CHAPTER FOUR

DISSOLUTION OF MARRIAGE

Definition of marriage dissolution

- It is the breaking of the conjugal bond and the effects the union of the spouses produced either as regards them or as regards third parties.
- It is the withering away of a marriage which had been producing the attendant effects.
- It is to put an end to the legal effects that it produced as between the spouses and as regards third parties.
- Voidable contract is a contract that can be annulled for defects.
- Void contract is a contract that has no legal effect from its start.

Grounds of dissolution

- All the causes and effects of dissolution of marriage apply uniformly irrespective of the form the marriage is celebrated.
- We have four grounds of dissolution that can be categorized in three, namely:
  - Dissolution by operation of the law
  - Dissolution by judicial declaration
  - Dissolution by acts of the spouses

Dissolution by operation of law

- This is bringing the marital conjugal to an end for the following conditions occurred.
  - When one of the spouses (and for stronger reason both) die their marriage comes to an end by operation of the law.
  - When a spouse (or both of them) is declared absent.
- In these condition there is no need of action.
- What will happen to the marriage if the person who is declared absent comes back?

Judicial Dissolution of Marriage

- This ground for dissolution of marriage is the result non fulfillment of the essential conditions of marriage.
- A marriage tainted with an impediment can be annulled on the application of the entitled parties.
- The court should order the dissolution of the marriage as long as the application is not barred by a period of limitation.
  - Age: till attainable age art 31 RFC
  - Bigamy: if one spouse die art 33 RFC
  - Incapacity: six months after termination of disability art 34

Dissolution by act of spouses: Divorce

- Divorce is defined as the rupture of a valid marriage during the life time of the two spouses.
- The word divorce, in Latin ‘*divorcium’,* comes from *‘divertere’* meaning each party goes its own way.
- We have two arguments whether divorce should be recognized.
- Argument pro Divorce: Life in common sometimes becomes impossible. It breaks off, or else, if it continues, the household becomes a center of trouble, a permanent cause of scandal

Divorce: in Ethiopian context

- Revised Family code has provided for divorce with attendant various legal consequences.
- Two types of divorce are recognized under RFC:
  - Divorce by mutual consent
  - Divorce by petition

Divorce by mutual consent: art 77-80 of RFC

- Divorce by mutual consent is also known as No fault divorce.
- Traditionally absence of fault was a defense to an action of divorce.
- Spouses can agree to divorce by mutual consent and this agreement must be submitted to the court for approval.
  - They shall give their consent freely
  - It shall state the consequence of their divorce
  - They have the right not to state any reason for divorce
  - It must not against law or moral
- Divorce by mutual consent is not permissible for

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- A court which receives a petition for divorce by mutual consent of the spouses is expected to attempt to make the spouses renounce their intention to divorce.
- For this purpose it can give Cooling period up to three months.
- Cooling period is not mandatory procedure.
- If not agreed within the cooling period, the spouse shall inform the court within six months after the end of cooling period.
- If the court finds the divorce proper it declare it.

Cassation decision: divorce by Defacto

- Case No 20938 W/r Shwaye Tessema Vs Sara Lngane, Vol 4
- It gives ruling on living separately for a long period, having the intention of no marriage is one kind of divorce.
- However the HOF decide that this interpretation is unconstitutional.
- W/r Ayalnesh Mogos Vs W/r Amelmal Asaye, HOF file No 40/10, date Meskerem 27, 2012.

Divorce by petition: Art 81-84 of RFC

- The other way of ending the conjugal union by divorce is when on of the parties requests (petition) the court to end the marriage.
- What makes differ from mutual consent is:
  - It may be only one of the spouses who requests for the ending of the union
  - Here the purpose is seeking the court's pronouncement of divorce
  - They have no duty to agree on divorce conditions
  - The spouse can state the reason for divorce (it is not mandatory)

Process of divorce by petition

- Either or both spouse bring petition.
- The court has an obligation to speak to the spouses either separately or jointly, with a view of convincing them to renounce their petition.
- Recommend the spouses to solve amicably
- The court shall order regarding the maintenance of the spouses, the custody and maintenance of their children and the management of their

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- Send their case to be seen through arbitrators, read art 117 and the following of RFC
- Give cooling period up to three months
- Court is duty bound to pronounce divorce within one month from the receipt of the report of the arbitrators, if any, or from the end of the cooling period.
- But it may postpone the judgment on conditions of divorce for not more than six months.

Decision on conditions of divorce

- The court request spouse to agree on conditions of divorce
- It can send to arbitrators or other expert who can provide means of conditions of divorce.
- The court it self can decide immediately.
- The court shall approve spouses' agreement or arbitrators or other expert proposal of conditions of divorce.
- If divorce is imputable to one spouse, court can decide damage to other spouse.

Effects dissolution of marriage: Art 85-93 of RFC

- There are many things that should be settled as they have shared many things together and acquired property in the marriage.
- Custody of children and division of property are the major ones.
- Personal effect: reciprocal duties that exist during the currency of the marriage come to an end.
- Pecuniary effect: Pecuniary relations between the spouses are to be liquidated in accordance with the contract of marriage, if any, or the agreement

Personal property

- Each spouse retakes his personal property in kind.
- If alienated with common property and proved , each spouse has the right to withdraw from the common property.
- Damage can be paid for spouse, If:
  - acts which adversely affects the other spouse
  - acts which constitute bad administration
  - an act of fraud against the right of the other spouse, or
  - where he performed such acts without a mandate
- But damage cannot be paid for faults happened

Common property

- Jointly owned property common property, divided equally between the two spouses
- In principle, the partition should be made in kind.
- Utmost Care should as well be taken to give each spouse things which are most useful to him/her.
- Property which is difficult or impossible to be divided:
  - The spouses can agree who take it and pay the share
  - If spouses cannot agree this property sold and equally take their money
- Even a spouse can ask the auction.

Third party claim

- The law gives protection for unpaid creditors of the spouses who came both before and after the partition of the matrimonial property.
- Creditors can take their money before partition if court order or both spouse acknowledge.
- if the debt which is going to be paid from the common property becomes due after the partition of property, each spouse will be liable in proportion to his/ her share.
- If the debt is personal that spouse shall pay it.

PROOF OF MARRIAGE

How can be proved

- One important question that can be raised in this relation is how does one prove the existence of marriage?
- In Ethiopia we have two ways of proving marriage:
  - Certificate of marriage
  - Possession of Status

Certificate of marriage: Art 94

- All marriages shall be registered under the register of the office of civil status either at the time of celebration or even after the celebration of the marriage.
- Hence, 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.
- Certificate of marriage primary proves the fact of celebration of marriage

Possession of status: Art 95-97

- In default, certificate due to the fact that there is no registration, or destroyed, possession of status is another way of proving marriage.
- 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

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- What is expected of the witnesses is to show to the court?
  - The parties treat themselves as spouses,
  - That the family and other persons treat them as married
  - That they know of the celebration of the marriage at some point in time.