CHAPTER SEVEN

ADOPTION

Definition of adoption

- Adoption the creation of parent-child relationship by judicial order between two parties who usually are unrelated. (Black’s law dictionary)
- It is a solemn contract which creates relation between two persons analogous and those flowing from legitimate filiation. (Planiol)
- It is bond of filiation created artificially by a contract of adoption between the adopter and the adopted child. (civil code)
- Adoption is a means of creating family relationship in the first degree artificially. Adoption is created by an agreement between the child and the adopter. (RFC)

Who can be adopter?

- Only person who attained full age of 25 years can validly conclude adoption.
- Why 25 age? This is need to be competent in all respect such as, mentally, physically and economically.
- Do we have maximum age? In Amhara family code 65 age is provided.
- When the adopter is a married person, it needs the consent of the other spouse. Unless the adopted child is the offspring of one of the adopters.

Continued

- Only Ethiopian national can adopter. (amendment revised family proclamation no 1070/2018)
- Capability of the adopter necessarily involves the mental capacity of the adopter.
- The existence of children of the adopter shall not constitute an obstacle to adoption.
- However it shall take into consideration the effects of the existence of children of the adopter on the well being and interest of the adopted child.

Who can be adopted?

- Any person who is under 18 years of age and who is under guardianship may be adopted.
- A merely conceived child can also be adopted as long as the adoption in the best interest of the child.
- Several adopters are prohibited for a child. But it is possible in the following manner:
  - If the previous adoption has been revoked or annulled and,
  - Where the adopters were married persons and one of them died,

Parties to the agreement: Art 190-192 RFC

- The contract of adoption is actually entered between the person and the parents/guardians of the adopted child rather than the child him/herself.
- The consent of the following persons must be there:
  - The consent of the adopter
  - The consent of both spouse when the adopter a married person.
  - The consent of both parents of the child
  - The consent of the institution the child is under its custody
- The consent of one of child parent is enough where one of them is ill, absent or incapable in any way to express their consent

Role of court in adoption agreement: Art 194 RFC

- Adoption unless approved by the court shall not have a legal effect. Court shall consider:
  - The opinion of the child if he/she attained 10 and above years of age
  - The opinion of the guardian or tutor of the child
  - The capability of the adopter, in every aspect, to raise and take care of the child
  - The possibility of raising the child inside the country
- Court shall verify vested interest of child.

Effect of adoption

- Adoption primarily creates parent child relationship between the adopter and the child.
- Adoption shall he of no effect with regard to the ascendants or collaterals of the adopter who have expressly opposed the adoption.
- The adopter has to provide the adopted child all the cares and treatments that he normally offers to his natural child.
- The adopted child owes obligation to supply maintenance to his adoptive parent when they are in need of it.
- Adoption also creates inheritance rights one to the other among the adopter and the adopted

Revocation of adoption: Art 195-196 RFC

- Revocation of adoption is official termination of adoption.
- Adoption may not be revoked for any reason other than the situations stated in the law.
- The following are the grounds to revoke adoption:
  - When the adopted child was a merely conceived child, the mother may revoke the agreement unilaterally within six months from the birth of the child.
  - When the adopter treated the child as a slave, or in conditions resembling slavery or makes him engage in immoral acts for his gain, or handles him in any other manner that is detrimental to his future.

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- Petition can be brought to court by adopted child, governmental organ or any other interested person.
- The court shall, before summoning the adopter to appear before it, determine whether the grounds for the petition are real and sufficient to warrant revocation.
- Court is the only organ to revoke adoption on the above grounds.

CHAPTER EIGHT

OBLIGATION TO SUPPLY MAINTENANCE

General concepts

- Obligation to supply or claim maintenance is one of the effects arising from family relationship.
- One person may be a creditor (if s/he can help) or a debtor (s/he is in need) depending on the situation he/she is in or the other members of a family.
- Obligation to supply maintenance arises not because persons made an agreement to this effect, but because they have legal obligation resulting from family relationship.

Subject matter of obligation: Art 197 of RFC

- The content of the obligation includes:
  - The means to feed
  - The means to lodge
  - The means to cloth
  - The means to a care his/her health
  - The means to for his/her education as the case may be in a decent manner having regard to social conditions and local circumstances
  - Paying funeral expenses of the debtor

Continued

- Obligation to supply maintenance is strictly personal to the person claiming maintenance.
- Maintenance cannot be assigned, attached or transferred.
- Maintenance cannot be inherited.

Persons between whom the obligation exist

- Persons related by consanguinity in direct line among ascendants and descendants.
- Persons related by consanguinity in the collateral line only between brothers and sisters.
- Persons related by affinity in the direct line.
- The obligation to maintenance also exist in adoptive affiliation.
- Between the adopted child and his natural family.

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- The following is the order of relatives who bear liability:
  - In the first place spouses
  - Descendants; according to their degree
  - Ascendants; according to their degree
  - Brothers and sisters
  - Descendants by affinity; according to their degree
  - Ascendants by affinity; according to their degree
- A creditor who has many children or sisters or brothers can claim from one of them.
- Debtors can agree on how and who shall pay the allowances to the creditor.

Time mode of payment

- As a rule maintenance is paid in cash and not in kind.
- This sum of money has to be paid in the form of allowances periodically. Usually month basis.
- Maintenance has to be paid on the place where it is convenient to both the creditor and debtor.
- The creditor may not be forced to live in the house of the debtor unless the court decides or the creditor agrees to this effect.

Termination of maintenance

- Obligation to maintenance may cease to exist when:
  - The creditor no more needs it
  - The debtor is absolute unable to pay it
  - The debtor dies
  - The creditor dies and,
  - The creditor becomes unworthy

Continued

- A creditor will become unworthy when he commits a fault against the debtor. The creditor is believed committed a fault, when he committed or attempted to commit a criminal act on the life and property of the debtor, his ascendants, descendants and spouse.
- When the marriage which created the family relationship is dissolved by reason other than death.

CHAPTER NINE

FAMILY DISPUTE SETTLEMENT

General Overview

- Misunderstandings and disputes among spouses in a marriage and partners in an irregular union are inevitable incidents.
- Resolving such disputes using various dispute settlement mechanisms the matter.
- These mechanisms are generally divided into two:
- settlement of disputes by courts and settlement of disputes by out-of-court mechanisms which are collectively called ADR (Alternative Dispute Resolution) mechanisms.

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- ADR (alternative dispute settlement mechanisms) such as arbitration, conciliation or mediation is a common.
- Arbitration *A method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.*

Child custody

- The word custody pertains to whom the child is to live with, and which parent has the responsibility to make major decisions about the life of the child.
- The standard enhanced judicial authority over child custody issues shall be “**best interest of child.**”
- The the court has to take into consideration the income, age, health, and condition of living of the spouses as well as the age and interests of the children.

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- The non-custodial parent is compelled to pay maintenance until his/her child attains majority age (18 years of age).
- Maintenance can be revised at any time.
- The non custodial parent has the right to visitation.