FAMILY LAW

1. Introduction

1.1. Meaning

- Family is the fundamental unit; a building block and the core of the society.
- Family has gone through various changes through time.
- It is an institution where people establish a close relationship.
- It is established by marriage, by filiation or by adoption.
- It is characterized by common residence, economic cooperation, and reproduction.

1.2. Types of Family

i. ***The nuclear family*** – it is a simple family (Husband, Wife and their Offspring)

ii. ***The compound family*** – it is formed thorough the amalgamation of nuclear-family units or parts of them. (E.g. A polygamous household consisting of one man, his wives and their children).

iii. ***The extended family*** – it includes more members in the family (E.g. grandparents, uncles, aunts, etc.)

- Due to its importance, the formation, its survival and its dissolution are regulated by law.

2. Conclusion of Marriage

- In Ethiopia, there are 3 ways of concluding marriage:
  - Civil
  - Religious
  - Customary

These are marriages concluded in Ethiopia

- In addition to these, marriages celebrated abroad in accordance with the law of the place of celebration shall be valid in Ethiopia so long as they do not contravene public moral. (Art. 5)

- Marriage is not defined by the Ethiopian law.
- It may be defined us:
  - “Marriage is 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. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law.”
- It can be seen from the definition that marriage is a solemn contract.
  - Parties cannot simply walkout from the

Betrothal

- In the Civil Code there is the idea of betrothal, which is not included in the RFC.
- Betrothal, unlike marriage, is concluded between the family members of the future spouses.
- Some regional states retained betrothal but differently from that of the Civil Code.
  - Agreement between the future spouses not between their parents.

3. Essential Conditions of Marriage

- Consent
- Age
- Absence of impediments
  - No relation by consanguinity
  - No relation by affinity
  - Not bound by another marriage
  - Not being under a judicial interdiction
  - Not being under a period of widowhood

3.1. Consent

- Full and free consent
  - What if a boy/girl marry due to imposition by their parents? ⇒ If they marry in fear of their parents?

- Consent is affected in the following situations
  - **Fundamental error**
    - Identity of the spouse
    - State of health of the spouse (disease that does not heal or that can be genetically transmitted to descendants)
    - Spouse does not have the requisite sexual organs for the consummation of the marriage
    - Behavior of the spouse who has the habit of performing sexual acts with person of the same sex.

– **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. (Art. 14(2))

3.2. Age

- 18 years of age (but this can be reduced by the Minister of Justice by 2 years) (Art. 7)

3.3. Absence of Impediments

- **Consanguinity**
  - In the direct line
  - In the collateral line

Not allowed to conclude marriage.

- Direct line Ascendant-descendant relationship
- Collateral line Having one or more common ancestors
- The RFC has cut short the rules of the Civil Code.
- So a man cannot conclude marriage with his sister or aunt; similarly, a woman

- **Affinity**
  - in the direct line and in the collateral line
- A person is related to the ascendants and descendants of his spouse in the collateral line.
- A man is related by affinity in the collateral line with sister of his wife and a woman with the brother of her husband.

- **Bigamy**
  – Having more than one wife/husband at the

Article 650 – Bigamy

1) Whoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled, is punishable with simple imprisonment, or, in grave cases, and especially where the criminal has knowingly misled his partner in the second union as to his true state, with rigorous imprisonment not exceeding five years.
2) Any unmarried person who marries another he knows to be tied by the bond of an existing marriage, is punishable with simple imprisonment.
3) Limitation of criminal proceedings is suspended until such time as one of the two marriages shall have been dissolved or annulled.

Article 651 – Exception

- Some Regional States have allowed bigamy.

There are arguments against bigamy.

1. The number of men and women in all societies are nearly equal;
2. It is usually men who are allowed to have two or more wives, not the otherwise;
3. It affects the property interest of the old wife;

- Moreover, the Committee on the Elimination of Discrimination Against Women opposes bigamy as it violates

- **Judicial interdiction**
  - It is one of the sources of incapacity
- **Period of widowhood (Art. 16)**
  - A woman may not remarry unless 180 days have elapsed since the dissolution of the previous marriage.
  - Exceptions:
    a) the woman gives birth to a child after the dissolution of her marriage;
    b) the woman remarries her former husband;
    c) it is proved by medical evidence that the woman is not pregnant;
    d) the court dispenses the woman from observing the period of widowhood.

Opposition to Marriage (Arts. 17-21)

- Articles 17 - 21 deal with opposition to a marriage. That is, someone may oppose the celebration of a marriage on the ground of violation of the essential conditions.
- Different persons are entitled to oppose the conclusion of marriage. The identity of these persons depends on the type of the condition that is violated.
  - **age** → parents of the minor, the public prosecutor or any interested person may oppose.
  - **bigamy** → only the person who alleges that he (she) had a previous marriage with the bigamous spouse or the public prosecutor.

Impediments to marriage can be divided into 3 groups. These are:

- Absolute impediments,
- Relative impediments, and
- Prohibitive impediments

1. Absolute impediments

➔shall always be there.

➔do not fade as time goes by (do not cure as a result of passage of time.)

➔it is always possible to invalidate the marriage. The marriages suffering from these impediments are voidable and not validatable. (E.g. Blood + affinity relationship)

2. Relative impediments

- Can be to invalidated only within a certain limited period of time.
- Once this time elapses, no action to invalidate the marriage is admitted. Voidable and validatable.

E.g. age, vice in consent, bigamy (if the spouse of the first marriage dies)

3. Prohibitive impediments

- Does not lead to invalidation of the marriage even if marriage is concluded in the existence of this impediment. (Period of widowhood)

Effects of Marriage

General Rules of Effects of Marriage

- Equivalence of all forms of marriage
  - All forms of marriage produce similar effects
  - E.g.
    - any income of spouses is their common property,
    - spouses owe each other fidelity.
- Consummation of marriage
  - even if a marriage is not consummated, it produces effects

- Contract of marriage (CM)
  - CM is a contract concluded between the marrying spouses before or on the date of their marriage.
  - The purpose of this contract is to regulate both personal as well as pecuniary effects of their marriage.
  - It cannot be done in violation of the mandatory provisions of the law.
    - For instance, they may not agree contrary to Art. 49(1) of the RFC which states that: “The spouses owe each other respect, support and assistance.”
  - Spouses cannot affect the rights of third parties by their CM.

- It is similar to prenuptial agreement.
- Prenuptial agreement is an agreement made before marriage, usually to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse.
- Contract of marriage is rare in Ethiopia.

Personal Effects of Marriage

1. Respect, support and assistance

- The relationship between spouses is very close and probably the closest relation between two persons;

2. Joint management of family

- Equal right in managing the household;
- Duty to cooperate for the interest of the family and in the bringing up of children.

Civil Code Art. 635

(1)The husband is the head of the family.

(2)Unless otherwise expressly provided by this Code, the wife owes him obedience in all lawful things which he orders.

- Article 35(2) of the FDRE Constitution provides for, "*Women have equal rights with men in marriage ….*"
- ***Inability of one of the spouses*** (Art. 51)
  - The remaining spouse shall bear all the responsibilities
- ***Children of previous marriage*** (Art. 52)
  - Exclusive rights to the parent of the child.
- ***Cohabitation, residence and fidelity*** (Arts. 53-56)
  - Shall live together (separation by agreement is allowed)

Pecuniary Effects of Marriage

1. Personal property

- Personal property can be divided into two:
  - Property that is not acquired by onerous title
  - Property that is acquired by onerous title
- Property that is not acquired by onerous title is the one obtained by way of succession or donation.
- Property that is acquired by onerous title is property obtained through an effort or work, or by exchange of one property by another or through purchase by spending

- Property that is not acquired by onerous title – such property, if acquired on the day of marriage or in marriage shall remain personal property of that spouse.
- Property acquired, by onerous title, by one of the spouses after marriage shall also be personal property of such spouse where such acquisition has been made by exchange for property owned personally, or with monies owned personally or derived from the sale of property owned personally. (Art. 58(1))
  - Court decision in favor of this is required at the request of one of the spouses.

- Personal property may be administered by the owner spouse himself. He/she can freely dispose such property.
  - E.g. of administering renting and collecting the income. (Note that the income derived from personal property is a common property)
  - Administration of personal property may be regulated by a contract of marriage.

2. Common property (Art. 62)

- All income by personal efforts + income from common property + income from personal property
- All property acquired by onerous title in marriage shall be common unless it is

Requisite of Agreement of Spouses (Art. 68)

- According to Article 68, the agreement of both spouses is necessary to do one of the following, even if only one of them is empowered to administer their common property.
  - To sell, exchange, rent out, mortgage or alienate in any way a common immovable property to give a right to third parties on such property.
  - One of the spouses alone has no power to sell, exchange, pledge or alienate in any other way, a common movable property or

- One of the spouses is not allowed to give by way of donation any property the value of which is more than Birr 100 or cash that exceeds Birr 100.
- One of the spouses cannot borrow or lend money exceeding Birr 500 by his own unilateral decision. Nor can he stand surety for a debt of another person to such amount of money.

Q = If a spouse donates a lottery ticket?

- Here the purpose of the law is protecting the common properties of the spouses.

→From this we can understand that the common property of the spouses is ***indivisible*** as long as the marriage is there.

- What do you think would happen if one of spouses violates the rules under Art. 68?
- Art. 69 provides the answer.

Q = What is invalidation of a contract?

 Reinstating in the previous position.

Debts of Spouses

- According to Article 70, if one of the spouses is a personal debtor (e.g. he borrowed the money before he/she concluded the marriage, i.e., ante/pre nuptial debt) such debt may be recovered from his/her personal property.

- Although the debt is concluded by one of the spouses, if it is incurred in the interest of the household, according to Article 70 (2), both spouses are considered to be common debtors.

- In such a case both of them are liable for paying the debt back.
- The debt can be recovered on the common property or on the personal property of the spouses.

➔a personal debt of one of the spouses may be recovered on the common property of the spouses, if the debtor spouse has no personal property or his personal property is not sufficient to recover the debt.

Q = Should the debt extend up to the full extent of the common property or should it be limited to portion of the debtor spouse?

- **Remember indivisibility of the matrimonial property.**

- Although the debt is concluded by one of the spouses, if it is incurred in the interest of the household, according to Article 70 (2), both spouses are considered to be common debtors. In such a case both of them are liable for paying the debt back.

Debts in the interest of household (Art. 71)

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

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

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

Q = Debts in betting or gambling

- If he/she loses?
- If he/she wins?

Contribution to Household Expenses (Art. 72)

- The spouses shall contribute to the household expenses in proportion to their respective means.

Dissolution of Marriage

- As marriage is formed through formal requirements, its dissolution also requires fulfillment of formal requirements.
- The causes of dissolution of marriage are death of one of the spouses or declaration of absence of one of them, dissolution by court order (invalidation) or divorce.
- Divorce is the most frequent means of dissolving marriage.
- Divorce involves the difficult question, as to how to liquidate the pecuniary relation

Divorce

- fault-based divorce,
- no-fault divorce, and
- divorce by mutual consent.

- **Fault-based divorce**
  - a spouse may only divorce if he or she can prove that the other spouse has committed a fault, which the society recognizes as serious enough to justify ending the marriage.
  - is based on the idea that marriage is a lifelong commitment from which a person should not be easily released.

- Traditionally, many countries have used a fault-based system.
- Obtaining a divorce in a fault-based system is difficult.
  - This is because the spouse who desires the divorce must prove to the court the existence of one of the faults listed in the law.
- In some cases this is difficult to do. For example, if the guilty spouse denies committing the fault, and there is no other evidence of the fault, the court may not believe the complaining spouse.
- The list of faults had increased with time.

- In the Civil Code, there were serious causes of divorce.
  - Adultery
  - Deserting the conjugal house for two years
  - Being inmate of a lunatic asylum for two years
  - When absence is declared.
- Note that the Civil Code did not use the expression “fault-based” divorce, but “serious causes.”

No-fault divorce

- A spouse need not prove fault by the other spouse in order to terminate the marriage.
- Thus, under no-fault divorce, one spouse may obtain a divorce simply because he is no longer happy in the marriage.
- It is usually much simpler to obtain a divorce under no-fault rules than under a fault-based system, since the party seeking to divorce does not have to prove fault.
- No-fault laws have made divorce easy as requiring a spouse to provide evidence of fault was difficult under the fault system.

- The rise of no-fault divorce has not been without criticism.
- Some people have criticized no-fault divorce for making divorce too easy to obtain.
- These critics argue that no-fault divorce encourages a frivolous or silly attitude towards the marriage commitment.
- Some critics argue that if one spouse faithfully has performed his or her marital duties, it is not fair to allow the other spouse to divorce him or her.

Art. 75

- ***Divorce by mutual consent***
  - Marriage shall dissolve by divorce either by a mutual consent of the spouses and where such agreement is accepted by the court.
- ***Divorce by petition***
  - Parties jointly or either of the two presents his petition to the court for divorce.
- The spouses are not obliged to state their reason for dissolving their marriage.
- The court also cannot force them to express the reasons for divorce.

- The court, after pronouncing divorce, shall request the spouses to agree on the conditions/or consequences of divorce.
- If the spouses fail to agree on conditions or consequences of divorce, the court shall, by itself, decide on the conditions of divorce.
- However the court may seek the assistance of arbitrators, experts or other persons to pass decision on the conditions of divorce.
- The court must approve the conditions of divorce that are agreed upon by the spouses or decided by arbitrators or

- The court may order a payment of indemnity (compensation) to one of the spouses if the divorce was a result of the fault or misconduct of the other spouse.
  - E.g. If the husband commits adultery, the court may order him to pay some amount of money as a compensation for the damage the wife has sustained as a result of the dissolution of the marriage.
- Art. 84 □ when the divorce is imputable to one of the spouses, the court may order payment of indemnity to the innocent party.
- But the court would pass such a judgment only when justice so requires.

Liquidation of Pecuniary Relations between Spouses

- Dissolution of marriage (death, declaration of absence, court order or divorce) the pecuniary relations between the spouses shall also be liquidated.
  - if spouses are debtors they have to pay back what they owe to their creditors,
  - if they are creditors, they must collect their monies from their debtors, and also divide their common property between themselves.
- Property division is one of the most difficult aspects of divorce, because usually the spouses disagree over who has the right to the property.

- In the past, many countries have discriminated against women by giving them fewer property rights than men, both during marriage and divorce.
- Throughout the world, the laws of many countries have failed to recognize the important role that women play in the family economy.
- The RFC provides that in case of divorce property of spouses shall be divided in accordance with agreement of the parties. If the parties fail to agree, division shall be made by the operation of the law.

Liquidation by Agreement (Article 85 (1))

- The law respects the agreement made between the spouses concerning the liquidation of their pecuniary relations.
- However the spouses cannot set aside any payment of indemnity as a means of compensation for an injury or damage on the common or personal property caused by fraudulent act or maladministration of one of the spouses.

Liquidation in Accordance with the Law (Article 85 (2)**)**

- If the spouses have no contract of marriage in which they have agreed about the liquidation of their pecuniary relations, or they did not make any subsequent agreement on this issue.

  Articles 86-93 shall apply if the souses have not made any agreement concerning the pecuniary relations between them or their agreements are not valid in law.

- **Retaking of personal property**
  - Each of the spouses shall take his personal property in kind. But, such spouse has to

- Where the personal property of one of the spouses has fallen in the common property and if such spouse has proofs to this effect, he can withdraw the value of his personal property from the common property before it is divided between the spouses.

- **Indemnities**
  - Both spouses administer common property of the spouses jointly.
  - But they may agree that only one of them could administer the common property.
  - Also the owner spouse administers his own personal property.
  - However, the other spouse can be authorized to administer the personal property of his spouse.

- While administering the common property, or the personal property of the other spouse, the administrator spouse caused injury to the common property or personal property of the other spouse by his bad administration (by affecting the property interest of the aggrieved spouse) the court may order payment of damages.
- Indemnity payment shall also be awarded when one spouse enriches his own personal property or the common property by the personal property of the other spouse. ***the case of unlawful enrichment!***
- No indemnity payment for bad administrations took place 5 years before the dissolution of the marriage

- ***Creditors***
  - As a result of dissolution marriage, creditors of the spouses should not lose their claims.
  - The law tries to protect the interest of such creditors. Accordingly, the spouses are ordered to pay back the debt that one of them or both incurred before partition of property.
  - It would be easy for creditors to get their money paid back before the spouses partition property and depart each other.
  - Once spouses depart each other after partition of property, the creditors may be required to divide their claims.

- ***Partition of Common Property***
  - Rule = common property of spouses is divided equally.
  - However, this is not always true. For instance, if one of the spouses is ordered by the court to pay indemnity, and such spouse does not have sufficient personal property, the indemnity can be paid from the common property.
  - In such a case, there shall not be an equal division of a common property between the spouses.
  - Community of property is based on the idea that marriage is a partnership to which both husband and wife equally contribute.

- In the past, in a number of countries women received lesser amount of the common property upon divorce.

- ***Can spouses partition their rural farmland upon divorce?***

Rule of partition in kind

- This is important to give the property which is more useful to a spouse.

- But this is not always possible.
  - Difficult to divide setoff
  - If not agree on setoff sale (even by auction)

- ***Debts of Spouses due after Dissolution of the Marriage***
  - After the partition of the property, each spouse shall be liable in proportion to his share.
  - If it is a personal debt, only the debtor spouse shall settle it.

PROOF OF MARRIAGE

- How can we prove whether a marriage existed or not?
- In Ethiopia, in the majority of the cases, existence of marriage becomes a bone of contention in case of death of one spouse.
- Marriage can be proved in two ways: (1) by producing certificate of marriage; (2) by possession of status.

1. Certificate of Marriage

- Certificate of marriage is issued by the officer of civil status.
- The officer of civil status issues the certificate of marriage at the time of celebration of marriage according to the formalities of civil marriage.
  - The officer of civil status is also expected to issue the certificate of marriage even if the marriage has been celebrated according to religious or customary formalities.
  - The officer of civil status issues the certificate for such marriages when he/she is requested by the spouse(s) after the celebration of such marriage.

- The existence of certificate of marriage is believed to prove the celebration of the marriage in one of the formalities of celebrating a marriage.

➔Ethiopian courts allow the proof of celebration of marriage by religious or customary procedures through eye witnesses.

➔They also accept marriage licenses issued by religious institutions and written documents of customary marriages as a proof for the existence of a valid marriage.

2. Possession of Status

- When there is no certificate of marriage for the reason that the marriage is not registered or the certificate is lost, the existence of marriage is proved by possession of status.
- The existence of marriage may be proved by possession of status by producing witnesses that could testify that, to their knowledge, the man and the woman lived together as husband and wife.
- After hearing this testimony, the court shall presume that such man and woman had concluded marriage. (Art.97 (1))

- Presumption by the court means, presumption of the celebration of the marriage.
- But this presumption can be rebutted when reliable evidence to the contrary is produced (Art.97 (2)).
  - E.g. 1. When someone proves that the man and woman had not celebrated the marriage – say, they were about to celebrate the marriage but it was interrupted by the death of the mother of one of the spouses.
  - E.g. 2. When it is proved that one of the spouses lived with another person as husband and wife at the same time.

IRREGULAR UNION
(Unmarried Cohabitation)

- Is a relationship that is similar to marriage (but actually it is not a marriage).
- This union also produces legal effects; some of these effects are similar to that of marriage.
- Today, in some parts of the world people are resorting to IU instead of concluding a formal marriage. The reasons may be the ever-increasing expenses of wedding ceremonies and stringent procedures of divorce.
- To escape these difficulties people sometimes choose to live in an 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. (Art. 98)
- The most important elements of irregular union are:
  - The man and the woman must live together as husband and wife.
  - The man and the woman have never concluded a valid marriage in any of the formalities.

- However, without living together under same roof, if a man and woman exercise sexual relations repeatedly in a manner that is known to other persons, their relationship does not constitute an irregular union.
- To constitute an irregular union, the way these persons live must be analogous (similar and comparable) to that of married persons.

Effects of Irregular Union

1. Bond of Affinity

- Unlike marriage, irregular union does not create a bond of affinity between the man and the relatives of the woman or between the woman and the relatives of the man.
- However, though irregular union does not create a bond of affinity, the rules of impediments shall apply.
- They cannot do so even after the termination of their irregular union. (See Art. 100.)

2. Community of property

- If the relation of the man and the woman in the irregular union has lasted for ***at least three years***, community of property shall be created between the man and the woman. Article 102(1).
- Unlike the case of marriage, community of property shall not begin at the first date of their relation.
- Once they have lived for three years, the community of property shall be effective from the time of commencement of the relation.
- The provisions of community of property of spouses shall also apply to the man and the woman who live in an irregular union.

- If they want to interrupt their relation, they have to liquidate their pecuniary relations by following procedures, which are similar to that of marriage. (Art. 103)
- Moreover, the man and woman engaged in irregular union are jointly responsible to administer their common property and to rear their common children.
- For any debt incurred in the interest of their livelihood, both are responsible.
- As far as filiation of children is concerned, marriage and irregular union are one and the same.

- In the Civil Code, irregular union did not result in community of property between the man and the woman, for whatever longer time they have lived together in the irregular union.
- Absence of community of property in an irregular union was extremely disadvantageous to women.

3. Termination of union

- Unlike marriage, there is no need to go through a certain formal procedure to dissolve or terminate the relationship that is created as a result of an irregular union.

- The man and the woman can put to an end their union at whatever time they like.
- They can terminate such union either by their joint agreement or by a unilateral decision of either of them.
- The party who is terminating the union by his decision is not liable to pay compensation to the other party, unless he commits fault.
- Although irregular union creates community of property after it has lasted three years, still it is not equivalent with marriage. One of its differences is the procedure of its interruption or termination.

Proof of Union

- According to Article 106, irregular union is proved is by possession of status of persons living in an irregular union. This is the only way in which the existence of the union is proved.

Possession of status of persons in an irregular union

- It is said that a man and a woman have the possession of status of persons in an irregular union, if such persons behave like married persons (although they are not formally married).

- Their neighbors, relatives and community members also consider them living as married couple.
- When such facts exist, the man and the woman will have the possession of status of persons in an irregular union.
- When it is said that they behave like married persons, they mutually consider themselves and live as spouses.
- Proof of irregular union can be better made through witnesses. The best persons to be called, as witnesses are: in the first place, members of families of the man and the woman, and in the second place, members of the community.

- Since the relation is analogous to marriage, the law expects that members of families of the man and the woman could know the relation.
- If the relation is unknown to the family members of (e.g. of the man), because the woman always hides herself from the man’s family, it is not possible to prove the relation using only members of the family of the woman.

  ⇨ See cases on the material.

CHAPTER 8

SETTLEMENT OF DISPUTES ARISING OUT OF MARRIAGE AND IRREGULAR UNION

- Disputes may arise in marriage (and IU) and the law has devised certain mechanisms how they shall be handled.
- In the Civil Code arbitrators, which commonly known as “shimagles” serve as first instance court for family affairs. They had great powers on family cases – from deciding on very serious divorce cases to reconciling minor disputes.

- Although the institution of family arbitrators was retained in the RFC, its powers were so much reduced.
- In the RFC the arbitrators have only the power to reconcile the spouses. All other powers of the arbitrators are given to the court.
- There are a number of reasons not to give much power to the arbitrators:
  - International situations suggest that divorce be pronounced only a competent court.
  - Many pressure groups, NGO's, etc. strongly appreciate the pronouncement of divorce by a competent court.

- Arbitrators were not able to give quick decisions
- They had no knowledge of the law.
- But they had to apply the substantive as well as procedural law.

- Under the RFC, their power has been restricted to only resolving minor disputes other than disputes related to divorce.
- As it is stipulated in Art.117 of the RFC, it is only the court that is competent to decide on divorce.
- Family arbitrators shall entertain other

- While dealing with the disputes in marriage or irregular union, the court may sit in camera.
- In this case the court may consult both spouses together or it may consult only one of them.
- The court may do this if it thinks that public hearing would spoil the good reputation of the family.
- It may also sit in camera to contain a family secret within the family. (Art. 110)
- In addition to this, the court may refrain from writing the details of the case while passing a divorce pronouncement.
- The court does this with the intention of protecting family reputation and marriage secrecy. (Art. 111)

- Once the court has passed a divorce decision, none of the contending parties could lodge an appeal against this decision. (Art.112).
- One of the very important decisions passed by the court is on the custody of children.
  - ➔Disagreement on custody of children is a common problem during divorce (or separation).
  - ➔In such circumstances, the court is expected to give its decision in the best interest of the child. Consequently, it shall take into account the income, age health, and living conditions of spouses (or partners).
  - ➔The court also shall also consider the age and interest of the children.

- The court may revise its decision regarding custody of children in their interest, upon an application made by one of the spouses or another interested person.
- Unlike the case of the Civil Code, there is no indication of the minimum age for the child to be with the mother.

CHAPTER 9

FILIATION

- Filiation deals with the question of who is the mother and/or the father of a child. The question *“who is the mother?”* of a certain child is not a very serious problem.
- However, ascertaining the father of a child is not easy.
- Pregnancy and childbirth are overt phenomena that could be observed by everyone around the woman.
- No such biological attachments between a child and his father exist.

- The law has devised some mechanisms to solve paternity problems.
- The solutions have targeted to reduce, as far as possible, the number of children that remain without legal fathers and to protect men, who are not actually the biological fathers from being, attributed legal paternity.
- Even if these two issues seem to conflict, the law tries to strike the balance between the two.

Ascertainment of Maternity and Paternity

- Ascertaining the mother of a child poses less difficulty on the law, unlike ascertaining the father of the child.
  - Ethiopia adopted the ***Convention on the Rights of the Child***, the Ethiopian family law must try to implement the principles enshrined in the Convention.

Art. 7

1. The child shall ..., as far as possible, have the right to know and be cared for by his or her parents.
2. State parties shall ensure the

- The FDRE Constitution under Art 36 (1), (c) prescribes that:

  "Every child has the right to know and be cared for his or her parents or legal guardians."

General Considerations

- All rules under filiation are mandatory provisions.
  - Therefore, people cannot, by their agreements, get aside the provisions of this section unless and otherwise it is authorized by the law. (Art.123).
  - The law may authorize an agreement between two or more persons as to how they are going to regulate the paternity of a certain child. It is only in such circumstances that parties may conduct agreements on ascertainment of paternity and maternity.

- According to Art. 124 of the RFC, maternal filiation is ascertained from the sole fact that the woman has given birth to a child.
  - This is to mean that, if a woman becomes pregnant and gives birth to a child, without any question such woman is called the mother of the child.

Modes of Establishment of Paternity

- There are three ways by which paternity is established. (Art. 125)
- However, before the paternal filiation is being established, there has to be a maternal filiation.
  - Where there is no maternal filiation, there will be no paternal filiation.

- The three modes of establishment of paternity are:
  - ***presumption of paternity,***
  - ***acknowledgements of paternity and;***
  - ***judicial declaration of paternity.***

1. Presumption of paternity

- A child conceived or born in wedlock has the husband as father. (Art. 126)
- The basis for the presumption is the possible sexual intercourse between husband and wife.
- As per Art 56 of the RFC, the spouses owe each other fidelity.
- Therefore, any child that is conceived or born in marriage is the child of his mother's husband.

- No parthenogenesis in humans!
- A child is deemed to have been conceived in wedlock (marriage) if he is born more than 180 days after the celebration of the marriage and within 300 days after its dissolution. (Art. 128(1))
- If a child is born after 300 days from the dissolution of the marriage, there is no room for him to be a legitimate child of the dissolved marriage. (See Art. 128 (2))
- However the case is different in many countries.

- The legal presumption here works both for conception and birth in marriage.
- Therefore, a child born even a week after the celebration of the marriage can be presumed by the law as the child of the husband of his mother.
- According to Article 126 of the RFC, a child not only conceived but also born in marriage has the husband of his mother as his father.

2. Acknowledgment of paternity

- Acknowledgment of paternity is the second option of establishing the paternal filiation.
- To resort to this option, the child must not be beneficiary of the presumption of paternity. (Art.131)
  - ➔That is, a child conceived or born in marriage or in irregular union cannot be acknowledged.
- Acknowledgement is a ***unilateral juridical act*** performed by a man who declares himself as father of a certain

- Acknowledgment may be made in one of the following ways.
  i. By appearing before the officer of civil status,
  ii. Through a duly made will, or
  iii. By a document attested by any competent authority.
- In all cases, acknowledgment must be made ***in writing***.
- Unless a special power of attorney approved by a court is given, the father of the child must make acknowledgment personally.
- This is true even for a minor (***a minor***, if he intends to acknowledge his child, he ***should personally declare that he is the father***).

- When the man who is expected to acknowledge dies before he makes the acknowledgement or he is not in a position of manifesting his will (e.g., he is seriously sick and unconscious) ***one of his parents*** may make an acknowledgement in his name and on his behalf. (Special power of attorney is needed)
- This is an exception to the prohibition of representation for the purpose of acknowledging a child.
- Pursuant to Art 136(1), the mother of the child must accept an acknowledgment

- Some men may acknowledge a child not for the benefit of the child, but rather for their own advantage.
- Once the child attains the age of majority, not only the mother's admittance, but also the child's acceptance of the declaration of acknowledgment is necessary.
  - ➔Acknowledgment has to be done primarily for the benefit of the child.
  - ➔Acknowledgment is not allowed after the death of the child, unless he is survived by descendants.

- Once an acknowledgment is made the man who declared himself father of the child cannot revoke his declaration. (Art. 140)
- Even if the law prohibits revocation of the acknowledgment of paternity, a minor is allowed to revoke the acknowledgment he made.
- Art 141 allows annulment of the acknowledgment of paternity, ***not revocation***)
- ***Difference between revocation and annulment?***
- Revocation is the personal declaration not to be bound by what someone has undertaken himself.
- Annulment is a declaration made by the court of law when someone applies to the court to get the cancellation of his obligations.

- Once a man acknowledges a child, another man cannot acknowledge such child.
- However, another man can acknowledge the child if the first acknowledgment has been annulled.

➔***Biologically it is impossible to have two fathers.***

3. Judicial Declaration of Paternity

- If a child is not conceived or born in marriage or in irregular union and if such child is not acknowledged by a certain man who declares himself as father, the child's father may be determined by a judicial decision.

Grounds for judicial declaration (Art. 143)

a) When someone rapes or abducts mother of the child, the court shall declare the rapist or the abductor as father of the child. The court shall pass this declaration, only if the child is born within the legally presumed period of pregnancy. That is, he should be born within 181st to 299th days from the rape or abduction of the mother.

b) A man, by abuse of authority, or promise of marriage, or by any other intentional deception seduces the mother of the child such man may also be declared father of the child. In this case also, the child should be born within the legally presumed period of conception.

c) When there exists a letter or another document that indicates in an unequivocal manner the claimed man is father of the child.

d) 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 recognized by law as the period of pregnancy.

e) When the alleged father has participated in the maintenance, care and education of the child in the capacity of a father.

- Notwithstanding the existence of the grounds for a judicial declaration of paternity, the court shall not declare paternity in the case of existence of conditions enumerated under ***Art. 144***.

Legal Conflicts in Regulating Paternity

- It is obvious that a child always has one biological father. When legal paternity becomes an issue, this may not hold true.

- That is, a child may be attributed to two or even more legal fathers.

Regulation of paternity (Art. 146)

- Assume on Meskerem 1, marriage b/n A and B dissolved;
- B remarried another man on Tikimt 1 (without observing the period of widowhood);
- If B gives birth to a child on Miazia 20 (on the 230th day from dissolution of the 1st marriage and on the 200th day from the conclusion of the 2nd marriage);
  - ➔The child is presumed to be the child of both men
  - ➔ The two men must come together and sit down to conduct a discussion to agree on the paternity of the child. The regulation of paternity needs to be made by a special formality. (See Art. 147)

➔ If the two men are unable to resolve the issue, the law shall intervene to give its own solution to the problem. ***(Art. 148)***

Contractual Assignment of Paternity

- Here, a husband or a man who is living with the mother in an irregular union) may assign, by way of agreement, to another man who declares himself as father of the child. (Art. 149)

149 (1) 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.

Art. 149 (2) 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 shall have the right provided in the preceding sub-article.

Proof of Filiation

- A person is required to prove a certain woman is his mother or a certain man is his father ***only when his filiation is challenged.***
- It is important to note that proof of

- There are three ways by which filiation is proved, depending on circumstances. These are:

1. ***by producing the recorded of birth; or***
2. ***by possession of status; or***
3. ***by action to claim filiation.***

1) Record of Birth

- According to Art 154 of the RFC, both the paternal and the maternal filiation of a person are proved by his record of birth.
- A child born outside marriage or outside irregular union cannot have a record of birth that indicates some man as his father, unless such man acknowledges the child or judicially declared to be father of the child.
- In such circumstances, the child will have a record of birth only in his mother's name.

- According to Article 24 of the Registration of Vital Events and National Identity Card Proclamation No. 760/2012 (as amended by Proclamation No. 1049/2017), record of birth shall contain:
  - The child's full name, sex, date of birth, place of birth, type of birth (whether single or more) and aid rendered during birth;
  - The child's parent's full name date and place of birth, principal residence, marital status, citizenship, religion, **ethnic origin** and, their signatures or signature of the delegated parent;
  - Where the declarant is other than the parent of the child the declarant's full name, relation with the child, sex, date and place of birth, principal residence and signature;

- Name and signature of the officer of civil status, seal of the administrative office and date of registration; and
- Other necessary information as may be determined by the appropriate federal organ.

- If a child has no record of birth, his filiation is proved by the possession of the status of child.
- Failure to get a child registered is a criminal act.

Article 656 — Omission to Register the Birth of an Infant or to Report its Abandonment

1. Whoever fails to declare the birth of an infant, as prescribed by law, to the officer of civil status, is punishable with a fine not exceeding five hundred Birr, or simple imprisonment not exceeding one month.
2. Whoever, finding a newborn infant abandoned, fails to report it to the appropriate authority, is liable to the same punishment.

Possession of Status

- If a child has no record of birth, his filiation is proved by the possession of the status of child. (Art. 155)
- A person has the possession of status of child when the community treats him as being the child of a man or a woman.
- The community naturally considers someone as father or mother of the child, when such person does everything for the child that is normally done by any parent to his child.

- Like the case of record of birth, in the case of possession of status also the child must have been conceived or born in either marriage or irregular union. That is, ***to prove filiation by possession of status, the child must be conceived or born in marriage or in irregular union.***
- The RFC does not state the modalities of proof of possession of status of child.
- The Civil Code prescribes in its Art 771(1) that possession of statues of child is proved by producing four witnesses.
This can also work for the RFC

- When possession of status is proved by producing witnesses, the court shall presume that the child is born of the alleged man or woman. This is a rebuttable presumption.

Action to Claim Filiation

- When it is not possible to prove filiation by record of birth or by possession of status, it could be proved by an action to claim filiation.
- Action to claim filiation cannot be instituted by the mere will of the claimant.

➔The court must allow someone to institute an

action to claim filiation.

- Action to claim filiation can be brought against the mother of the child or her heirs. When the mother institutes the claim she shall bring it against the child. (Art. 162.)
- In the case of action to claim filiation, filiation could be proved by witnesses or by any other evidence.
- Therefore, if such an action is allowed without any scrutiny by the court, people may abuse this rule and may introduce false evidence.

- The court shall grant its permission to the person who intends to institute an action to claim filiation only after examining the existence of circumstantial evidence resulting from facts which are constant and sufficiently serious to enable it to grant the permission.
- Such circumstantial evidence could be ***a great resemblance between the child and the alleged mother***.

Contestation of Filiation and Disowning

- Both the maternal as well as the paternal filiation of the child may be contested.
- The maternal filiation is contested by the contestation of filiation and the paternal filiation is contested by disowning.

Contestation of Filiation

- This is a mechanism by which the maternal filiation is contested.
- Any interested person may make the contestation at any time. (Art. 163)
- The contestation can be instituted only when the court gives permission. (Art. 164)

- The court permits somebody to institute an action to contest the maternal filiation only when there are indications resulting from concrete facts that enable the court to presume a certain woman is not the mother of a certain person (a child).
- These indications could be; that at the time of birth of the child, the woman might not be available at the place of birth of the child. Or the woman could not be the mother of the child due to infertility, etc.

- As prescribed in Art 174, only the man who is attributed paternity by the law can bring an action to disown a child.
- Unless a man owns a child (or unless he is legally attributed paternity of a certain child), he cannot disown a child.
- For instance, if a child is born in marriage, the husband of the mother will be attributed paternity.
- If the court grants him permission, such man can bring an action to disown a child.

- There are two grounds, for the man who is attributed paternity, to disown a child.
- These are no access to the mother and impossible paternity.

a) No access to the mother

- A person to whom 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.

b) Impossible paternity

- In this case the man who is attributed paternity of the child exercises sexual intercourse with the mother of the child.
- So, he cannot allege that he had no access to the mother.
- What is expected of such man is proving decisively that it is absolutely impossible that he could be the father of the child.
- First of all, to institute an action of disowning on the ground of impossible paternity, permission of the court is required.

- The court gives its permission only when there are presumptions or serious indications resulting from sufficient and reliable facts. (Art. 171)
- The presumptions and serious indications are those indicated under Art. 172.
- The man, who is attributed paternity, can get court permission for the purpose of disowning a child by establishing the physical characteristics of the child those, which are recognized by science to be incompatible with those of the man.

- Examples of physical characteristics of the child incompatible with those of the father could be:
  - When there is a complete dissimilarity between the man and the child. For instance, if a white child with blonde hair and blue eyes is born of Ethiopian parents, or
  - If the blood test of the child and the man gives a negative result, or
  - If the man shows that he is ***absolutely sterile***.
- In such circumstances, the man may institute an action to disown a child.
- The court may allow a man to bring an action to disown a child if the woman has concealed the child or her pregnancy to the man under circumstances, which are apt to create doubts as regards his paternity. (Art. 172(2))

- The man who is attributed paternity of the child is not allowed to disown the child merely on the ground that the mother has committed adultery or she has admitted that another man is her child's father. (Art. 173)
- That is, the law considers that the child shall be a legitimate child although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.
  - The fact that the mother of the child has committed adultery is not a sufficient circumstantial evidence to allow an action to

- According to Art. 178, 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.

CHAPTER 10
ADOPTION

- Adoption is an agreement by which the adopter takes a child to make him his child.
- In Ethiopia adoption is widely practiced, especially in the ***Oromo*** society. It also exists in other societies.
- The incidence of adoption has increased in the aftermath of ***World War II*** throughout the world.
- Basically, adoption is made to the ***benefit of the child.***
- Once the court approves an adoption contract it becomes effective and the child will have all the ***legal rights of natural children***.

- Adoption provides ***childless couples*** with children, serves the adopted ***child's interest in being raised in a presumably better environment*** than would be the case without adoption.
- A person of age and in possession of full civil capacity and legal rights may adopt, provided that he is ***in a position to support and care for his children, legitimate or illegitimate***, in keeping with the means of the family.

- According to ***Art. 180*** of the RFC, adoptive filiation may be created by an agreement between ***a person and a child.***
- This article may lead you to believe that the parties to the contract of adoption are the adoptive parent and the adoptive child.
- However, as you learn in Art. 190, parties to the agreement of adoption are the ***adoptive parent and the guardian of the child.***
- Art. 180 simply shows that an adoptive filiation shall be created between the adoptive parent and the child as a result of an agreement of adoption.

- As far as filiation is concerned, there will be no distinction between an adopted child and natural children of the adoptive parent(s).
- Hence ***for all intents and purposes, an adopted child is assimilated to natural children*** of the adopter. (Art. 181) This rule has an exception.
- That is, adoption shall be of no effect with regard to the ***ascendants or collateral's of the adopter who have expressly opposed the adoption***.

- The ascendants and collaterals of the adopter have the right to oppose adoption.
- Once ascendants and collaterals have made their opposition expressly and get their opposition ***registered in the registry of the court within a year*** from the approval of the adoption, the adoption does not produce any effect on such persons.
- This means, the parents of the adopter shall not be grandparents of the adopted child and the siblings of the adopter shall not be the uncles and aunts of the child. (Art. 182)
- However, their opposition cannot stop the adoptive parent from adopting the child.

- An adopted child will have ***two families***, the family of origin (his natural family) and the family of adoption.
- However, if choice has to be made, the interest of the ***adoptive family shall prevail***.
- For example, if the adopted child dies (assume he is wealthy at the time of his death) and both families need to succeed him, the law protects the interest of the adoptive family by ignoring the interest of the family of origin. (Art. 183)

- As prescribed in Art 184, any person whose age is not less than ***twenty-five years*** may conclude an adoption contract.
  - That is, a person who did not attain twenty-five years of age cannot adopt a child, unless such person is a spouse who adopts a child jointly with the other spouse, who is at least twenty-five years of age.
- One point of revision of the Civil Code by the RFC is age of the adopted child. ***Only children below the age of eighteen are going to be adopted***. (Art. 185)
  - In the Civil Code, the age of the child to be adopted was not indicated. It was only by interpretation that the age of the adopted child was determined to be eighteen years. This problem is resolved by the RFC.

- A married person cannot adopt a child by his ***unilateral decision***.
  - That is, he must obtain the consent of his spouse and they must adopt the child by their joint decision.
- However, a spouse can adopt unilaterally the child of his spouse.
- One interesting thing in the agreement of adoption is the possibility that ***a merely conceived child*** can be adopted.
- This is one aspect of considering a merely conceived child as though he is born whenever the interest of the child so requires.

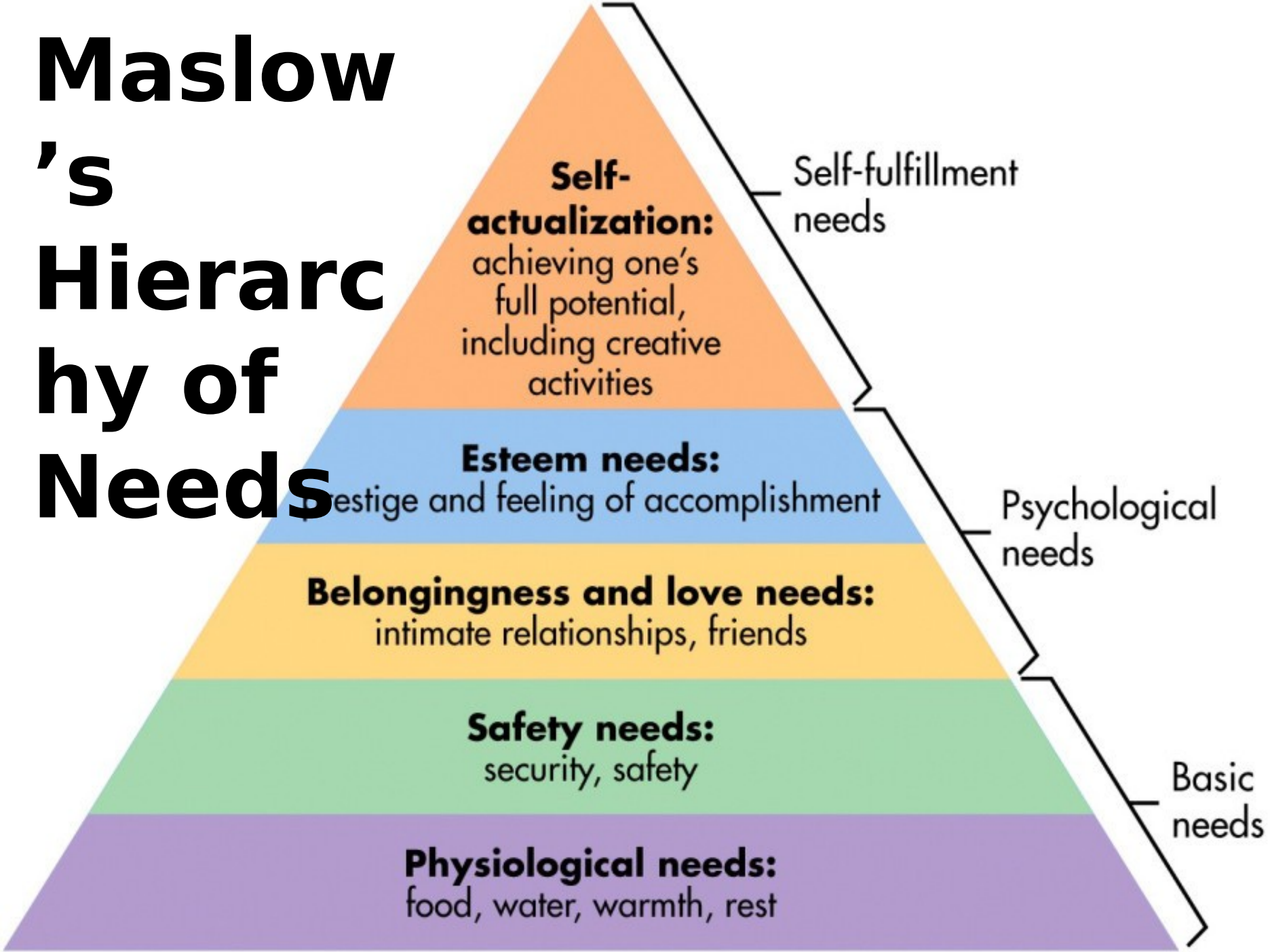
- ***Once the adoption agreement is concluded, it cannot be revoked***.
- But adoption of a merely conceived child is an exception to this rule of non-revocability of an adoption agreement.
- The mother who agreed to give her conceived child by adoption could revoke the agreement unilaterally, within six months following the birth of the child. (Art. 187)
- Naturally, a child will have only one father and one mother. Similarly several parents cannot adopt a child at the same

- The rule of impossibility of adoption by several persons will be excepted:
  - When two spouses adopt a child
  - When the first adopter dies, another adoption can be concluded and these are considered as exceptions to the said rule.
- If the child's father and mother are alive and known, the agreement of adoption will be made between the adoptive parent on the one hand and the father and the mother of the child on the other.
- Institutions called orphanages may act as guardian of a child in the adoption contract. Such institutions can be parties to the adoption agreement when they give any child who is under their custody, to adopters. (Art. 192)

- An agreement of adoption, unlike several other agreements, ***needs to be approved by a court of law***.
- The court verifies whether adoption is made to the benefit of the child.
- Basically, adoption must be made to the advantage of the child.
- However, just like any child, an adopted child ***shall obey the adoptive parent(s)***.

- The court, before approving the agreement of adoption, shall take the following into consideration:
  - The opinion of the child about the adoption;
  - The opinion of the guardian or tutor of the child if he has not previously given his consent;
  - The capability of the adopter to raise and take care of the child;
  - The availability of information which will enable the court to know that the adopter will handle the adopted child as his own child and will not abuse him. (See Art. 194)

Maslow's Hierarchy of Needs



- An agreement of adoption once concluded and approved by the court, the parties may not revoke it for any reason.
- But the adoption agreement may be annulled by a court of law.
  - For instance, the adopter, instead of looking after the adopted child as his own child, handles him as a slave, or in conditions resembling slavery; the court may annul the adoption. Or the adopter makes the child engage in immoral acts for his gain, or handles him in any other manner that is detrimental to his future; the court may annul the adoption agreement. (Art. 195)

- As prescribed in Art 196, the adopted child, a government organ authorized to follow up the well-being of children, or any other interested person, may petition to the court for the invalidation of the adoption when the adopter abuses his power.
- However, the court shall, before summoning the adopter to appear before it, determine whether the grounds for the petition are real and sufficient to warrant annulment.

CHAPTER 11

OBLIGATION TO SUPPLY MAINTENANCE

- As a result of relationship by ***consanguinity, affinity*** or as a result of being ***spouses***, there exists a ***reciprocal obligation*** to supply maintenance (support) between persons.
- One may be obliged to pay maintenance allowance to only limited persons.
  - That is, he is obliged to supply maintenance ***only to his proximate relatives*** by consanguinity and affinity, and to his spouse.
- The ***debtor*** for the maintenance is obliged to supply those ***things necessary*** to ensure the survival of the creditor.

- To be obliged by law to pay maintenance allowance, the creditor, the one who asks payment of maintenance allowance, must be ***a needy person***.
  - Maintenance is not an absolute right.
  - There are also possibilities that one could lose his rights of asking supply of maintenance. (Art. 200)
- The person who is obliged to supply maintenance is bound to his creditor things that are ***necessary for the livelihood of the creditor***.
- This means that the debtor (the one who is obliged to supply maintenance) is not

- The things that are necessary for the well-being of the creditor must be given to him based on the ***social conditions and local custom*** of the area in which the creditor lives.
- E.g. A creditor who lives in the countryside may not claim to be given expensive clothes that are worn by ***fashion-conscious young people*** of big cities.
- Generally, things that are necessary for the livelihood of the creditor are; ***the means to feed, lodge, and clothe; to care for his health and education***

- Therefore maintenance comprises everything indispensable for sustenance, dwelling, clothing, medical attendance education and transportation, in keeping with the financial capacity of the family.
- The ***education*** of the person entitled to be supported may include his s***chooling or training for some profession, trade or vocation***.
- In some countries, such right of the person who is claiming maintenance be effective even ***after such person attains the age of majority***.

- The BEC has no such a rule and the court

- As can be seen from the reading of Art. 198, a person may be obliged to supply maintenance to his spouse, ascendants, and descendants, to the ascendants and descendants of his spouse and to his brothers and sisters.
- These are the only persons that can ask payment of maintenance from someone.
- ***The converse is also true***. That is, someone can demand payment of maintenance only from the above persons.
- Therefore, no person may be obliged to

- The obligation to supply maintenance shall not subsist between relatives by affinity unless the marriage, which created the affinity, is dissolved by death. (Art. 199)
- There are times that the creditor would lose his right to claim for maintenance. The loss of his right is associated with his criminal activities. (Art. 200) The person who has the right to claim maintenance from you may lose his right if he kills your spouse, or your ascendant or your descendant. The same will happen if he attempts to kill (e.g. he shoots and misses) you, your spouse, your ascendant or your descendant.

- Such person also loses his right of maintenance if he, for example, burns down your house, or poisons your father’s cattle, or steels your son’s money. The same will also happen if he simply attempts one of these crimes, without completing them.
- The obligation to supply maintenance shall not exist unless the person who claims its fulfillment is in need and not in a state of earning his livelihood by his work. (Art. 201)
- Generally minors are in need of maintenance

- Moreover, persons who have no sufficient means to take care of themselves as a result of poverty may be considered to be needy if they are unable to work and earn an income.
- Aged persons and those who are seriously sick are considered to be not in a state of earning their livelihood by their work.
- If your ***brother, who has completed a secondary school***, claims maintenance from you, you may reject his claim on the ground that he is able to work, although he has no income.

- ~~Although there are no clear provisions in the RFC, there may be circumstances that you may be obliged to pay for your brother's schooling fees, irrespective of the fact that he is a major.~~
- The obligation to supply maintenance shall, as a rule, be fulfilled by means of ***a maintenance allowance paid by the debtor to the creditor*** for maintenance.
- The payment could be in ***kind or in cash***.
- The ***amount*** to be paid shall be determined by taking into consideration the ***needs of the person*** claiming it and the ***means of the person liable*** to pay maintenance. (Art. 202)

- The ideal amount to be paid is the one that corresponds to the need of the creditor and the paying capacity of the debtor.
- The ***amount fixed*** at one time ***may be revised*** at another by the application of the debtor or of the creditor. (Art. 203)
- That is, maintenance may be reduced or increased proportionally, according to the reduction or increment of the necessities of the creditor and the resources or means of the debtor to furnish the same.

- As the maintenance allowance is believed to be extremely necessary for the survival of the creditor, ***it cannot be attached nor can it be assigned***.
- For example, such person may be a debtor of another person.
- His creditor cannot attach the maintenance allowance.
- Also the creditor of this person cannot ask the maintenance allowance be assigned to him. In this regard there is a ***similarity between maintenance allowance and pension allowance***.

- This rule has an ***exception***. (Art. 205)
- All arrears, which have not been received or claimed within three months from their falling due, shall cease to be due unless the creditor proves that such arrears were necessary for his subsistence. (Art. 206)
- Where ***several persons*** are liable to supply maintenance, the latter may claim maintenance from ***any one*** of such persons.
- Particularly, when all of the debtors have similar relationship with the creditor, the creditor may claim the payment of

- However, the debtor who has paid the allowance shall have recourse against those who have not paid their shares. (Art. 209)
- That is, when the obligation to supply maintenance falls upon two or more persons, the payment of the same shall be divided between them in proportion to the resources of each.
- However, in case of urgent need and special circumstances, only one of them may furnish the support provisionally, without prejudice to his right to claim from the other obligors the share due

- Although there is a reciprocal obligation to supply maintenance between these persons, there is an order of precedence between them.
- For instance, you are obliged to supply maintenance, first of all to your spouse.
- In the second place you are obliged to supply maintenance to your descendants according to their degree.
- Then your ascendants, according to their degree shall follow. (See Art. 210)

- That is, when two or more recipients at the same time claim maintenance from one and the same person legally obliged to give it, should the latter not have sufficient means to satisfy all claims, the order established in Art 210 of the RFC shall apply.
- The debtors for maintenance may validly agree, as regards their reciprocal relations, that maintenance shall be supplied to their common creditor by one of them.
- This agreement is beneficial to the creditor. Because he can pursue only against one debtor instead of many debtors to get his maintenance allowance be paid.

- In such conditions, the creditor may not make a claim against the other debtors to obtain maintenance unless he has a serious reason for not respecting such agreement. (Art. 211)
- The adopted child, his spouse and his descendants may not claim maintenance from the family of origin of the adopted child unless the adoptive family is not in a position to supply such maintenance.
- The family that has to take the prior obligation to supply maintenance is the adoptive family.

- It is only when the adoptive family is unable to supply maintenance that the family of origin is obliged to do so.
- Likewise, the adopted child shall not be bound to supply maintenance to the ascendants of the family of origin unless the latter cannot claim maintenance from another member of their family. (Art.212)
- The obligation to supply maintenance shall include the funeral expense of the creditor of the maintenance.
- Therefore, the debtor of maintenance is obliged to cover the funeral expenses of

- For instance, if the neighbor of the creditor covers the funeral expense of the creditor, the person who is obliged to supply maintenance for the deceased has to pay back the funeral expense to the neighbor of the creditor. (Art. 213)
- This rule shall also apply when the person obliged to supply maintenance to another unjustly refuses or fails to give and when maintenance is urgently needed by the creditor, any third person may furnish maintenance to the needy individual, with right of reimbursement from the person obliged to supply maintenance.

- The provisions of the law relating to the obligation to supply maintenance are mandatory provisions and parties cannot make any agreement in violation of these provisions. (Art. 214)