Family Law

- What is Family Law?
  - Family law is a law that give protection for Family.
- Why the law protects Family?
  - The Law protects Family because of the fact that family is the fundamental unit of a given community/society or state at large.



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- The wellbeing of a given state or country is based on the wellbeing of a given family.
- working on family at a grass root level will play an important role in ensuring the wellbeing of the community at large.
- Safety and security of family is a base on the Safety and security of the community since community is the totality of different families.

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- Factors affecting a single family may later on affect the whole society.
- How the Law Protect Family?
- Family law gives protection for family by determining rights and duties of each and every member of the family.
- By setting necessary criteria for the establishment of family.

- **What is meant for family?**
- Basically it is difficult to give an internationally acceptable and comprehensive definition of family.
- Different scholars and dictionaries tried to define family differently at different time.
- When we start from Black's Law Dictionary, it defined family in following three ways:

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1. A group of persons connected by blood, by affinity, or by law (Adoption), esp. within two or three generations.
2. A group consisting of parents and their children.
3. A group of persons who live together and have a shared commitment to a domestic relationship

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Black’s Law dictionary Categorizes family As:

- ***Intact /Nuclear family:*** A family in which both parents live together with their children.
- ***Blended family:*** The combined families of persons with children from earlier marriages or relationships (Stepchildren).
- ***Immediate family:*** A person's parents, spouse, children, and Siblings, as well as those of the Stepchildren and adopted children.

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- ***Extended family:*** The immediate family together with the collateral relatives who make up a clan; the immediate family together with collateral relatives and close family friends.
- ***Planiol*** defines a family as a group of persons who are united by marriage, by filiation (blood) or by adoption.

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- **Murdok** defined family as a social group characterized by common residence, economic cooperation, and reproduction.
- According to him, family includes adults of both sexes, at least two of whom maintain a socially approved sexual relationship, and one and more children, own or adopted, of the sexually cohabiting adults.

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- **Malinowski** defined family as a bounded set of people (a mother, a father, and children):
- who recognize each other and are distinguishable from other groups;
- Who have a definite physical space and a home;
- Who have a particular set of emotions, family love.

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- All defined family in different way and none of them can bring all inclusive and worldwide acceptable definition of family.
- Thus, it is not advisable to attempt to give internationally acceptable definition of family.
- Rather it is good to define it in each country’s context and even, in the context of each state in case of federally structured countries like that of ours.

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- Points like; whether gay or lesbian marriage is permitted by that country or region, the degree of relation up to which marriage is prohibited between certain relatives shall be considered.
- Especially, the main thing that should be taken into account in defining family is whether inter marriage is prohibited by the law within a certain group.
- If marriage is prohibited by the law between certain persons, these persons are members of one family and enjoy right from one another and bear corresponding duties to one another.

Sources of Family Relation

1. consanguinity/Blood relationship

- Relation by consanguinity emanates from birth.
- One acquires this relation by the mere fact of his birth from certain group/couples.
- Person acquires consanguine relation with someone either by directly descending or ascending from him (direct relation) or by having common ancestor with him (collateral relation).
- Direct relation is represented by straight line going from one relative to the other while collateral relation is represented by parallel line going from common ancestor.

Affinial relationship

- It is a relation that emanates from marriage.
- Two independent groups who have no blood relation may become relative by the mere fact of conclusion of marriage between two couples coming from each group.
- Then, these persons will be considered as family to the extent of the degree that prohibits marriage between them by the law.

Adoption

- Relationship by adoption is created as a result of a special contract between the adopter and the original families of the adopted child.
- It is a fictitious/artificial relationship which resulted from the agreement of the parties to the adoption agreement.
- Once a child is adopted by someone he is considered as the biological child of that person.

Degree of Relationship that Prohibit Marriage

Blood Relation/Relation by Consanguinity

- Persons who have blood relation are relatives.
- But, it does not mean that all person who have blood relation cannot conclude marriage/irregular union.
- There is degree of relationship provided by the law which prohibit marriage between persons who have consanguine relationship.
- These person who are prohibited by the law to conclude marriage among themselves are considered as family.
- This degree of relation that restrict marriage among persons who have blood relation differs between Federal and regions; as well between regions themselves.

- Under the Federal Revised family code, degree of relation is not set.
- but persons who cannot conclude marriage between themselves are listed.
- As per Art. 8:
- Marriage between persons related by consanguinity in the direct line, between ascendants and descendants, is prohibited.
- In the collateral line, a man cannot conclude marriage with his sister or

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- As per Art. 18 of SNNPR family code:
- Marriage between persons related by consanguinity in the direct line, between ascendants and descendants, is prohibited.
- In the collateral line, the prohibition extends to seventh degree/generation.
- Regarding Oromia region, Art. 27 provides the same thing as that of SNNPR family code.
- Art. 19 of Amhara region family code provides the same thing with the federal

Method of Counting

- In the direct line, we simply count the number of lines between them.
- In calculating the degree of relationship in the collateral line, there are two ways/methods, which will lead to different results.
- **Civil Law method of counting:**
- The Civil law system to calculate the degree of relationship is simply adding the two lines which are departing from the common ancestor.

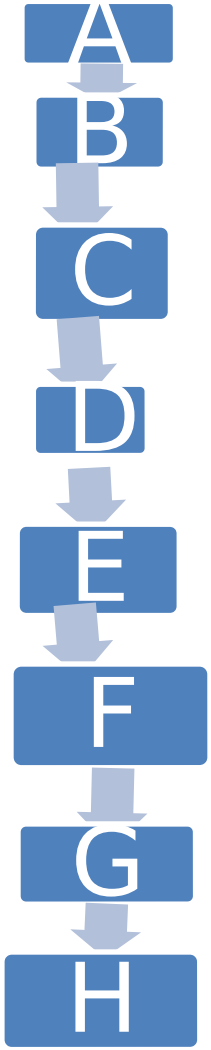
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- **Cannon law Method of Counting**
- The cannon law system to calculate the degree of relationship is counting only one side to the stated degree starting from the common ancestor.
- When the two lines are equal, we will simply take one line in order to know the number of generation/s that exist between two relatives.
- If the lines are not equal, the longest line is to be taken.

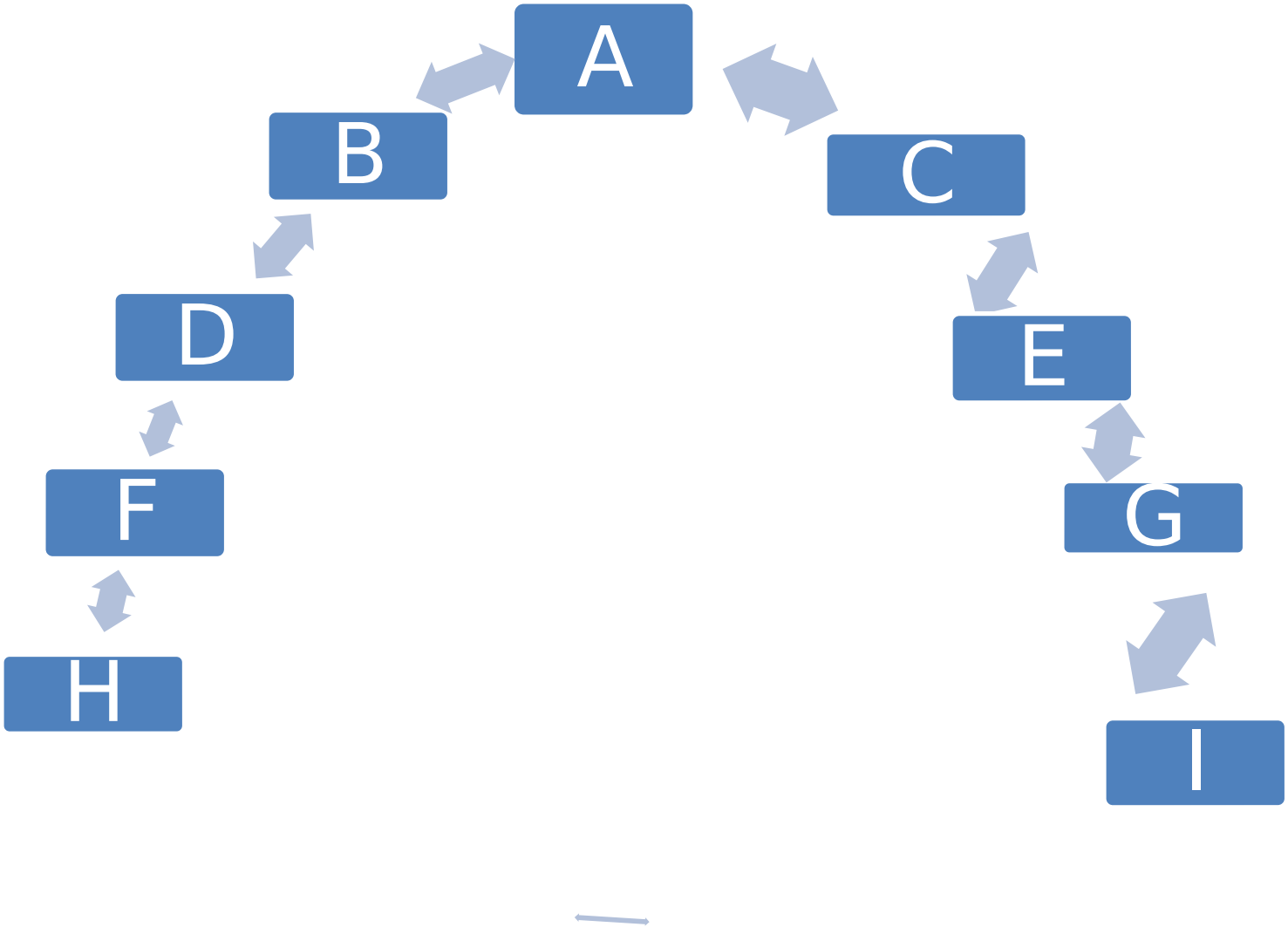
Which Method is Accepted in our case?

- In federal case there is no complexity since persons who cannot concluded marriage are listed objectively.
- The same is true for Amhara regional state family code.
- Regarding the Oromia family code, civil law method of counting is accepted as per Art. 4(3).
- The Tigray family code accepted the cannon law method of counting under Art. 2 (1).
- SNNPR family code accepted the civil law way of counting under Art. 18 (3)

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Affinial Relation/marriage relation

- The is also a difference between federal and regions with regard to degree of relation that prohibit marriage between persons related by affinity.
- As per Art:9
- Marriage between persons related by affinity in the direct line is prohibited.
- In the collateral line, marriage between a man and the sister of his wife, and a woman and the brother of her husband is prohibited.
- The Amhara family code follows the same approach while the Oromia, Tigray and SNNPR family codes prohibition extends to third degree.

Relation by Adoption

- An adopted child shall, for all purposes, be deemed to be the child of the adopter.
- The adopted child shall retain his bond with the family of origin.
- The same shall apply to the spouse and the descendants of the adopted child.
- Adoption shall have no effect with regard to the ascendants or collaterals of the adopter who have expressly opposed the adoption.

Betrothal

- In the past, betrothal is a precondition to marriage (i.e. a marriage that will be concluded through weeding).
- If two persons need to conclude marriage, they would go through the process of betrothal.
- But now, it is not a precondition to marriage, rather it is something optional to the parties.
- Persons who need to marry one another may pass through betrothal or directly conclude marriage without making betrothal.

Definition of Betrothal

- According to wikipedia.org:
- An **engagement or betrothal** is a promise to wed/marriage.
- During this period, a couple is said to be *betrothed, intended, affianced, engaged to be married,* or simply *engaged*.
- Future brides and grooms may be called *the betrothed,* a *wife-to-be* or *husband-to-be, fiancée* or *fiancé*.

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- Under Ethiopian Laws
- Betrothal is defined under Art. 560 of the repealed civil code as a contract between the members of two families that a marriage shall take place between two persons, the fiancé and the fiancée, belonging to these two families.
- Art. 1 of SNNPRS family code has defined betrothal as an agreement whereby the fiancé and the fiancée as between themselves undertake to conclude marriage for future.
- This agreement has no effect unless it is based on their free consent.

- As per Art. 9 of Oromia family code, betrothal is an agreement between fiancé and fiancée to conclude marriage in the future.
- It has no effect unless it is based on their free consent.
- Art. 1 of the Amhara Family code has defined betrothal as a mutual pact whereby a man and a woman, having attained majority, exchange their respective promises to conclude marriage in some future time, by having officially consented in the presence of representatives or witnesses from the families with an observer status at the ceremony.

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- The federal revised family code and the Tigray family code has ignored the concept of betrothal.
- The justification given for this avoidance of betrothal from the revised family code is that it is not a precondition to marriage.
- Since it is not a precondition to marriage, there is no need to regulate it and discretion shall be given for the parties themselves.
- But, the problem is how we regulate the consequence/effect of betrothal if we are going to leave every thing for the parties?

Essential Conditions for Betrothal

- With regard to conditions that impede/hinder betrothal the SNNPR family code is not as such clear.
- Under SNNPR family code, only consent is clearly required.
- Oromia and Amhara family codes is some how clear concerning this concept.
- As per 10 and Art. 4 of the Oromia and Amhara family code respectively, all conditions that impede marriage shall impede betrothal.
- These conditions are; consent, capacity, relation (either consanguinity or affinity), bigamy, etc that are listed as conditions that impede marriage shall also impede betrothal.

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- But, silence of SNNPR family codes does not mean that betrothal can be concluded in violation of these conditions.
- Since the purpose of betrothal is concluding marriage in some future, it is meaningless to conclude betrothal between persons who cannot conclude marriage.

Mode and form of Betrothal

- As stated under Art. 11 of the Oromia family code, betrothal shall be made according to the custom of the community where such is made.
- As to its form, it can be oral or written form.
- According to Art. 5 of the Amhara family code, betrothal shall be made in writing and signed by the future spouses.
- It shall also be attested by four witnesses of the family members, two from each.
- The SNNPR family code is same with the

Duration of Betrothal

- The duration of betrothal varies vastly, and largely dependent on cultural norms or upon the agreement of the parties involved.
- Most of the time the two ceremonies, i.e. of betrothal and wedding usually took place up to a year apart.
- Long engagements were once common in formal arranged marriages, and it was not uncommon for parents betrothing children to arrange marriages many years before the engaged couple were old enough

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- Freedom is given for the parties to fix the exact date of their marriage from betrothal.
- But the law limits the maximum duration of time that can exist between the date of betrothal and the date of weeding/marriage in the absence of fixed duration by the parties.
- According to art. 6 of the Amhara family code, marriage shall take place within two years from the date of betrothal.
- According to art. 6 and 13 of the SNNPR and Oromia family codes respectively, marriage shall take place within one year from the date of betrothal.
- But there is no provision that prohibit the parties from fixing longer time than what is provided. these laws prescribed such restriction as gap filling in the absence of fixed date by the parties.

Termination of Betrothal

- Betrothal can be terminated at any time if either of the future spouses refuse to conclude marriage.
- There need no cause/reason to terminate betrothal.
- If any one of the future spouse is not interested in the continuation of the engagement he/she can terminate it at any time without any precondition.
- Since betrothal is based on the free will of the future spouses, their willingness

Effect of Termination

- A party who is responsible for the breach of betrothal shall pay all expenses/costs incurred by the other party in connection with the betrothal.
- He/she shall return/restore back presents/gifts he/she received on the occasion.
- He/she shall return/restore back presents/gifts received by his/her family on the occasion.
- In addition moral damages might by order by the court if such is caused due to termination.

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- The amount of moral damage may extends to 10,000 Birr in the case of the SNNPR family law and 1000 Birr in the case of Oromia.
- The Amhara family code is silent on the maximum amount of moral damages.
- But, can apply the general law of extra-contractual liability to assess moral damage if there is a gap with special law.
- Under extra-contractual liability law the maximum amount of compensation for moral damage is 1000 Birr.
- This claim shall be brought within two years from the of termination betrothal.

Marriage

- Marriage is the source of all family relations.
- The three sources of family relation ship emanates from marriage or sometimes irregular union.
- In the absence of marriage or irregular union it is difficult to have blood/consanguine relation; or relation by affinity; or adoption.
- Marriage or in some limited circumstances, irregular union is a basic thing for family.
- This is why marriage is given a dominant place in family law.
- Family law is all about conclusion, effect and dissolution of marriage.

Definition

- Like that of Family it is difficult to define marriage.
- Deferent scholar and laws of different countries defined marriage in different ways.
- In the English legal system, marriage, as defined by Sir James Wilde in the land mark case of Hyde Vs Hyde, is the voluntary union for life of one man and one woman to the exclusion of all others.
- The Philippines Family Code of 1987 defines marriage as a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life.

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- Irish Catholic Bishops conference defined marriage as the biological fact that join together a man and a woman as male and female in a union that is orientated to the generation of new life.
- Marriage is no where defined under the Ethiopian law except the Amhara Family code which attempted to define marriage as a relationship whereby a man and a woman, having attained majority, officially establish out of their own free will and consent with an intention to sustainable live together united in law, or a legal institution structured as a result of this relationship thereto.
- The definitions given by the different legal systems have their own shortcomings.

Mode of conclusion of Marriage

- Mode of conclusion of marriage is the way certain marriage shall be concluded.
- The Revised Federal Family Code as well as the Regional Family Codes recognized three modes of conclusion of marriage (Art. 1 RFC).
- These are; Civil Marriage, Religious Marriage and Customary Marriage.
- certain marriage shall be concluded either before the officer of civil status, or celebrated according to religion or as per the custom of the community, to be

Civil marriage

- Marriage shall be deemed to be concluded before an officer of civil status when a man and a woman have appeared before an officer of civil status for the purpose of concluding marriage and the officer of civil status has accepted their respective consent (Art. 2 RFC).
- Who is officer of civil status?
- Officer of civil status is a person in charge celebrating marriage the office of civil status.
- The office called office of civil status is not established in Ethiopia.

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- In place of this office the municipal at wereda level discharge this duty.
- Thus, officer of civil status is, in practice, the officer of the municipal that assigned for this purpose.
- A man and a woman shall appear before an officer of municipal for the purpose of concluding marriage and the officer shall accepted their respective consent.
- Therefore, civil marriage is a marriage that is concluded before the officer of the municipal assigned for this purpose by

Jurisdiction

- Which municipal has a jurisdiction/power to entertain celebration of the civil marriage?
- According to art. 22 of the RFC, Civil marriage shall be concluded before the officer of civil status (municipal) of the place where either of the following persons has established residence by continuously living there for not less than six months prior to the date of the marriage:

i. one of the future spouses or
ii. one of the ascendants or
iii. close relatives of one of them (Art. 22 of RFC).

Request for Celebration of Marriage.

- Who shall made request for the celebration of marriage?
- The future spouses shall inform, the officer of civil status of their intention to conclude marriage.
- Only the future spouses shall request the celebration of marriage before the officer of civil status (Art, 23 RFC).
- When they bring their request?
- They shall bring their request before one month prior to its celebration(Art, 23 RFC).

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- The purpose of informing the officer before a month prior to celebration are:

i. Enabling him to have enough time to investigate into the fulfillment of essential condition for marriage.

ii. To enable him to fix the exact date of the celebration by referring his timetable.

- Upon receipt of the request, the officer of civil status shall, in consultation with the future spouses, decide the exact date of the conclusion of marriage and publicize same by any appropriate means.

Formalities of Celebration.

- Marriage that is concluded before the officer of civil status shall fulfill the following formalities (Art. 25 RFC):

i. Marriage shall be concluded publicly.

ii. it shall be concluded in presence of the future spouses and two witnesses for each of the future them.

iii. The future spouses and the witnesses shall declare, under oath, that the essential conditions of marriage are not violated.

iv. The officer of civil status shall inform the future spouses and their witnesses, before taking oath, of the consequences of their declaration.

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v. Each of the future spouses shall declare openly to the officer of civil status that they consented to conclude marriage on their own free will.

vi. Each of the spouses and their witnesses shall sign in the register of civil status.

vii. Then after, the officer of civil status shall pronounce them united in marriage and issue a certificate of

Religious Marriage.

- Religious marriage shall take place when a man and a woman have performed such acts or rites as deemed to constitute a valid marriage by their religion or the religion of one of them (Art.3 RFC).
- Religious marriage is simplify performing acts or rites that constitute a valid marriage as per:

1. Religion of both of them or;
2. The religion of one of them.

- Therefore, the religions institution that have a jurisdiction to entertain the celebration of the marriage of the future spouses is either the religion of both of them or the religion of one of them.

Formalities of Celebration.

- There is no formality for the conclusion of religious marriage prescribed by the law in advance as that of civil marriage.
- The conclusion of religious marriage and the formalities thereof shall be as prescribed by the religion concerned (Art. 26 (1) RFC).
- As far as it fulfilled the formality that is required by the concerned religion, religious marriage is valid before the law.
- But it shall fulfill essential conditions for the validity of marriage (Art. 26 (2) RFC).

Customary Marriage

- In all community there are different types of customary marriages.
- Custom is a practice that is passed from generation to generation and continued for time immemorial.
- Oromo customary Marriage.docx
- Marriage according to custom shall take place when a man and a woman have performed such acts or rites as deemed to constitute a valid marriage by:

i. the custom of the community in which they live or
ii. the custom of the community to which they belong or
iii. the custom of the community to which one of them belongs.

Formalities of Celebration.

- Like that of the religious marriage there is no formality for the conclusion of customary marriage prescribed by the law in advance as that of civil marriage.
- The conclusion of customary marriage and the formalities thereof shall be as prescribed by the custom of the community concerned (Art. 27(1) RFC).
- As far as it fulfilled the formality that is required by the concerned custom, customary marriage is valid before the law.
- But it shall fulfill essential conditions for the validity of marriage (Art. 27 (2) RFC).

Marriage Celebrated Abroad.

- Marriage celebrated abroad shall be valid in Ethiopia if:

1. it is concluded in accordance with the law of the place of celebration and
2. it does not contravene public moral.

- The same is true for marriages that is concluded out of the region within Ethiopia is valid if fulfilled the above criteria.

Essential Conditions of Marriage

- Essential Conditions of Marriage are elements for the validity of marriage.
- To have valid marriage before the law, there are some preconditions that shall be fulfilled.
- Any marriage that is concluded in violation of these conditions is invalid before the law.
- Non-fulfillment of these conditions impede the conclusion marriage.

Consent.

- A valid marriage shall take place only when the spouses have given their free and full consent (Art. 6 RFC).
- Consent, as provided here, has two aspects:

i. The future spouses shall give their consent:- this one is the communication aspect. Both future spouses shall communicate their willingness.

- In what form?
- Form of the communication is not stipulated here.
- But if we refer to law of contract there four forms of giving consent (i.e. oral, written, signs or conduct).
- So, communication of consent to marriage can be given in one of these forms as far as such is understandable to the parties, person who is leading the ceremony and the witnesses.
- The usual form of giving consent to marriage is oral.

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ii. The second aspect is freedom aspect:- consent which is given shall be based on the free will of the future spouses.

- Freedom is a broad concept and difficult to know its scope.
- To avoid this difficulty the law opted to go the opposite way (i.e. stating conditions that affect the free will of the future spouses).
- the occurrence of prescribed condition that affect the free consent of the parties shall result in invalid marriage.

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- What are these grounds?

1. Fundamental Error/mistake (Art. 13 RFC).

- Marriage concluded as a result of fundamental error in consent shall not be valid.
- But, what is fundamental error/mistake?
- Mistake is fundamental if it is made in relation to the fact which is the base for the continuation of that marriage.
- In another word, fundamental error/mistake is the one that is committed on the material fact which is the ground on which the very existence of that marriage is built upon.
- In the absence of that fact there is no marriage.

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- Examples of fundamental errors (Art. 13 (3) RFC):

i. error on the identity of the spouse:- where it is not the person with whom a person intended to conclude marriage;

ii. error on the state of health. of the spouse who is affected by a disease that does not heal or that can, be genetically transmitted to descendants;

iii. error on the bodily conformation of the spouse who does not have the requisite sexual organs for the consummation of the marriage;

iv. error on the behaviour of the spouse who has the habit of performing sexual acts with person of the same sex.

2. *Consent Extorted by Violence/duress (Art.14 RFC).*

- Marriage concluded as a result of consent which is extorted by violence shall not be valid.
- What is violence?
- Consent is deemed to be extorted by violence where it is given by a spouse to protect himself or one of his ascendants or descendants, or any other close relative from a serious and imminent danger or threat of danger.
- To say certain act is violence or duress the following conditions shall be fulfilled:

i. There shall be a threat.

ii. The threat shall be serious and imminent.

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- The threat shall target the concerned spouse himself or one of his ascendants or descendants, or any other close relative.

Capacity

- Capacity is the ability to conclude juridical act.
- Juridical act that is concluded by incapable person is invalid before the law.
- Marriage is one of the juridical acts that shall be concluded by capable persons.
- Thus, capacity is required to conclude valid marriage.
- For the sake of marriage two group of persons prohibited:

i. Minors

Age

- Neither a man nor a woman who has not attained the full age of eighteen years shall conclude marriage (Art. 7 (1) RFC).
- Marriageable age for both male and female is eighteen years.
- Marriage concluded between persons who are under eighteen is invalid marriage.
- But how can we know the exact age of certain person in a country where certificate of birth is not accustomed?
- Sometimes, even, family may not know the age of their child.

Justifications for Prohibition

1. Age is highly related with consent. A person who is underage cannot give his free consent. Minors cannot give sound decision on their own interest.
2. Marriage comes with so many responsibilities like administering the family, earning incomes, upbringing children, etc. Persons who are underage cannot bear these responsibilities.
3. Marriage needs the maturity of sexual organs, especially, in case of females. Early marriage shall cause serious health problem to females.

Exception

- The Minister of Justice may, on the application of the future spouses, or the parents or guardian of one of them, for serious cause, grant dispensation of not more than two years (Art. 7 (2) RFC).
- In this case, a man or a woman can conclude marriage at the age of sixteen if the Minister of Justice permitted on the application of the future spouses, or the parents or guardian of one of them, for serious cause.
- Three things shall be fulfilled:

i. Request
ii. Ministry of justice
iii. Serious cause

Judicially interdicted persons

- Any person who is judicially interdicted shall not conclude marriage ()Art 15 (1) RFC.
- Marriage concluded by judicially interdicted person is invalid marriage.
- What about notorious insane?
- The law only prohibit judicial interdicted person from concluding marriage.
- But under law of persons notorious insane is also prohibited from performing juridical acts.

Justifications for Prohibition

1. Sanity is highly related with consent. A person who is insane cannot give his free consent. Insane persons cannot give sound decision on their own interest.
2. Marriage comes with so many responsibilities like administering the family, earning incomes, upbringing children, etc. Persons who are insane cannot bear these responsibilities.

- The court may, on the application of interdicted person himself or by his guardian authorized conclusion of marriage by judicially interdicted person (Art. 15 (1&2) RFC).
- Two things shall be accomplished in this case:

1. Request by interdicted person himself or by his guardian and
2. Admission/acceptance of the request by the court.

Relations

- A man and a woman who are relatives within the degree of relation that prohibit marriage shall not marry one another.
- Marriage between close relatives is prohibited by the law.
- if concluded that marriage is invalid.
- The following two relations prohibit marriage between a man and a women to the extent of degree that is prescribed by the law:

i. Consanguinity

Consanguinity/blood relation

- Marriage between persons related by consanguinity in the direct line, between ascendants and descendants, is prohibited.
- In the collateral line, a man cannot conclude marriage with his sister or aunt; similarly, a woman cannot conclude marriage with her brother or uncle.
- Why? What is the justification for prohibiting marriage between relatives?
- The justification given at the time of the enactment of the revised family code is its harmfulness to the health of the offspring.
- Children that may born from relative husband and wife are highly vulnerable hereditary disease.

Affinity/marriage relation

- Marriage between persons related by affinity in the direct line is prohibited.
- In the collateral line, marriage between a man and the sister of his wife, and a woman and the brother of her husband is prohibited.
- Why? What is the justification for prohibiting marriage between relatives by affinity?

Bigamy/prior bond of marriage

- Bigamy is the act of marrying one person while legally married to another.
- It is the state or practice of having more than one spouse simultaneously.
- It will apply for both and female as far as second marriage is concluded before the legal dissolution of prior marriage.
- A person shall not conclude marriage as long as he is bound by bonds of a preceding marriage (Art. 11 RFC).
- Marriage that is conclude by a person who is bound by prior bond of marriage is invalid

justification

- The main justification for prohibition of bigamy is to protect the right of women.
- Men and women have equal rights while entering into, during marriage and at the time of divorce (Art. 34 (1) FDRE Constitution).
- To ensure this constitutionally guaranteed right of women, bigamy shall be prohibited.

Physical presence of both spouses

- Each of the future spouses shall personally be present and consent to the marriage at the time and place of its celebration.
- Marriage by representation/through an agent is not allowed.
- What is the necessity of physical presence?
- Parties are expected to fulfill procedural matters like declaring their consent, declaring the fulfillment of essential conditions of marriage, etc.

Exception

- Marriage by representation may be allowed by the Ministry of Justice where it has ascertained that there is a serious cause and the person who intended to do so has fully consented thereto.
- To conclude marriage by representation:

i. It shall be permitted by Ministry of Justice;

ii. There shall be serious cause;

iii. The absent person has given his consent to that effect.

Period of Widowhood

- A woman may not remarry unless one hundred and eighty days have elapsed since the dissolution of the previous marriage (Art 16 (1) RFC).
- Why?

Exceptions

- Observing period of widowhood is necessary where:

i. the woman gives birth to a child after the dissolution of her marriage;

ii. the woman remarries her former husband;

iii. it is proved by medical evidence that the woman is not pregnant;

iv. the court dispenses the woman from observing the period of widowhood.

Opposition to Marriage

- Opposition may be made when marriage is to be concluded in violation of one of the essential conditions of marriage (Art. 17 RFC).
- Opposition to marriage can be made when marriage is planned in violation of one or more of essential conditions to marriage.
- It is an act for stoppage/withdrawal of the planned marriage for the reason of violation of one or more of essential conditions to marriage.

Who shall bring the Opposition?

- A person who has a right to bring an opposition to marriage may differ on the basis of the element violated (Art. 18 RFC).
- In case of age, opposition can be made by the parents of the minor, public prosecutor or any other interested person.
- In case of relationship by consanguinity or affinity, opposition can be made by the ascendants of the future spouses, or the ascendants of one of them, or by the brothers or sisters of the future spouses, who have attained the age of eighteen years or by the public prosecutor.

- In case of bigamy, opposition can be made by the person alleging to have had a prior marital relationship with the bigamous spouse or by the public prosecutor.
- In case of judicial interdicted person, opposition can be made by his guardian, or by the public prosecutor.

Opposition to whom made?

- A government organ that has an authority to entertain opposition to marriage is office of civil status/practically municipals.
- Any person who is authorized to oppose marriage shall bring his case before the officer of civil status.
- What about religious and customary marriages?
- Officer of civil status can only entertain opposition of marriage that is planned to be celebrated by that concerned office.

Form and Time of Opposition

- Opposition to marriage shall be made in writing (ART. 19 (1) RFC).
- Opposition to marriage cannot be made in oral form, by sign or in conduct.
- Any one who need to oppose marriage shall bring his opposition before the officer of civil status in written document.
- Opposition to marriage shall be submitted to the officer of civil status within fifteen days from the notification of the marriage.
- If fifteen days lapsed from the notification of marriage opposition shall not be admitted by the officer.

Decision on the Opposition (Art. 20) RFC.

- The officer of civil status shall receive the opinion of the future spouses before deciding on the opposition.
- The officer of civil status shall decide on the opposition within five days from the date of opposition.
- The decision of the officer to celebrate the marriage shall be final.
- Where the opposition is sustained, the officer of civil status shall refuse to celebrate the marriage.
- In such case, the officer of civil status

Appeal.

- The future spouses or one of them may petition/appeal to the court against the decision of the officer of civil status not to celebrate marriage.
- If the court reject the appeal, there is no further proceed and future spouse will have no other chance.
- If the court overrules the decision of the officer of civil status, such officer shall celebrate the marriage.

Violations of Essential Conditions of Marriage

- Marriage that is concluded in violation of one or more of essential conditions to marriage is invalid.
- Invalid marriage is, on the other hand, susceptible to dissolution.
- Thus, the main points that need discussion under this topic are:

1. Who can apply for dissolution?
2. To whom application be made?
3. When shall application be made?

- A person who has a right to bring a claim for dissolution of marriage may differ on the basis of the condition violated.
- Marriage concluded by a man or a woman under the age of eighteen years shall dissolve on the application of any interested person or the public prosecutor (Art. 31 (1) RFC).
- The dissolution of marriage concluded in violation of impediments arising out of consanguinity or affinity shall be ordered on the application of any interested person or the public prosecutor (Art. 32 RFC).

Con't

- The dissolution of a bigamous marriage shall be ordered on the application of either of the spouses of the bigamous marriage or the public prosecutor (33 (1) RFC).
- The dissolution of marriage by judicially interdicted person may be requested from the court by the judicially interdicted person himself or by his guardian (Art. 34 (1) RFC).
- The dissolution of marriage under defective consent may be requested by a

- From the cumulative reading of the whole provision of this topic, the organ of government that has a power to entertain claim for dissolution of marriage is the court.
- Not only marriage dissolution/invalidation of all juridical acts is given for the court.
- Thus, any one who claim for dissolution of marriage shall bring his case before the court.

- There may be time limit to bring claim for dissolution of marriage for the violation of essential conditions.
- This time limitation may differ on the basis of the violated condition.

AGE

- Dissolution of marriage concluded by a man or a woman under the age of eighteen years may no longer be applied for after the age required by law for marriage is satisfied.

Effects of Marriage

- Marriage is a legally recognized institution that will create legal effect.
- Marriage which is concluded by fulfilling all essential conditions for its validity shall create a legal effect on the spouses.
- Marriage comes with rights and responsibilities.
- It grants rights to the spouses and their children and as well, impose duties/responsibilities on them.
- Thus, the core points under this chapter are:

1. Explaining effects of marriage (i.e. rights and responsibilities that result from marriage)
2. Assessing the way of regulating these effects

1. effects

- Generally, marriage shall create two effects:

i. Personal effect:- is the right and responsibilities of the spouses in their personal relationship and in their relationship with their children.

- Persona effect of marriage is rights and responsibilities of the spouses in their relation with one another and their children.
- These rights and responsibilities are:

Con't

b. Management of Family (security and interest of the family, up bringing of the children, education of the children).

c. Cohabitation

d. Fidelity

ii. Pecuniary effect:- is the right and responsibilities of the spouses in their relation to matrimonial property.

- It simply deals with the effect of marriage on the property of the spouses.
- It is all about personal property; common property and management of these properties.

Con’t

- Marriage produces the same legal effects whatever the form according to which it has been celebrated.
- No distinction shall be made as to whether the marriage has been concluded before an officer of civil status or according to the forms prescribed by religion or custom (Art. 40 RFC).
- The effects of marriage shall not depend on the real or presumed consummation of the marriage.
- Effects of marriage commences from the

Regulation of these effects of marriage

- Effect of marriage can be regulated either by the contract of the spouses or in the absence of contract, by the law.
- Thus, effects of marriage can be regulated by:

1. Contract of marriage or
2. The law In the absence of contract of marriage or where the contract of marriage is not valid before the law.

Contract of marriage

- At first, freedom is given for the spouses to regulate the effects of their marriage by their contract.
- The spouses may, before or on the date of their marriage, regulate by a contract the pecuniary effects of their marriage.
- They may also specify in such contract their reciprocal rights and obligations in matters concerning their personal relations.
- Such contracts shall not affect mandatory provisions of the law.
- This contract of marriage shall comply with elements for the validity of contract like consent, capacity, object and form.

Con’t

- In this respect, The contract of marriage of a judicially interdicted person shall be of no effect unless it is entered into by the interdicted person himself and approved by the court.
- **Form**
- A contract of marriage shall be of no effect unless made in writing and attested by four witnesses, two for the husband and two for the wife.
- A copy of the contract of marriage shall be deposited in the court or with the

Modifications to Contract of Marriage

- If the spouses agree to that effect contract of marriage can be modified in the course of marriage.
- Where the interest of the family so requires, the spouses may, by agreement, modify the terms of the contract of marriage.
- But the modified version of the contract of marriage shall not have an effect unless approved the court.
- One copy of the modified contract shall be deposited in the court or with the office of civil status.

Regulation by the law

- In the absence of contract of marriage or where the contract of marriage is not valid under the law, the law regulate effects of marriage.
- Priority shall be give to the spouses to regulate effect of their marriage by the contract.
- But, if the spouses fail to conclude contract of marriage, or if their contract of marriage is invalid, the law regulate the effects of marriage.
- The law fills the gaps that the parties fail to do.
- Therefore, before applying the provisions of the law, contract of marriage shall be referred if any.

Personal Effects of Marriage

- **Respect, Support and Assistance**
- The spouses owe each other respect, support and assistance.
- The contract of marriage shall not derogate such rule.
- **Management of Family**
- The spouses shall have equal rights in the management of the family.
- The spouses shall in all cases, co-operate, to protect the security and interest of the family to bring up and ensure the good behavior and education of their children in order to make them responsible citizens.

Exception

- Where one of the spouses is under disability, absent, abandons his family or is away or, for any other reason, is not in a position to give his consent, the other spouse shall alone carry out the duties family management.
- The spouses shall not agree to the contrary in the contract of marriage.
- Each of the spouses shall retain an exclusive right of decision in matters concerning the up bringing of children whom he had before the marriage.

Cohabitation (Art. 53).

- Cohabitation have two concept under it.

i. The spouses are hound to live together under one roof.

- Where?
- The spouses shall jointly decide their common residence (54).

i. They shall have with one another the sexual relations normal in marriage unless these relations involve a risk of seriously prejudicing their health.

- As per this provision, it is must for spouses to live together and have sexual intercourse that is normal in marriage.
- Any agreement to the contrary shall be of no effect.

Exception

- The spouses may agree to live separately for a definite or indefinite period of time.
- Any agreement made to this effect may be revoked at any time by one of the spouses provided that such revocation is not arbitrary.

Fidelity.

- The husband and the wife owe fidelity to each other.
- Spouses shall be loyal and faithful to one another.
- Any sort of extramarital relationship is prohibited.

Pecuniary Effects of Marriage

- The law regulate the pecuniary effect of marriage in the absence of contract of marriage or where the contract of marriage is not valid.
- the law will intervene only when there is no contract of marriage or when the contract of marriage is invalid due to its contradiction with mandatory provisions of the law.
- The point of discussion under this topic is how the law regulate the pecuniary effect of marriage in the absence of

Personal property

- Personal property is the property that is exclusively owned by each of the spouses.
- Each of the spouses may have their respective personal property .
- so, what type of property is considered as personal property by the law?

1. **Property possessed before marriage.**

- The property which the spouses possess on the day of their marriage shall remain their personal property (Art. 57).

Con't

2. **Property acquired by succession or donation.**

- The property which they acquire after their marriage by succession or donation/gift shall remain their personal property (Art. 57).

3. Property Acquired by Onerous Title.

- Property acquired by one of the spouses after marriage shall also be personal property of such spouse where such acquisition has been made by:

i. exchange for property owned personally, or

ii. with monies owned personally or

iii. derived from the sale of property owned personally (Art. 58 (1)).

Con't

- But, property acquired by onerous title only become personal property when the court, at the request of one of the spouses, has decided that the property thus acquired shall be owned personally by such spouse (Art. 58 (2)).
- In the absence of court approval, property acquired by onerous title shall become common property of the spouses.
- What the need for approval of the court as far as property is acquired in

Common Property

- Common property of the spouses is the property that is owned by them jointly.
- What do you think are the source of common property?

1. Property derive from personal effort.

- All income derived by personal efforts of the spouses.
- What constitute person effort?

2. Property derive from common or personal property

- All income derived from their common or personal property shall be common property of the spouses.
- Property derived from common or personal property is the property which is the proceed of them like breeding, rent, interest, charge, etc.

Con't

3. Property acquired by onerous title which is not approved.

- All property acquired by the spouses during marriage by an onerous title shall be common property unless declared personal by the court.

4. Donation or will bequeathed conjointly

- Unless otherwise stipulated in the act of donation or will, Property donated or bequeathed conjointly to the spouses shall be common property.

Con’t

- Generally, all property shall be deemed to be common property even if registered in the name of one of the spouses unless such spouse proves that he is the sole owner thereof.
- The law gives priority for common interest than personal interest of the spouses.
- Any spouse who claim for personal property shall prove it.

1. Administration of Personal Property.

- Each spouse shall administer his respective personal property and receive the income thereof.
- Each spouse may freely dispose of his personal property (Art. 59).
- **Exceptions:**

i. It may be agreed in the contract of marriage that one of the spouses shall administer all or part of the personal property of the other spouse and that he may dispose of such property (Art. 60).

ii. One of the spouses may freely entrust to the other spouse the administration of all or part of

- The spouse who is entrusted with the power of administering the property shall at the request of the other spouse, submit an annual statement of accounts of the management of such property.

2. Administration of Common property.

i. At the earning stage (Art. 64):

- Each spouse shall receive his earnings.
- The spouses may deposit their respective earnings either in personal or joint bank account.
- But each spouse shall, at the request of the other spouse, render an account to the latter of the income received by him (check and balance).

Exception

- One of the spouses may freely give the other spouse a mandate to receive the income which is due to him.
- But this delegation needs approval of the court that may authorize such spouse to receive the income of the other spouse.

ii. After earning (Art. 66):

- Common property shall be administered conjointly by the spouses.
- What does it mean? Does it mean both spouses shall always exist together and act together all the time?

Con't

- The spouse who performs an act of management in respect of common property is duty bound to inform the other spouse thereof.
- It is about consultation before acting or before performing act of administration.
- Especially, regarding the following acts agreement of both spouses is needed:

a. sale, exchange, rent out, pledge or mortgage or alienate in any other way a common immovable property to confer a right to third parties on such property;

Con't

B. sale, exchange, pledge or mortgage, or alienate in any other way, a common movable property or securities registered in the name of both spouses, the value of which exceeds five hundred Ethiopian birr.

C. transfer by donation of a common property the value of which exceeds one hundred Ethiopian birr, or money which exceeds such amount;

d. borrow or lend money exceeding five hundred Ethiopian birr or to stand

Violation of the Rule

- Where one of the spouses has entered into obligations without getting consent from the other spouse, the court may, at the request of the other spouse, revoke, such obligations.
- An application for cancellation may not be made six months after the day on which the other spouse came to know the existence of such obligation or, in any case, two years after such obligation is entered.

Exceptions

- There are exceptional circumstances when only one spouse administer common property without the involvement of the other spouse.
- These exceptional circumstances are:

i. When there is an agreement which empowers one of spouses to administer all or part of the common property.

ii. When one of the spouses is declared incapable, or is deprived of his right of property management or for any other reason is unable to administer the common property, the other spouse shall alone administer such common property.

Debts of Spouses

- Like that of property, debts of the spouses can be personal debt or common debt (house hold debt).
- Personal debt is the debt to which only the indebted spouse is responsible.
- But, what constitute personal debt is not indicated under the revised family code.
- The law only provides that debts due by one spouse may be recovered on the personal property of the indebted spouse, and in the absence of such personal property, it may be recovered on the common property (Art. 70).

Con't

- But the law tried to define common/household debts by listing them.
- Accordingly, common/household debts are:

i. debts incurred to fulfill the livelihood of the spouses and their children;

ii. debts incurred in order to fulfill an obligation of maintenance to which both the spouses or one of them is bound;

iii. other debts which are acknowledged to be such by the court at the request of either of the spouses or the creditor.

Con’t

- Where the debt is incurred in the interest of the household, it shall be deemed to be joint and several debt of both spouses and may be recovered on the common property and on the personal property of either of the spouses.
- If it is from personal property, the spouses shall contribute to the household expenses in proportion to their respective means.

DISSOLUTION OF MARRIAGE

- Dissolution of marriage is the end of marital relation.
- Marital relation shall end due to different grounds.
- The grounds for dissolution of marriage are the same for all forms of marriage.
- The causes of dissolution of marriage shall be the same whichever the form of celebration of the marriage.
- No distinction shall be made concerning dissolution whichever the form according to which the marriage is celebrated.

Grounds for Dissolution of Marriage

- The following are causes of dissolution of marriage:

i. death of one of the spouses, or declaration of absence, by the court, of one of the spouses;

ii. dissolution order by court due to violation of one of the essential conditions of marriage; or essential conditions of marriage; or

iii. Divorce.

Divorce

- Marriage shall dissolve by divorce where:

i. The spouses have agreed to divorce by mutual consent and such agreement is accepted by the court; or

ii. The spouses or one of them made a petition, for divorce, to the court.

- Therefore, marriage can be dissolved by divorce in two ways:

1. Divorce by mutual consent
2. Divorce by petiton

1. Divorce by Mutual consent

- The spouses may agree to end their marital relation by divorce.
- This agreement also may regulate the consequence/effect of the divorce.
- But this agreement shall be submitted in writing to the court for approval.
- Spouses who petition for divorce by mutual consent are not obliged to state the reason for their divorce.
- spouses whose marriage lasted for less than six months shall not be permitted to divorce by mutual consent.

Power of the Court

- Where a petition for divorce is made, the court shall do the following activities:

i. Discuss with the spouses separately or jointly and counsel them to renounce their intention to divorce.

ii. Where the spouses did not show willingness to renounce their intention to divorce, dismiss them giving a cooling period of not more than three months.

- Where the spouses did not change their intention to divorce within the cooling period given to them, they may re-apply to the court to approve their agreement to

Con’t

iii. The court shall approve the divorce agreement only when it believes that the agreement is the true expression of the intention and free consent of the spouses and is not contrary to law and morality.

iv. The court shall also approve the conditions of the divorce agreed between the spouses together with the divorce agreement.

v. But, where the agreement of the spouses on the conditions of divorce does not sufficiently protect the interest and well being of their children, or, where it adversely affects the interests of one of the spouses, the court may approve only the divorce agreement and give decisions it may deem appropriate to correct the defects on the conditions of divorce.

2. Divorce by Petition

- Petition for divorce is a type of suit made to the court requesting the end of marital relation.
- A petition for divorce may be made to the court either by the two spouses conjointly or by one of them.
- The spouses or one of them may state in the petition the reasons for divorce.
- Stating the reason for divorce is not compulsory.
- The petitioner may state the reason of divorce if he want.

Power of the Court.

- Where the petition for divorce is made, the court shall do the following activities:

i. Speaking to the spouses separately or jointly with a view of persuading them to renounce the petition for divorce and solve their dispute amicably.

ii. Where this attempt is failed or is likely to fail, the court may direct the spouses to settle their dispute through arbitrators of their own choice.

- There might be two probabilities here, accepting the direction of the court or rejecting it.
- Where the spouses have decided to settle their

- On receiving the list of arbitrators or when the arbitrators appear before it the court shall make a record forthwith and give direction as to how the reconciliation has to proceed and to submit the result of the arbitration or the attempt of reconciliation within three months.
- the court may, where it deems necessary, examine the progress of the arbitration and make orders for submission of periodical reports thereon.
- where the court is of the opinion that the spouses may settle their dispute through arbitration, it may, having regard to the progress of the arbitration, give additional time of not more than one month.

Con’t

- The arbitrators shall make an effort to reconcile the spouses and to make them renounce their petition for divorce.
- Where the arbitrators have concluded that the dispute cannot be solved except by divorce, they shall report the result of their attempt to the court without delay.
- The arbitrators shall have no power to give any order or decision concerning the spouses except persuading them to resolve the issue through arbitration.

Con’t

- Where the arbitrators have failed to submit reports in accordance within the given time, the court shall close the case.
- Where the spouses or one of them have petitioned the court to reopen the case within one month from the date of the closure of the case by stating the reasons for not submitting the report and that the issue has not been settled through arbitration, the court may reopen the case and give appropriate decision.

Con’t

- Where the spouses did not agree to settle their dispute through arbitration, the court may dismiss the parties by giving them a cooling period of up to three months.
- Where all the efforts made under the preceding provisions have failed, the court shall pronounce divorce within one month from the receipt of the reports of arbitrators, or the end of the cooling period, as the case may be.

Effect of Dissolution of Marriage

- Dissolution of marriage has its own consequences on children born from that marriage and the property acquired during the lifetime of the marriage.
- Once marriage is dissolved by one of the grounds for dissolution of marriage, the next thing is effect of that dissolution.
- Children may born from that marriage or common property may be acquired in the course of that marriage.
- When marriage is dissolved, the fate of the children that is born from the marriage and property acquired in course of that marriage shall be determined.

1. Custody of the Children

- After dissolution of marriage, the custody of children is the first thing that shall be solved.
- Questions like who shall take responsibility for the custody of the children?; who shall give maintenance? Where they shall live? And the like shall be solved.
- The answer for these questions may differ on the base of the ground of the dissolution of that marriage.
- If the cause for dissolution is death or absence of one of the spouses, the responsibility of custody of the children will fall on the shoulder of the spouse who is alive.

Con't

- If the cause of dissolution is divorce, the court shall consider the following first:

i. The court shall approve the conditions of the divorce agreed between the spouses together with the divorce agreement in the case of divorce by mutual consent (Art. 80 (2)).

ii. Where the marriage is dissolved by divorce by petition, the court shall request the spouses to agree on the conditions of divorce (83 (1)).

- This condition of divorce include custody of children.
- Thus, incase of dissolution by divorce the court shall first consider agreement of the spouses or invite the spouses to make an agreement on matters concerning custody of children.

Con't

- Where the mutual agreement of the spouses on the custody of children does not sufficiently protect the interest and well being of the children, the court may reject it and give decisions it may deem appropriate to correct the defects (Art. 80 (3)).
- Where the spouses are not willing to agree or have failed to agree on the custody of children in the case of divorce by petition, the court shall, by itself, or through arbitrators, or experts appointed by it, or by any other means it thinks appropriate, decide on the custody of children (Art.83 (2)).

- The court shall, when deciding the dissolution of marriage, also decide as to which spouse shall have custody of the children, care of their education, health, maintenance and the rights of the parents and the children to visit each other (Art. 113 (1)).
- When giving decision concerning this matter, the court shall take into account the income, age, health, and condition of living of the spouses as well as the age and interests of the children.
- The court may, on application and taking into account the change of circumstances, revise or reverse its decision regarding the custody and maintenance of the children.

Partition of Property

- where the marriage is dissolved, the pecuniary relation between spouses shall be liquidated in accordance with the agreement entered into by the spouses or the contract of their marriage.
- Agreement under this article is agreement made by the spouses under divorce by mutual consent or agreement made after divorce in the case of divorce by petition.
- Such agreement is not expected in the case dissolution by death or absence of

Con’t

- In default of a contract of marriage or an agreement, or if these are not valid under the law, the pecuniary relations between spouses shall be liquidated by the court.
- Property shall be liquidated by the court as follows:

i. *Retaking of Personal Property:* Each spouse has the right to retake his personal property in kind where he shows that he is the sole owner thereof.

- If one of the spouses proves that any of his personal property has been alienated and that the price thereof has fallen in the common property, he has the right to withdraw there from, beforehand, money or things of value corresponding to such price.

Con’t

- Where both spouses have such right-each of them shall take their respective share from the common property in proportion to their contribution.

ii. Indemnity: Where one of the spouses who has been vested with the power to administer the common property or the personal property of the other spouse, has performed acts which adversely affect such spouse, the court may, at the request of the aggrieved spouse, award damage to such spouse.

- No claim for indemnity may be made by reason of acts which have been performed five years before the dissolution of the marriage.

Con't

iii. Unlawful Enrichment: the court may award indemnity to a spouse who proves that the personal property of the other spouse or of the common property has been enriched to the prejudice of his own personal property.

iv. Payment of debts: where there is a debt incurred by either spouse or both spouses conjointly, and such debt is confirmed by judicial decision, or acknowledged by the spouses, such debt shall be paid before partition of property.

v. *Common Property:* common property shall be divided equally between the spouses.

- How?

1. As a rule, partition shall be made in kind in such a way that each spouse receives some property from the common property.

- The utmost care shall be taken to give each spouse things which are most useful to him.
- Where there is inequality in dividing such Common Property, the inequality of shares in kind shall be set off by the payment of sums of money.

Con't

2. Impossibility of partition in kind: If there is a certain property which is difficult or impossible to be divided and if the spouses do not agree as to who shall have that property in his share, such property shall be sold and the proceeds thereof shall be divided between them.

- If the spouses do not agree on the condition of sale and if one of them so requires, the sale shall be made

Con't

vi. Debts of Spouses due after partition

- If a debt which was to be paid from the common property becomes due after the dissolution of the marriage and after the partition of the property, each spouse shall be liable in proportion to his share.
- If the debt concerns one of the spouses, only such spouse shall pay it.
- This rule of partition shall also apply in the case of dissolution due to death,

Indemnity/damages

- Where the cause of the divorce is imputable to one of the spouses and where justice so requires, the court may order such spouse to make good the damage sustained by the other spouse.

Irregular Union

- An irregular union is the state of fact which is created when a man and a woman live together as husband and wife without having concluded a valid marriage.
- Irregular union is a union that resembles marriage but not marriage.
- It is similar with marriage in a sense that the couples live together as husband and wife.
- Their conduct is similar with that of the married couples.
- It is necessary and sufficient in order to have an irregular union that the behavior of the man and of the woman be analogous to that of married people.

Con’t

- The difference between marriage and irregular union is on celebration.
- For a certain union to be called marriage, there shall be celebration according to one of the modes for the conclusion of marriage.
- But such celebration is not there in the case of irregular union.
- There may be some sort of celebration at the commencement of irregular union. But, what matters is whether that celebration or act constitute one of the mode for conclusion of marriage.

- If it does not constitute celebration or act that is needed in all modes for conclusion of marriage, that union is irregular.

Con’t

- In order to have an irregular union, it is enough to have the behavior which is analogous to that of married people.
- They need not represent themselves to third parties as being married.
- The mere fact that a man and a woman keep up sexual relations between them, even if repeatedly and notoriously, is not sufficient by itself to constitute an irregular union between such man and woman.
- Thus, to consider certain union as irregular union, the couple should treat one another as husband and wife and the community shall treat them as such.

Con’t

- Is there essential condition for interring into irregular union?
- Though the law clearly provided the difference between marriage and irregular union, there is a gap with regard to the essential conditions for entering into irregular union.
- The law say nothing about essential conditions for interring into irregular union.
- Affinity is the only conditions that is prescribed by the law.
- An irregular union shall not create any bond of affinity between the man and the relatives of the woman , and between the woman and the relatives of the man.

Con’t

- The provisions concerning impediments to marriage in the case of affinity shall, however, apply in the case of an irregular union.
- Conditions that impede marriage such as age, consent, relation by consanguinity, bigamy and the like that impede marriage are not clearly prescribed by the law whether they also impede irregular union.
- When we see this fact from the sprit of the law, it is justifiable to prohibit irregular union for non-fulfillment of these conditions.
- Since the purpose of both marriage and irregular union is the same, the conditions that are needed for their conclusion must be the same.

Con’t

- Though it is justifiable to prohibit irregular union for non-fulfillment of these conditions, it is still difficult to solve the case when irregular union is created in violation of this conditions.
- Questions like which authority has a mandate to terminate such union?; who has right to claim for the termination?; when such claim shall be made? and other questions may be raised.
- Generally, there is a clear gap in law concerning essential conditions for

Effect of Irregular Union

- Personal effect of irregular union is not clearly regulated by the law.
- But one can infer the personal effect of irregular union from its definition.
- irregular union is the state of fact in which the behavior of the man and of the woman is analogous to that of married people.
- Personal effect of the marriage shall be practiced by these persons to say that their behavior is analogous to that of married people.
- They shall perform the acts that are expected from married couple to have a behavior which is analogous to that of married people.

Pecuniary Effect of Irregular Union

- Property acquired during such relation shall be common property provided that the relation has lasted for not less than three years.
- To have common property, the relation shall continued for more than three years.
- Once the relation lasted for three years and above, property acquired during such relation shall be common property.
- But, still there is a problem with the term “property acquired during such relation.” What does it mean? Does it include property that is property acquired by succession or donation? Does it include property that is acquired by onerous title?

- Without prejudice to agreements entered into between the man and the woman engaged in an irregular union concerning the administration of their property, matters pertaining to the administration of property, shall be as per the provisions dealing with administration of common property under marriage.
- With regard to debt, the man and the woman engaged in an irregular union shall be jointly and severally liable for all debts incurred for their maintenance, or for the maintenance of their children born of such union.

Con’t

- They shall contribute to the common expenses in proportion to their respective means.
- But, still, there is unclarity with regard to other debts.
- There is no distinction made between personal debt and common/house hold debts.

Termination of Irregular Union

- A man and a woman engaged in an irregular union may, at any time, put an end to such union.
- There is no need to apply to court for termination of irregular union.
- There is no need to have reason for termination of irregular union.
- The party who terminates the union shall not be liable to pay damages unless he commits fault.

Proof of Marriage and Irregular Union

- Proof marriage or irregular union become necessary when the very existence of that marriage/irregular union is denied by one of the spouses.
- Where the existence of marriage is denied, the court shall require the claimant to prove the same.
- A person who is claiming for the existence of marriage shall bring an evidence to prove the same.
- What type of evidence is admissible before the court?

i. Marriage is proved by producing the certificate of marriage drawn up at the time or after the celebration of the marriage in accordance with the law.

Con’t

- This certificate of marriage may be drawn up on the day of marriage in the case of marriage that is made before the officer of civil status.
- Certificate of marriage can be drawn up after the celebration of the marriage pursuant to article 28 of the revised family code, i.e. registration of marriage.
- Can the certificate of marriage drawn up by religious institutions be admitted for prove of marriage?

ii. When it is difficult to prove marriage by producing the certificate of marriage due to the fact that the marriage has not been registered or such register has been lost, it shall be proved by the possession of status of spouse.

Con’t

- A man and a woman are deemed to have the possession of status of spouses when they mutually consider themselves and live as spouses and when they are considered and treated as such by their family and the community.
- Where a person alleging the existence of marriage proves the possession of status of spouse, the court may presume that marriage has been concluded.
- But, this presumption is rebuttable and can be disproved by producing any kind of reliable evidence.

Con’t

- An irregular union may be proved by the possession of such status.
- A man and a woman may have the possession of the status of persons living in an irregular union when, although they are not married, they behave as such, and when their families and the community consider them living as married couple.
- Where a person alleging the existence of irregular union proves such status, the court may presume that they live in an irregular union.
- This presumption may be rebutted by producing any kind of reliable evidence.

Filiation

- Filiation is The fact or condition of being a son or daughter of someone.
- It is the method of establishing the maternity or paternity of certain person.
- Filiation has three concepts or give an answer for three questions:

i. Who is the mother of certain child?

ii. Who is the father of certain child?

iii. To whom certain child belongs?

- Filation is, generally, a method of finding a solution for these issues.

Con,t

- The fact of being father or mother of certain child or being child of certain woman or man shall be determined on the base of the law.
- Unless the law expressly authorizes, the legal rules concerning the ascertainment of paternity and maternity shall not be derogated by agreement.
- They are mandatory in nature and cannot be changed by agreement

Maternal Filiation

- Maternal filiation is the way of establishing/finding the mother of the child.
- Maternal filiation is ascertained from the sole fact that the woman has given birth to the child.
- Giving birth to certain child will give rise to the right as well as the duty of maternity.
- A woman who gave birth to certain child has right to be called the mother of that child.
- From this, it seems an easy task to know the mother of certain child.
- But, due to advancement of technology in genetic engineering, an issue may be created.

Con't

- For example, it is not as such an easy to know the mother of the child in the case of ***surrogacy***.
- In this case, there are two mothers, i.e. biological mother and surrogate mother.
- So, who is the mother of the child under our law in the case of surrogacy?
- If apply the provision of the family code, surrogate mother is considered as a mother of the child because she gave birth to the child.
- But, this is not the intention of the law maker since surrogate mother has no blood relation with the child.

Con’t

- In addition, as per art. 36 (1 (c)) of the constitution, every child has the right to know and be cared for by his or her parents.
- When the constitution give the right to know and be cared for by his or her parents to the children, it is clear that parents means biological parents.
- When we deeply analyze the intention of the law, family law incorporated maternal filation to protect the right of children.
- Therefore, for the strongest reason, the mother of the child in the case of surrogacy shall be the biological mother.

Paternal Filiation

- The father of certain child can be ascertained in three ways:

i. By Presumption

ii. By acknowledgement

iii. By judicial declaration.

- Since it is some how difficult to know the father of the child, the law broadened the way of ascertaining paternal filiation.

I. Presumption of Paternity

- Paternal filiation results from the maternal filiation when a relation provided for by the law has existed between the mother and a certain man at the time of the conception or the birth of the child.
- A child conceived or born in wedlock has the husband as father.
- A child shall be deemed to have been conceived in wedlock if he is born more than 180 days after the celebration of the marriage and within 300 days after its dissolution.
- Once the maternal filiation of the child is established, a man who is the husband of the mother during the period prescribed by the law shall be presumed as the father of the child.

Con’t

- They shall also apply when the record of birth of the child does not indicate the husband as the father of the child or when it indicates that another man is the father of the child.
- In such cases, the record of birth shall merely be corrected.
- When we come to the case of irregular union, a child conceived or born during an irregular union has as father the man engaged in such union.
- Generally, the child born in marriage or irregular union within the time prescribed by the law shall have the husband of his mother or a man who is engaged in that irregular union with his mother as father.

Acknowledgement of Paternity

- When the father of the child is not determined by applying the provisions of the preceding Articles, the paternal filiation of the child may be established by an acknowledgement of paternity.
- Acknowledgement of paternity is the state of fact when certain man declare himself as the father of the child by his free will.
- An acknowledgement is deemed to be made when a certain man made a declaration that he considered himself as the father of a certain child merely conceived or born.

Con’t

- Regarding the form of this acknowledgement, the declaration might be made by a man before an officer of civil status or by a Will he made in writing or by a document attested by any competent authority that he is the father of the child.
- The declaration shall be made personally by the father of the child even though he is a minor or judicial interdiction.
- In principle acknowledgement of paternity is personal to the man who is declaring such and representation is prohibited.
- But, it can be made through representation, if such mandate is given by a special power of attorney approved by the court or by a legal representative judicial interdiction, with the permission of the court.

Con’t

- If the father of the child is died or is not in a position of manifesting his will, the acknowledgement of paternity may be made, in his name, by one of his parents.
- The mother of the child shall be heard and give opinion on the acknowledgement of paternity.
- The acknowledgement of paternity shall be of no effect unless it has been accepted by the mother of the child.
- If the mother of the child is died or is not in a position of manifesting her will, the acknowledgement of paternity may be accepted by the maternal grandfather or grandmother of the child.

Con’t

- In default of maternal grandparents, it may be accepted by another maternal ascendant or by the guardian of the judicially interdicted person.
- An acknowledgement of paternity shall be of no effect unless it has been accepted by the child himself when it is made after the latter has attained majority.
- The acknowledgement of paternity shall be deemed to be accepted where the persons who have a right to accept have not raised any protest against such acknowledgement within one month after they came to know it.

Revocation of acknowledgement

- The acknowledgement of paternity may not be revoked.
- A minor who has acknowledged a child may revoke such acknowledgement for so long as he is incapable and within one year following the cessation of his incapacity, unless his guardian consented to the acknowledgement.
- This right of revocation may be exercised by the minor only.
- It may not be exercised by his legal representatives nor by his heirs.

Annulment/invalidation of acknowledgement

- Acknowledgement of paternity may be annulled on the ground of violence.
- It may not be annulled on the ground of error or fraud unless it is decisively proved that the child could not have been conceived of the person who made the acknowledgement.

Restrictions

- The acknowledgement of paternity may not be made after the death of the child unless the latter has left descendants.
- Where an acknowledgement of paternity has been made in regard to a child, no other acknowledgement of the child by another man shall be permitted unless the first acknowledgement has been annulled.

Judicial Declaration of Paternity

- Judicial declaration of paternity is the way of ascertaining the father of certain child by court decision.
- It is the way of compelling certain man to be the father of the child by the court.
- This judicial declaration of paternity shall come into being where the father of the child is not ascertained by presumption or acknowledgement.
- Though judicial declaration of paternity is one method of finding the father of certain child, it can only be made on limited grounds that are Cleary prescribed by the

Con’t

- a judicial declaration of paternity may be obtained under the following conditions

i. in the case where the mother has been the victim of abduction or rape at the time of conception of the child.

ii. in the case where, at the time of conception of the child, the mother has been the victim of seduction accompanied by abuse of authority, promise of marriage, or any other similar act of intentional deception.

iii. in the case where there exist letters or other documents written by the claimed father which unequivocally prove paternity.

Con’t

iv. in the case where the claimed father and the mother of the child have lived together in continuous sexual relation, without having a legally recognized relation, in the period regarded by law as the period of pregnancy.

v. in the case where the person claimed to be the father of the child has participated in the maintenance, care and education of the child in the capacity of a father.

- A judicial declaration of paternity shall not be demanded or made except in the cases specified above.

Defense for the action of judicial declaration of paternity

- An action brought for judicial declaration of paternity shall not have an effect under the following conditions:

i. In the case where the mother of the child had sexual relationship with another man in the period regarded by law as the period of pregnancy unless it is proved by medical or other reliable evidence that such man is not the father of the child.

Con’t

ii. In the case where the claimed person could not be the father of the child for he was absent or has been a victim of accident during the period regarded by law as the period of pregnancy.

iii. In the case where the person claimed to be the father of the child decisively proves by blood examination or other reliable medical evidence that he could not

Legal Conflicts in Regulating Paternity

- A child might be attributed to several fathers when we apply the rule for ascertainment of paternity, especially in the case presumption.
- The time which is regarded as period of conception by the law may overlap in the following two cases:

i. When a woman concluded marriage or inter into irregular union immediately after the dissolution of former marital relation

ii. when a woman conclude marriage or inter into irregular union immediately after the termination of the former irregular union.

Con’t

- where such problem is created, regulation of paternity may be made by agreement between the persons to whom the paternity of the child is thus attributed by the law.
- With regard to the form of this agreement, the agreement shall be attested by three witnesses and approved by the court.
- Except in the case of force majeure, the mother of the child shall be heard in person.
- But, the is silent about the role of the mother in this agreement.
- It is unclear whether the mother can change the agreement.

Absence of Agreement

- Failing agreement, the paternity of the child shall be regulated as follows:

a) the child shall be attributed to the husband of the mother in preference to the man who has an irregular union with the mother.

b) the child shall be attributed to the husband or the man with whom the mother is living at the time of the birth, in preference to the husband or the man with whom she was living at the time of the conception.

Assignment of Paternity

- Where the child is born within 210 days from the conclusion of the marriage or the commencement of the irregular union, the husband or the man who is living with the woman may, by agreement, assign the paternity of the child to another person who declares that he is the father of the child.
- Where the child is born more than 210 days after the dissolution of the marriage or the cessation of the irregular union, the husband or the man who lived with the mother may, by agreement, assign the paternity of the child to another person who declares that he is the father of the child.

Con't

- As to its form, this agreement shall be attested by three witnesses and approved by the court.
- Except in the case of force majeure, the mother of the child shall be heard in person.
- The agreements shall be concluded by the interested parties themselves where they have attained the age of majority and are not judicially interdicted.
- A mandate to conclude them may only be given by a special power of attorney

Con’t

- The agreement on the assignment of paternity shall not be revoked.
- The agreement on the assignment of paternity may be annulled on the ground of violence.
- It may not be annulled on the ground of error or fraud unless it is decisively proved that the child could not have been conceived of the person who has declared to he the father.

Contestation of Filiation and Disowning

- Contestation is simply challenging the maternal filiation of the child.
- The maternal filiation of the child may be contested at any time by any interested person.
- The action to contest filiation may not be instituted except with the permission of the court.
- Such permission shall not be granted unless there are presumptions or indications resulting from concrete facts enabling the court to grant permission.
- Where the filiation of the child results from the certificate of birth and is corroborated by a possession of status, permission to institute an action to contest filiation may not be granted.

Con’t

- The action to contest filiation shall be instituted against the person whose filiation is contested or against his heirs.
- The mother and, where necessary, the father of the child shall be joined as parties in the proceedings.

Disowning

- The paternal filiation of a child may be contested only by means of an action to disown.
- This action for disowning can be made on the bases of two grounds:

i. When there is no sexual intercourse with the Mother of the child during the period of conception prescribed by the law.

- The person to who the law attributes the paternity of a child may disown such child by proving decisively that he could not have had sexual intercourse with the mother during the period between the 300th and 180th day before the birth of the child.

Con’t

- The spouses shall be deemed to have had no sexual intercourse with one another during the time when they actually lived separately following a petition for divorce made by one of them or in consequence of an agreement concluded between them.
- But, Proof to the contrary by any means is admissible.

ii. When it is impossible to be the father of the child.

- The person to whom the law attributes the paternity of a child may disown such child by proving decisively that it is absolutely impossible that he could be the father of the child.

Con’t

- The action to disown based on this may not be instituted except with the permission of the court.
- Such permission shall be granted when there are presumptions or serious indications resulting from sufficient and reliable facts enabling the court to accept the action.
- The presumptions and serious indications may consist of physical characteristics of the child recognized by science to be incompatible with those of the father.

Con’t

- They may also result from the fact that the woman has concealed the birth of the child or her pregnancy to the man under circumstances which are apt to create doubts as regards his paternity.
- The adultery of the mother or her admission that the child has another father are not sufficient, by themselves, to constitute serious circumstantial evidence.
- Who can apply for disowning?
- Only the person to whom the paternity of the child is attributed by legal presumption may institute an action to disown.

Con’t

- No action to this effect may be made by the mother or by a man who claims the paternity of the child or by the public prosecutor or by the child himself.
- An action to disown may, with permission of the court, be instituted by the judicially interdicted person himself.
- The action may, with the same permission, be instituted in the name of the interdicted person by his guardian.

Exception

- Where the person to whom the paternity of the child is attributed by law dies or becomes incapacitated within the time fixed by law for instituting the action to disown, one of his descendants, in his stead, may institute an action to disown.
- In default of descendants, the right to disown may be exercised by his father, or mother, or in their default, by one of his ascendants.
- In default of ascendants, it may be exercised by one of his brothers or sisters, to the exclusion of any other heir or representative.

Con’t

- When shall this claim be made?
- An action to disown shall be instituted by the man to whom the paternity of the child is attributed by law within 180 days following the day he knew or he should have known the bil1h of the child.
- The action to disown shall be instituted against the child or, where he is dead, against his heirs.
- The mother of the child shall be joined in the suit.
- Where the child is minor, he shall be represented by a tutor ad hoc appointed by the court for this purpose.

Restriction

- Disowning shall not be allowed where it is proved that the child has been conceived by means of artificial insemination with the written consent of the husband.