CHAPTER TWO

MARRIAGE

Betrothal: Pre marriage

- Betrothal can be defined as the engagement taken by two persons (fiancé and fiancée) to marry each other at some future time.
- According to article 560 of the civil code contract is made between the parents.
- Betrothal is excluded from revised family code
- SNNP, Amhara and Benshangul Gumz family codes recognize Betrothal.
- The duration of Betrothal is 6 months in Benishangul Gumz the civil code, SNNP 1 Year, AMHARA two years
- Effect of breach of betrothal indemnification and moral damage.

Definition of marriage

- Marriage could be regarded as either a status or a contract.
- Marriage is voluntary union of one man and one woman for life to the exclusion of others.
- Scholars argue either marriage include the celebration or not.
- Do we have definition of marriage in Ethiopia? Of course not, but we can infer a definition for article 1 to 4 of RFC.
- Marriage represents the conclusion or the celebration, which is made by fulfilling the required formalities.

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- Thus in Ethiopia
- Marriage is the legal status, condition, or relationship that results from the special contract (celebration) by which one man and one woman, who have the capacity to enter into such an agreement, mutually promise to live together in the relationship of husband and wife in law for life, or until the legal termination of the relationship.
- In Amhara family code marriage is defined in article 11

Conclusion of Marriage

- There three forms of conclusion of marriage:
  - Civil Marriage
  - Religious Marriage
  - Customary Marriage
- Common features all forms of marriage are:
  - They shall fulfill all essential requirements
  - All forms of marriage have equal validity
  - Equal validity of marriages celebrated abroad (Art 5)
  - All must be registered per to Vital registration proclamation No 760/2012 and its amendment 1049/2021

Civil Status Marriage: Art 2 of RFC

- 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.
- They shall inform officer one month earlier
- Officer shall publicize for fifteen days
- Presence in person is mandatory except in serious conditions (like in military service navy, in prison etc)
- Solemnization, taking oath and four witness necessary

Religious Marriage: Art 3 of RFC

- A man and a woman have performed acts or rites which are deemed to constitute a valid marriage by the religion of both or one of them.
- Can persons with different religion marry?
- The shall follow what dogma of the religion they opt. but this does not mean the effect of marriage shall be also bind by that religion.
- It needs registration

Marriage by custom: Art 4 of RFC

- A man and a woman have performed such acts or rites which are deemed to constitute a valid marriage by the custom of the community both live, belongs or either belong
- Can the spouses use any culture they wish?
- What will happen if the procedure of the custom does not respect?
- It need registration

Essential Conditions of Marriage: Art 6-16

- Essential conditions of marriage are preconditions that the to be married couples should observe before celebrating the marriage.
- They can be categorized:
  - Consent
  - Capacity
  - Impediments

Consent: Art

- Marriage shall be entered in free and full consent (art 34/2 of FDRE constitution).
- Similarly, the spouses should give their full and free consent. (art 6 of RFC)
- What consent mean? Consent shall not be given in error, violence or imminent danger.
- Under Art 13 RFC, no valid marriage results if its conclusion was induced by an error.
- It must be fundamental error.

Fundamental errors

- Error on the identity of the spouse where it is not the person with whom a person intended to conclude marriage
- Error on the state of health of the spouse who is affected by a disease that does not heal or can be genetically transmitted to descendants
- Error on the bodily confirmation of the spouse who does not have the requisite sexual organ for the consummation of the marriage
- Error on the behavior of the spouse who has the habit of performing sexual acts with person of the same sex

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- Violence is other vitiating consent as stated in art 14 of RFC, duress is the main type of violence.
- Duress is a compulsion aimed at inducing a party to an agreement to give his/her consent by threat of imminent and serious harm.
- The harm can be against the party himself, one of his ascendants or descendants or any other close relative.

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- Representation is prohibited as principle. Consent shall be given in person as stated in art 12 of RFC.
- In serious cause ministry of justice, now vital registration Agency can permit representation.
- What is serious cause?

Capacity

- Capacity is all about the mental competence to understand the nature and consequences of one's actions and to act accordingly.
- Age: A man or a woman who has not attained 18 years is proscribed from concluding marriage (Art7 (1) of RFC)
  - This minimum age of 18 years is open for dispensation of not more than two years. But it must be serious cause and permitted by the justice minister

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- **Judicially Interdicted Persons (Arts.15 RFC):** mentally ill or mentally retarded. judicially interdicted cannot conclude marriage unless they are authorized, for that purpose, by the court
- Once the disability is terminated, marriage is allowable.

Impediments

- Impediment is a prohibition imposed on a person. The grounds are:
- Persons related consanguinally and affinally
- Bigamy is prohibited
- Period of widowhood: Period of widowhood is a condition, which proscribes a woman from getting married because of her previous marital status. It is 180 days

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- There are exceptions for period of widowhood:
  - The woman gives birth to a child after the dissolution of her marriage
  - The woman remarries her former husband
  - It is proved by medical evidence that the woman is not pregnant
  - The court dispenses the woman from observing the period of widowhood

Opposition

- When essential conditions of marriage are violated there can be opposition:
  - **Age** - the parents of the minor, public prosecutor or any interested person (like NGOs who stood for the right of the child or women)
  - **Relationship by consanguinity or affinity** - the ascendants of the future spouses, or the ascendants of one of them, or the brothers or sisters of the future spouses, who have attained the age of majority or the public prosecutor
  - **Bigamy** - the person(s) alleging to have had a prior marital relationship with the bigamous spouse or the public prosecutor
  - **Judicial Interdicted Person** - the guardian or the public prosecutor