lost their natural parents or whose parents cannot care for them. It gives the child legal rights and duties similar to a naturally born child.

Essential conditions include age requirements for the adopter (>=25, 21 if one spouse in a joint adoption) and adoptee (<18 and under guardianship).

Effects of adoption include creating an **impediment to marriage** with family members of the adopter, conferring **succession rights** (assimilated to natural children, generally prevail over natural family inheritance), and establishing **rights and obligations of support and care** between adopter and adoptee.

Inter-country adoption involves adopters and a child of different nationalities or habitual residences. It must be in the **best interests of the child** and involves safeguards like investigations and follow-up work. The child's right to identity and secrecy are considerations.

Adoption, once approved by the court, is generally **irrevocable**, but may be revoked by court order on specific grounds detrimental to the child's future.

✓ Obligation to Supply Maintenance

This is a legal obligation arising from familial relationships, based on a **moral duty**.

It exists between spouses, ascendants and descendants, brothers and sisters, and adopter and adoptee.

The obligation is to supply things **necessary for the creditor's livelihood**, such as food, lodging, clothing, healthcare, education, and transportation, based on social conditions and the debtor's capacity.

The obligation **terminates** on grounds including agreement, the creditor's ability to earn their livelihood, the debtor's inability to provide maintenance, or the creditor's condemnation for criminal acts against the debtor or their family.

✓ Settlement of Disputes

Disputes arising from marriage or irregular union can be settled by **courts** or through **Alternative Dispute Resolution (ADR) mechanisms** like arbitration. The RFC provides for both, with optional arbitration for family disputes.

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