What do you expect from this course?



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Chapter 1-General Consideration

Introduction

- Family is the **basic unit of a society**
- Family has **social as well as economic** importance in any society.
- Family Law is the **branch of law** which sets the rules to govern the **ongoing responsibilities of family** members to each other; both at the time families are **formed** and **after relationships dissolve**.
- Generally, a law that give protection for Family.

❑Why the law protects Family?

- ✓The Law protects Family because of the fact that family is the fundamental unit of a given community/society or state at large.
- ✓Art 34(3)-since it is a fundamental unit of society it needs protection from the state and government.

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

- Factors affecting a single family may later on affect the whole society.

- **How the Law Protect Family?**

- Family law gives protection for family by determining **rights and duties** of each and every member of the family.

- By setting **necessary criteria** for the establishment of family.

Who enacts family law?

- Federal Gov’t have a power to enact labour code, Commercial code, Penal code –Art 55(3)(4)(5) Constitution .
- Then Art 52(1) provides that those power not given expressly for federal and concurrently, are reserved for the state.
- Art 55(3) federal gov’t may enact **civil laws** which HF deems necessary **to make and sustain one economic community**.

- So family law by its nature depend on **local usage** and it is not a law that create one economic community **(not decided by HF)** and not expressly given for the federal gov't.
- **Finally Remark**: **Enacting family law is power of states.**

Definition of Family.

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

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

- ***Planiol*** defines a family as a group of persons who are united by marriage, by filiation (blood) or by adoption.
- **Murdok** defined family as a social group characterized by common residence, economic cooperation, and **reproduction.**
- According to him, family includes adults of both sexes, at least two of whom maintain **a socially approved sexual relationship**, and one and more children, own or adopted, of the sexually cohabiting adults.

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

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

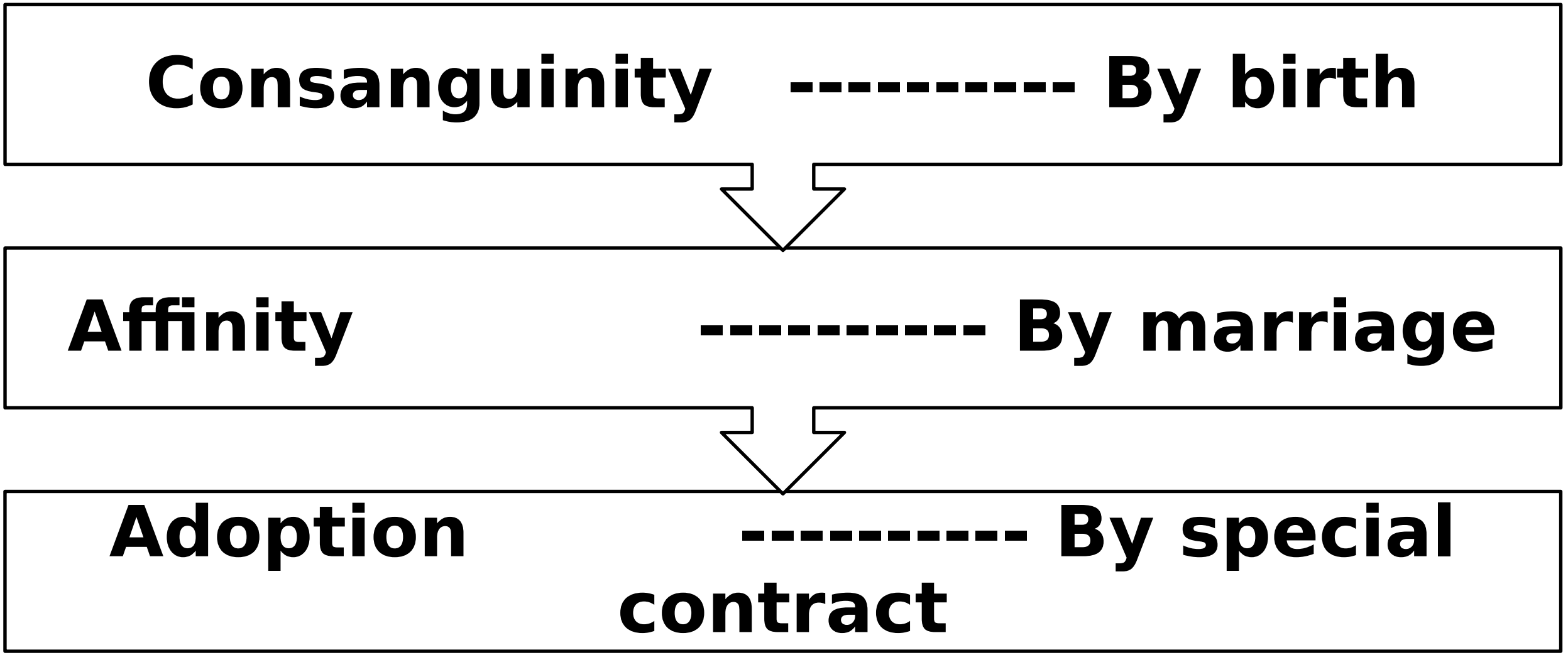
Points Here

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

Types of Family

- ***Intact /Nuclear family:*** A family in which both parents live together with their children.(Husband, wife and children)
- ***Blended family:*** The combined families of persons with children from earlier marriages or relationships (Stepchildren).
- ***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).
- ***Extended family:*** The immediate family together with the collateral relatives who make up a clan; the immediate family together with collateral relatives and close family friends.

Sources Of Family Relationships

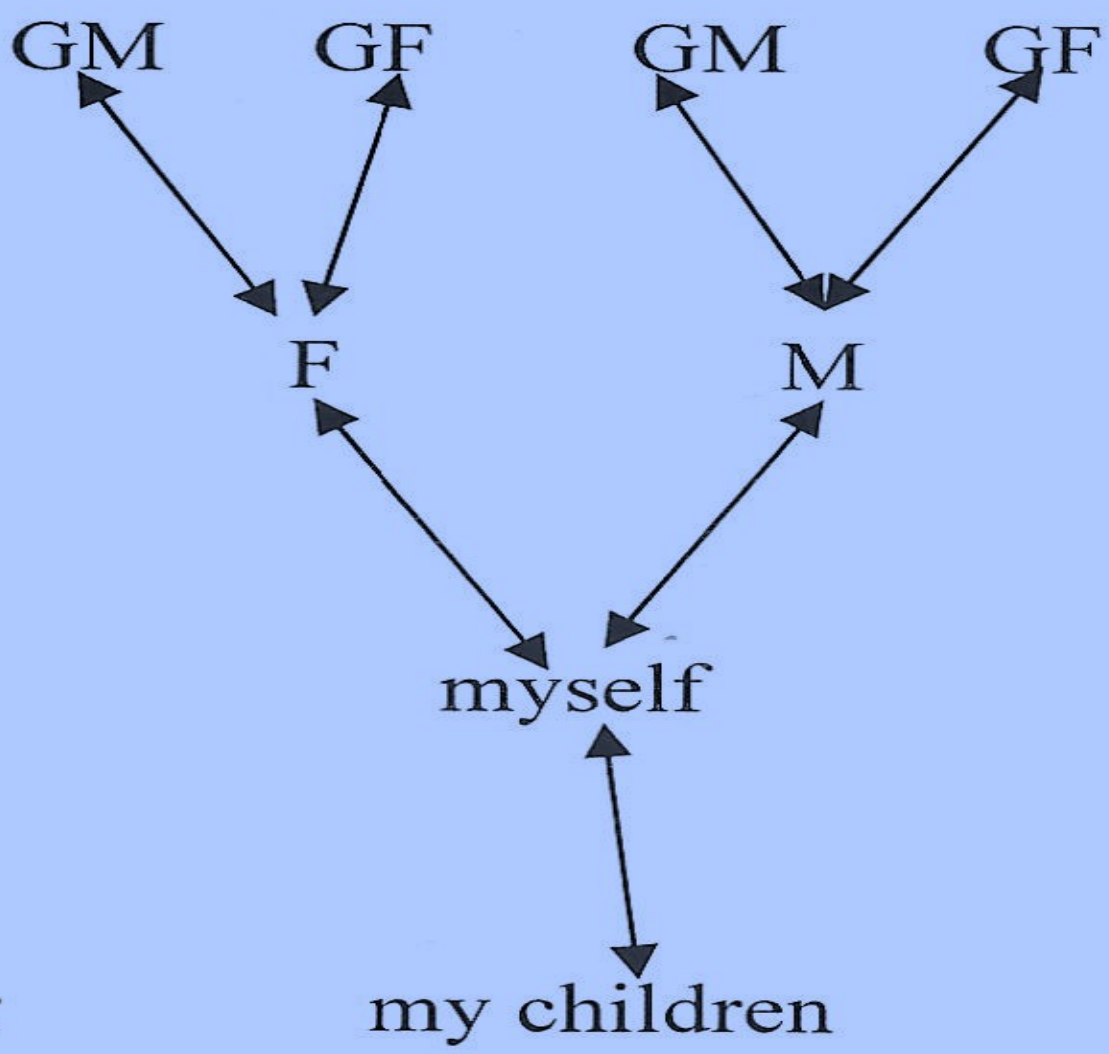


A. consanguinity/Blood relationship

- Relation by consanguinity emanates **from birth.**
- One acquires this relation by the mere fact of his birth from certain group/couples.
- There are two forms;
  - **Direct line relation:** serious of relatives descended from each other form what is called a straight line.
  - **Collateral line relation:** a relationship which unites two relatives descended from common ancestor.

Direct Line

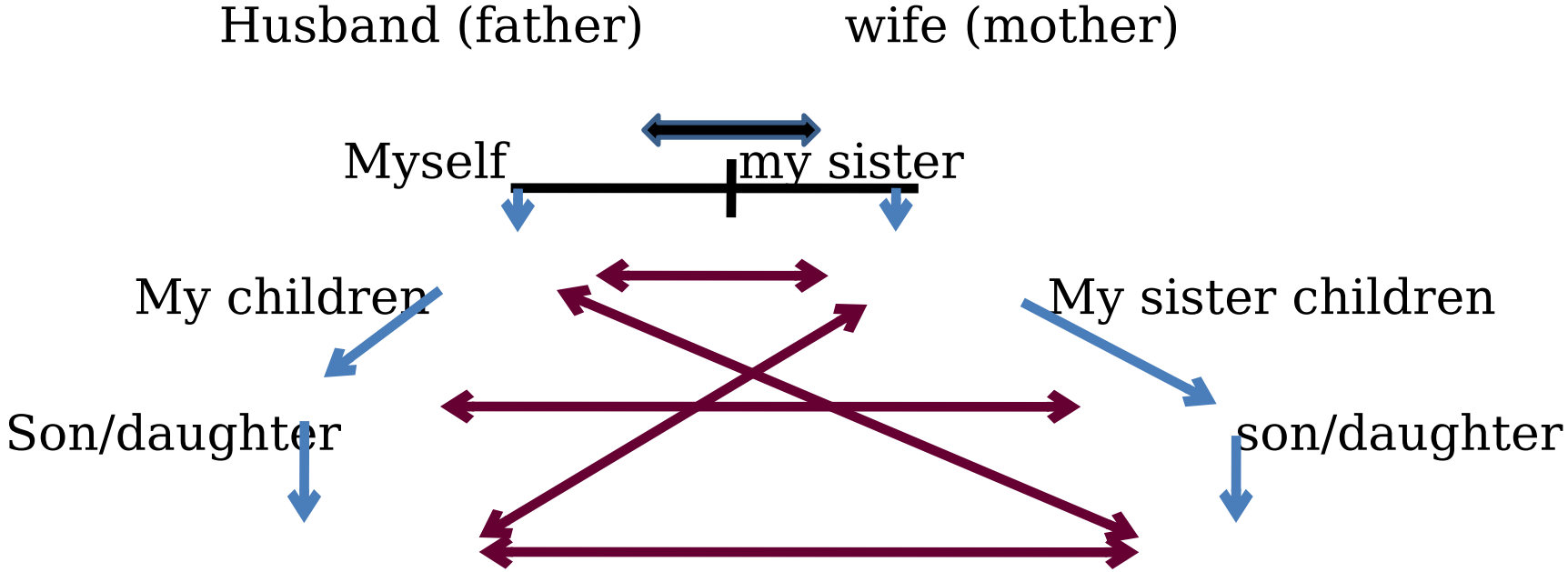

GGF/mother
GF/mother
My Father/mother
Myself (man/women)
My child (son/daughter)
My Grand children
My GG children- son/daughter


GM
GF
GM
GF
F
M
myself
my children

Collateral line

For example:

cousins, **nieces**, **nephews**, **aunts**, **uncles**, **sibling**s (brother and sister), etc



The **red** relationship shows collateral relationships

B. Affinial relationship

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

C. Adoption

- **Relationship by adoption** is created as a result of a **special contract between the adopter and the original families(guardian of child)** of the adopted child. Art 190 F.C
- It is a fictitious/artificial relationship which resulted from the agreement of the parties to the **adoption agreement.**
- Once a child is adopted by someone he is considered as the **biological child of that person.**

Effect of Family Relationship

Once the family relationship is created it has **three effects**;

1.Rights emanating from the relationship:

- **Right of succession** -the right of the relatives to take the estate of the deceased relative.(**Intestate succession**: 1st degree,2nd degree,3rd degree,4th degree-Art 842-852 CC
- **Right to get maintenance** -Article 198 of the RFC provides that the obligation to supply maintenance exists between ascendants and descendants and also between persons who are related by affinity in the **direct line**

2. Obligations emanating from the relationship: is **alimony** for destitute family and custody of child (see art 219 cum 255 of RFC)

- Article 219 of the RFC puts an obligation on the father and mother of the minor child to be the joint guardian and tutors during the life time of their marriage.
- Art 255 RFC- obligation on the parents to take care of the health, residence, **education as well as social contact of the minor child**. To administer property of child.

3. Incapacity of persons: The law prohibits marriage between close relatives. The incapacity to marry is one type of incapacity resulting from relationship. Under 32 of the RFC as well as the regional family codes relationship is provided as **one essential condition** for the **conclusion of marriage.** **See also Art 192-197-incapacity.(may be general or special)**

Chapter 2-Marriage

Betrothal



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

Definition of Betrothal

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

Under Ethiopian Laws

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

- As per Art. 9 of Oromia family code, betrothal is an agreement between fiancé and fiancée to conclude marriage in the future.
- It has no effect unless it is based on their free consent.
- The **federal revised family** code and the **Tigray family code** has ignored the concept of betrothal.

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

Essential Conditions for Betrothal

- As per 10 **of the Oromia** all conditions that impede marriage shall impede betrothal. The same to Amhara regional family code.
- These conditions are; **consent**, **capacity**, **relation (either consanguinity or affinity)**, **bigamy**, etc that are listed as conditions that **impede marriage shall also impede betrothal**.

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

Mode and form of Betrothal

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

Duration of Betrothal

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

- Freedom is given for the parties to fix the exact date of their marriage from betrothal.
- But the law limits the maximum duration of time that can exist between the date of betrothal and the date of weeding/marriage in the **absence of fixed duration by the parties.**
- **Maximum duration: Amhara(2 years)-Oromia(1 year)**
- But there is **no provision that prohibit the parties** from fixing **longer time than what is provided**. these laws prescribed such restriction as **gap filling** in the absence of fixed date by the parties.

Termination of Betrothal

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

Effect of Termination

- A party **who is responsible for the breach of betrothal shall pay all expenses/costs** incurred by the other party in connection with the betrothal.
- He/she shall r**eturn/restore** back **presents/gifts** he/she received on the occasion. As well as the family shall return gifts received on the occasion. **But if the reason is death of one party or sufficient reason exist the shall not return the gift**
- In addition **moral damages** might by order by the court if such is caused due to termination. **As Principle-parties** but also **family(judge may decide)-**Oromia F.C Art 16

Amount of Moral Damage

- The amount of moral damage may extends to 10,000 Birr in the case of the SNNPR family law and **1000 Birr in the case of Oromia**.
- The **Amhara family code** is silent on the maximum amount of moral damages.
- But, can apply the general law of extra-contractual liability to assess moral damage if there is a gap with special law.
- Under **extra-contractual liability** law the maximum amount of **compensation for moral damage is 1000 Birr.**

Period of limitation

- This claim shall be brought within one years from the of **termination betrothal.(Oromia Family code Art 18)**
- When is the time of termination? **It depends on evidence. Subjective.**

Practical problem

- After the betrothal without concluding marriage they start to live together.(child and property)- (fear of cost, complexity of marriage process
- Then it become difficult to identify weather the relation is betrothal or marriage or IU
- Let see the following case taken from the dead file.

Practical case

Dhimma MMO Godina Baaleetti murtii argateedha.(2001)-Galmee 064973

- Oliyyataa fi D/kennituun miseensota poolisii Aanaa Goobbaa ta‘anii yemmu hojjatanitti hiriyyummaan walitti dhiyaachuudhaan jaalalaan waliin jiraachaa eega turan booda bara 1999 keessaa hiriyyootaafi namoota ollaa waamuudhaan sagantaa irbaataa qopheessanii manuma D/kennituun kireeffattee jirtutti, akka oliyyataan jedhutti sirna fuudhaafi heerumaa raawwannee jirraa.

- D/kennituun akka jettutti immoo sirna kaadhimummaa raawwataniiru. Kana booda manuma kana keessatti waliin jiraachaa waggaa tokkoof walakkaa yemmuu turan D/kennituun mana biroo ijaaradhe jettutti galuudhaan oliyyataa of irraa basteetti.
- Oliyyataanis ga‘elaa fi mana koo keessaa waan na‘ariiteef gaa‘elli naaf diigamee qabeenyas naaf haa qooddu jechuun himata M/M Aanaatti dhiyeeffate jira.

- Deebii kennituun gara fulduraa walfudhuuf (ye qelebet sen sera’ata) gone kadhimummaadha malee gaa’ila hin qabnu jeechuun falmitee.
- MMA-kadhimummaa osoo hin ta’iin **Irregular union** jechuun waggaa 3 waan hin gunneef bu’aa hin qabu jedhe.
- MMO –kadhimummaadha jechuun bu’aa hin hordofsisuu jechuun murtii kenne.

How Do you see the case?

Marriage

1. Definition of Marriage

- Like that of Family it is difficult to define marriage.
- Different **scholar and laws** of different countries defined marriage in different ways.
- In the English legal system, marriage, as defined by Sir James Wilde in the land mark case of Hyde Vs Hyde, **is the voluntary union for life** of **one man and one woman to the** exclusion of all others.

- **The Philippines Family Code of 1987** defines marriage as **a special contract** of **permanent union** between a man and a woman entered into in accordance with law for the establishment of **conjugal and family life**.
- **Irish Catholic Bishops** conference defined marriage as the **biological fact that join together** a man and a woman as male and female in a union that is orientated to the **generation of new life**.

Under Ethiopian Law

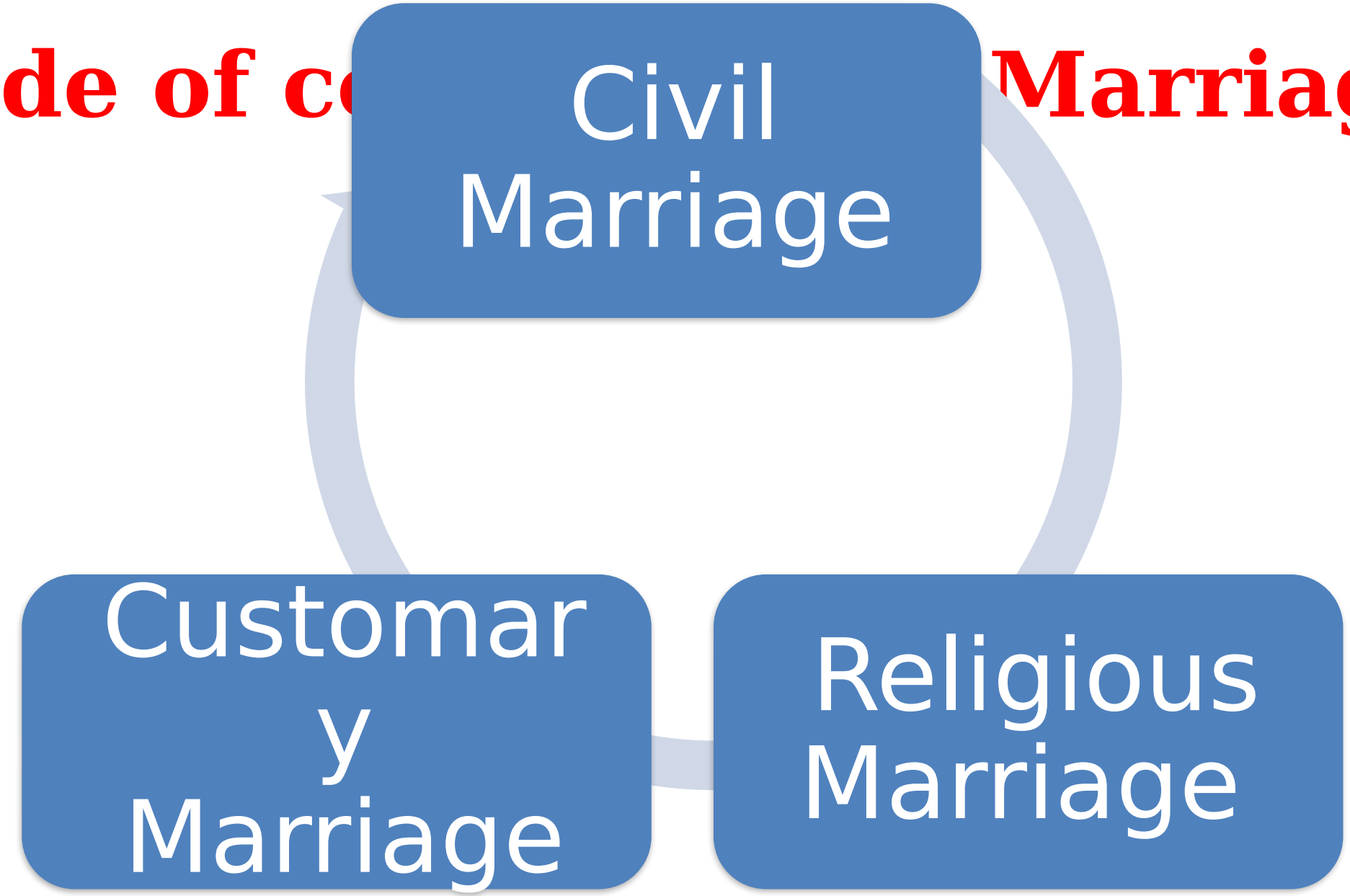
- Marriage is no where defined under the Ethiopian law **except the Amhara Family code** which attempted to define **marriage as** a relationship whereby a **man and a woman**, having **attained majority**, officially establish out of their own **free will and consent** with an **intention to sustainable live together** united in law, or a legal institution structured as a result of this relationship thereto.
- The definitions given by the different legal systems have **their own shortcomings.**

Examples of Shortcomings..

- All the documents tend to be ideal in the sense they expect the union to **last for life,** while in reality marriages **breakdown for different reasons** other than death.
- Relating to property- but they may manage their personal property by contract..
- The central aim of concluding marriage seems to be establishment **of a family, while in reality**, some couples conclude marriage knowing that **they cannot have their own children.**

- **Draft RFC Art 31—tries** to define marriage but **it lacks permanency of marriage.**
- Draft revised family code provides that it is difficult to define **marriage holistically**. So it is better to leave for lawyers to conclude from different articles **concerning the definition of marriage.**

Mode of co Marriage.



Civil marriage



❖Marriage shall be deemed to be concluded before an officer of civil status when a **man and a woman have appeared before an officer of civil status** for the purpose of concluding marriage and the officer of civil status has accepted their **respective consent** (Art. 2 RFC).

- **Who is officer of civil status?**

❖Officer of civil status is a person in charge celebrating marriage in the office of civil status.

❖The office called office of civil status **is not established in Ethiopia**.

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

- Therefore, civil marriage is a marriage that is concluded before the officer of the municipal assigned for this purpose by the municipal administration.

Jurisdiction

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

Request for Celebration of Marriage.

- **Who shall made request for the celebration of marriage?**

❖The **future spouses** shall inform, the officer of civil status of their intention to conclude marriage.

❖Only the future spouses shall request the celebration of marriage before the officer of civil status (Art, 23 RFC).**why?**

- **When they bring their request?**

❖They shall bring their request before **one month prior** to its celebration(Art, 23 RFC).

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

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

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

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

Read those procl and Directive.

- **Registration of Vital Events and National Identity Card Proclamation No. 760/2012(የወሳኝ ኩነት ምዝገባ እና የብሔራዊ መታወቂያ አዋጅ)**
- Amendments **Procl. 902/2015 and 1049/2017**
- Regulation No. 169/2014-Establishment of **Oromia Regional state** vital social events evidences Registration Agency
- **Directive No: 7/2010**(Qajeelfama Raawwii Galmeessa Ragaa Bu‘uura Hawaasummaa Naannoo Oromiyaa Lakk—7/2010-provide criteria's for registration.(**for Oromia)**

Formalities of Celebration.

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

i. Marriage shall be concluded publicly.

ii. it shall be concluded in presence of **the future spouses** and **two witnesses from each of the future Spouses.**

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

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

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

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

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

Religious Marriage.

- Religious marriage shall take place when a man and a woman have performed such acts or rites as deemed to constitute a valid marriage by their religion or the religion of one of them **(Art.3 RFC).**
- Religious marriage is simplify performing acts or rites that constitute a valid marriage as per: **ye haymanot gabecha** VS **be haymanot sere'ate meserete ye mifetseme gabecha**

1. Religion of **both of them** or;
2. The religion of **one of them. What if by religion of others???**

Formalities of Celebration.

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

Customary Marriage.

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

i. the custom of the community in **which they live** or

ii. the custom of the community to **which they belong** or

iii. the custom of the community to **which one of them**

Formalities of Celebration.

- Like that of the religious marriage **there is no formality for the conclusion of customary marriage** prescribed by the law in advance as that of civil marriage.
- The conclusion of customary marriage and the formalities thereof shall be as prescribed **by the custom of the community** concerned (Art. 27(1) RFC).

- As far as it fulfilled the formality that is required by the concerned custom, customary marriage is valid before the law.
- But it shall **fulfill essential conditions** for the validity of marriage (Art. 27 (2) RFC).

Marriage Celebrated Abroad.

- Marriage **celebrated abroad** shall be valid in Ethiopia if:

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

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

Practical problems

- What about marriage concluded for the purpose **DV**, **to get transfer from work place**, **making personal ceremony. What is its effect??**
- **From where the effect of marriage starts? Registration or conclusion? –conclusion-**. Read **cass. Vol 8- F.N 41896, Vol 11- F.N 54258-day of registration and celebration may be different. So the effect results from day of conclusion not registration.**

Essential Conditions of Marriage

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

A. Consent. Art. 6, 13 & 14

- A valid marriage shall take place only when the spouses have given their free and full consent **(Art. 6 RFC).**
- **FDRE Con. Art 34(2)-free and full consent**
- Consent, as provided here, has two aspects:

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

- In what form?
- **Form of the communication** is not stipulated here.
- But if we refer **to law of contract** there four forms of giving consent (i.e. oral, written, signs or conduct).

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

- Freedom is a broad concept and difficult to know its scope.
- To avoid this difficulty the law opted to go the **opposite way** (i.e. stating conditions that affect the **free will of the future** spouses).

- **What are these grounds?**

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

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

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

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

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

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

ii. error on the behavior of the spouse who has the habit of performing **sexual acts with person of the same sex**

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

❖Marriage concluded as a result of consent which is extorted by violence shall not be valid.

- **What is violence?**

❖Consent is deemed to be extorted by violence where it is given by a spouse **to protect himself or one of his ascendants or descendants**, or **any other close relative** from a **serious and imminent danger or threat** of danger.(is personal or **property damage?**)

❖To say certain act is violence or duress the following conditions shall be fulfilled:

i. There shall be a **threat.**

ii. The threat shall be **serious and imminent**

2. Capacity (art. 7 & 15

- Capacity is **the ability to conclude juridical act**.
- Juridical act that is concluded by incapable person is invalid before the law.
- Marriage is one of the juridical acts that shall be concluded by capable persons.
- **For the sake of marriage two group of persons prohibited:**
- Minors
- Judicially interdicted persons. what about **notorious insane and legally interdicted person(criminal liability)?**

- **Neither a man nor a woman who has not attained the full age of eighteen years shall conclude marriage (Art. 7 (1) RFC).**

❖Marriageable age for both male and female is **eighteen years. But, Other countries like Rwanda for both more than 21, Croatia- more than 18 for both.**

- Marriage concluded between persons who are under eighteen is invalid marriage.
- ✓ But how can we know the **exact age of certain person** in a country where certificate of birth is not accustomed?
- Sometimes, even, family may not know the age of their child. capacity is presumed

Justifications for Prohibition

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

Exception

- The Minister of Justice may, on the application of the future spouses, or the parents or guardian of one of them, for serious cause, grant dispensation of **not more than two years** (Art. 7 (2) RFC). Reasons: **may be Rape and military obligation.**
- **Three things** shall be fulfilled:

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

3. Judicially interdicted persons

- ❖Any person who is **judicially interdicted(CC 351-health)** shall not conclude marriage ()**Art 15 (1) RFC.**
- ❖Marriage concluded by judicially interdicted person is invalid marriage.
- **What about notorious insane?**
- ❖The law only prohibit judicial interdicted person from concluding marriage.
- ❖But under law of persons notorious insane is also prohibited from **performing juridical acts.**

Justifications for Prohibition

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

- But the court may, on the application of **interdicted person himself** or **by his guardian** authorized conclusion of marriage by judicially interdicted person (Art. 15 (1&2) RFC). So in such case **application and admission** is needed for conclusion of marriage.

4. Relations (art.8-10)

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

i. **Consanguinity**

ii. **Affinity**

Consanguinity/blood relation-Art 8

- Marriage between persons related by consanguinity in the **direct line**, between **ascendants and descendants**, is prohibited.
- **In the collateral line,** a man cannot conclude marriage with his **sister or aunt**; similarly, a woman cannot conclude marriage with her **brother or uncle. Ye akeste or agote lij??? ---------even if not restricted by law the religious followers may make broad prohibition.**

- **Why? What is the justification for prohibiting marriage between relatives?**
- The justification given at the time of the enactment of the revised family code is **its harmfulness to the health of the offspring**.
- Children that may born from relative husband and wife are highly vulnerable **hereditary**

Affinity/marriage relation-Art 9

- Marriage between persons related by **affinity in the direct line** is prohibited.
- **In the collateral line**, marriage between **a man and the sister** of his wife, and a woman and the **brother of her husband** is prohibited.
- Why? What is the justification for prohibiting marriage between relatives by affinity?
- No justification is given?

5. Bigamy/prior bond of marriage(art.11)

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

Justification

- The main justification for prohibition of bigamy is **to protect the right of women.**
- Men and women have **equal rights while entering into, during marriage and at the time of divorce** (Art. 34 (1) FDRE Constitution).
- To ensure this constitutionally **guaranteed right of women**, bigamy shall be prohibited.
- **Crim. Code Art 650-** bigamy is criminalized unless religious and traditional

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; (practical problem)**

- Moreover, the Committee on the **Elimination of Discrimination Against Women** opposes bigamy as it **violates women's rights** It stated that bigamy seriously affects **emotional and financial interests of women.**

6. Physical presence of both spouses(art.12)

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

Exceptions

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

i. It shall be permitted by **Ministry of Justice**;

ii. There shall be **serious cause;**

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

7. Period of Widowhood(art.16)

- A woman may not remarry unless **one hundred and eighty days** have elapsed since the dissolution of the previous marriage (Art 16 (1) RFC).
- Does it affect right of **equality/c no obligation on men**
- **Why? To settle problem of paternity.**

Exceptions.

- **Observing period of widowhood is not necessary where:**

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

Opposition to Marriage(art. 17-21)

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

Who shall bring the Opposition?(art.18)

- A person who has a right to bring an opposition to marriage may differ on the basis of the element violated (Art. 18 RFC).
- In case of age, opposition can be made by the **parents of the minor**, **public prosecutor** or any other interested person.

- In case of relationship by consanguinity or affinity, opposition can be made by the **ascendants of the future spouses, or the ascendants of one of them, or by the brothers or sisters of the future spouses**, who have attained the age of eighteen years or by the **public prosecutor.**

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

Opposition to whom made?(art.19)

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

Form and Time of Opposition(art. 19)

- Opposition to marriage shall be made **in writing** (ART. 19 (1) RFC).
- Opposition to marriage cannot be made in oral form, by sign or in conduct.
- Any one who need to oppose marriage shall bring his opposition before the **officer of civil status** in written document.

- Opposition to marriage shall be submitted to the officer of civil status within ***fifteen days from the notification*** of the marriage.
- If fifteen days lapsed from the notification of marriage opposition shall not be admitted by the officer.

Decision on the Opposition (Art. 20) RFC.

- The officer of civil status shall receive the opinion of the future spouses before deciding on the opposition.
- The officer of civil status shall decide on the opposition within **five days from the date of opposition.**
- The decision of the officer to celebrate the marriage shall be final.

- Where the opposition is **sustained**, the officer of civil status shall refuse to celebrate the marriage.
- In such case, the officer of civil status shall give reasons of his refusal and inform same forthwith to the future spouses.

Appeal.*(art. 21)*

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

•CHAPTER THREE

•NON-OBSERVANCE OF ESSENTIAL CONDITIONS OF MARRIAGE

Violations of Essential Conditions of Marriage(art.31-39)

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

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

1. Who can apply for dissolution?

- A person who has a right to bring a claim for dissolution of marriage may differ on the basis of the condition violated.
- Marriage concluded by a man or a woman under the **age of eighteen years** shall dissolve on the application of **any interested person** or **the public prosecutor** (Art. 31 (1) RFC).

- The dissolution of marriage concluded in violation of impediments arising out of **consanguinity or affinity** shall be ordered on the application of **any interested person or the public prosecutor** (Art. 32 RFC).
- The dissolution of a **bigamous marriage** shall be ordered on the application of **either of the spouses of the bigamous marriage or the public prosecutor** (33 (1) RFC).only

Con’t

- The dissolution of marriage **by judicially interdicted person** may be requested from the court by the **judicially interdicted person himself or by his guardian** (Art. 34 (1) RFC).
- The dissolution of marriage under **defective consent** may be requested by **a person with vitiated consent** (Art. 35 (1) and Art. 36 (1) RFC).not PP and interested person or others

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

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

AGE

- Dissolution of marriage concluded by a man or a woman under the age of eighteen years may no longer be applied for **after the age required by law for marriage is satisfied**.
- Consent- **two years** from the conclusion of marriage. But **divorce is permitted.**
- **Bigamy or relation**—have no time limit. Bigamy may be death of one party.

- **A void marriage,** in the eyes of the law, is one which is **deemed to have never taken place**. Its very existence is negated and hence the term used for describing such marriages is **void ab initio**.
- Even when the parties have not obtained a court decree invalidating the marriage, the marriage cannot be deemed as valid.
- A formal decree permits the court to make a judicial declaration of the fact that the marriage is void.

- The premise most often used for the plea of declaring the marriage void is bigamy. The issue of validity of marriage surfaces most often when women claim their right to maintenance.
- A void marriage is no marriage at all. What makes a marriage void is the existence of permanent **irregularity that cannot be removed, such** as marrying within prohibited degrees (**blood relationships, affinity**,).

- **A voidable marriage** is one which will be considered **valid until a decree annulling it** has been pronounced by a court of competent jurisdiction. The invalidation is only at the instance of one of the parties. **Until such a declaration**, the marriage is deemed valid and the parties are bound by mutual rights and obligations.

What about Our Law(both federal and regional family laws)

issue

- **Do court give dissolution of marriage in case when the parties will not raise non-fulfillment of essential conditions?**

Chapter 4 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.

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.

- Article kwt.95, proof in default of certificate of marriage
- ***When it is difficult to prove marriage by producing the certificate of marriage due to the fact that the marriage has not been registered or such register has been lost, it shall be proved by possession of status of spouse.***
- ***Article 96***
- ***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 they are considered and treated as such by their family and the community***

CHAPTER FIVE

Personal and Effects of Marriage

Effects of Marriage

- Marriage is a legally recognized institution that will create legal effect.
- Marriage which is concluded by fulfilling all essential conditions for its validity shall create a legal effect on the spouses.
- Marriage comes with **rights and responsibilities**.

- It grants rights to the spouses and their children and as well, impose duties/responsibilities on them.
- Thus, the core points under this chapter are:

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

1. effects

- Generally, marriage shall create two effects:

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

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

- These rights and responsibilities are:

a. Respect, Support and Assistance

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

c. Cohabitation

d. Fidelity

Con’t

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

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

- Marriage produces the **same legal effects whatever the form** according to which it has been celebrated.
- **No distinction shall** be made as to whether the marriage has been concluded before an officer of civil status or according to the forms prescribed by religion or custom (Art. 40 RFC). .

- The effects of marriage **shall not depend on the real or presumed consummation of the marriage.**
- Effects of marriage commences from the time of celebration regardless of the fact that **consummation of marriage not realized**

Regulation of these effects of marriage

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

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

Contract of marriage

- At first, freedom is given for the spouses to regulate the effects of their marriage by their contract.
- The spouses may, **before or on the date of their marriage**, regulate by a contract the pecuniary effects of their marriage.

- Such contracts **shall not affect mandatory provisions** of the law.
- This contract of marriage shall comply with elements for the validity of contract like **consent, capacity, object and form.**

Con’t

Form

- A contract of marriage shall be of **no effect** unless made **in writing** and **attested by four witnesses**, **two for the husband and two for the wife.**
- A copy of the contract of marriage shall be deposited **in the court** or with the office **of civil status.**

Modifications to Contract of Marriage

- If the spouses agree to **that effect contract** of marriage can be **modified in the course of marriage**.
- Where the interest of the family so requires, the spouses may, by agreement, modify the terms of the contract of marriage.

- But the modified version of **the contract of marriage** shall **not have an effect unless approved the court.**
- One copy of the modified contract shall be deposited in the court or with the office of civil status.

Regulation by the law

- In the absence of **contract of marriage** or where the contract of **marriage is not valid under the law**, the law regulate effects of marriage.
- **Priority shall be give to the spouses** to regulate effect of their marriage by the contract.
- But, if the spouses fail to conclude contract of marriage, or if their contract of marriage is invalid, **the law regulate the effects of marriage.**

Personal Effects of Marriage

- **Respect, Support and Assistance**

❖The spouses owe each other respect, support and assistance.

❖The contract of marriage shall not derogate such rule.

Management of Family

- The spouses shall have **equal rights in the management of the family**.
- The spouses shall in all cases, co-operate, to protect the security and interest of the family to bring up and ensure the good behavior and education of their children in order to make them responsible citizens.

Exception

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

Cohabitation (Art. 53).

- **Cohabitation have two concept under it.**

A. The spouses are **bound to live together under one roof**. Where?

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

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

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

Exception

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

Fidelity.

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

Administration of property

1. Administration of Personal Property.

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

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

ii. One of the spouses may freely entrust to the other spouse the administration of all or part of his personal property by contract of agency.

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

2. Administration of Common property.

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

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

Exception

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

ii. After earning (Art. 66):

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

Con’t

- The spouse **who performs an act** of management in respect of common property **is duty bound to inform the other spouse thereof.**
- It is about **consultation before acting** or **before performing act of administration.**

- **Especially,** regarding the following **acts agreement of both spouses is needed:**

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

Con’t

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

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

d. **borrow or lend money exceeding five hundred Ethiopian birr** or to **stand surety for a debt** of such amount to another person.

Violation of the Rule

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

Exceptions

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

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

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

Debts of Spouses

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

Con’t

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

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

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

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

Con’t

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

Chapter 6- Dissolution of Marriage

- **Dissolution Of Marriage- By operation of law and Divorce(mutual consent and petition by one party)**
- **Effects of Dissolution of Marriage**: Concerning **child, personal** and **common** property.

DISSOLUTION OF MARRIAGE

- Dissolution of marriage is the **end of marital relation**.
- Marital relation shall end due to different grounds.
- The **grounds for dissolution of marriage** are the same for all forms of marriage.

- The causes of dissolution of marriage shall be the same whichever the form of celebration of the marriage.
- No distinction shall be made concerning dissolution whichever the form according to which the marriage is celebrated.

Grounds for Dissolution of Marriage

- The following are causes of dissolution of marriage:

- **Death of one of the spouses, or declaration of absence**
- **Dissolution order by court due to violation of one of the essential conditions of marriage**
- **Divorce.**

Divorce

- Marriage shall dissolve by divorce where:
- Therefore, marriage can be dissolved by divorce in two ways:

1. Divorce by **mutual consent**
2. **Divorce by petition**

1. Divorce by Mutual consent

- The spouses may agree to end their marital relation by divorce.
- This agreement also may regulate **the consequence/effect of the divorce.**
- But this agreement shall be **submitted in writing to the court** for approval.

- Spouses who petition for divorce by mutual consent **are not obliged to state the reason for their divorce.**
- spouses whose marriage lasted **for less than six months** shall not be permitted to divorce by mutual consent.

Power of the Court in case of mutual consent

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

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

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

❖Where the spouses **did not change their intention to divorce within the cooling period** given to them, t**hey may re-apply to the court to approve their agreemen**t to **divorce within six months** from the last date of such cooling period.

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

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

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

2. Divorce by Petition

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

Power of the Court in case of petition

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

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

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

- There might be two probabilities here, **accepting the direction of the court or rejecting it.**
- Where the spouses have **decided to settle their dispute** through arbitration, **they shall appoint one or more arbitrators and submit, within fifteen days from the date** they were told to do so, the names of those arbitrators to the court (Art. 119).

- On receiving the list of arbitrators or when the **arbitrators appear before it the court shall make a record forthwith and give direction** as to how the reconciliation has to proceed and to submit the result of the arbitration or the attempt of reconciliation **within three months.**
- the court may, where it deems necessary, **examine the progress of the arbitration and make orders for submission of periodical reports thereon.**

- where the court is of the opinion that the spouses may settle their **dispute through arbitration**, it may, having regard to the progress of the arbitration, **give additional time of not more than one month.**

Con’t

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

Con’t

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

Con’t

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

Effect of Dissolution of Marriage

- Dissolution of marriage has **its own consequences on children born from that marriage and the property** acquired during the lifetime of the marriage.
- Once marriage is dissolved by one of the grounds for dissolution of marriage, the next thing is effect of that dissolution.

- Children may born from that marriage or common property may be acquired in the course of that marriage.
- When marriage is dissolved, the fate of the children that is born from the marriage and property acquired in course of that marriage

1. Custody of the Children

- **After dissolution of marriage**, the custody of children is the first thing that shall be solved.
- Questions like **who shall take responsibility for the custody of the children?**; **who shall give maintenance? Where they shall live? And the like shall be solved.**

- The answer for these questions **may differ on the base of the ground of the dissolution of that marriage.**
- If the cause for dissolution is **death or absence of one of the spouses,** the responsibility of custody of the children will fall on the **shoulder of the spouse who is alive**.

Con’t

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

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

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

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

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

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

Partition of Property

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

Pecuniary Effects of Marriage

- The law regulate the **pecuniary effect** of marriage in the absence of contract of marriage or where the contract of marriage is not valid.
- The law will intervene only when **there is no contract of marriage or when the contract of marriage is invalid** due to its contradiction with **mandatory provisions of the law**.
- So we try to say how the ***law regulates pecuniary effect.***

1. Personal property

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

1.Property possessed before marriage.

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

Proved by any Evidence

Exceptions

FIRST -.(Vol. 4 file No. 19479, and vol. 5 file no. 25281))

- **Additional house .(Vol. 6 file no. 26130)**
- Second (Vol. 10 file no. 42766, and vol. 6 file no. 31833)
- **Third, vol. 5, file no. 25005(the building of the house started before marriage and finish after marriage)**
- **Fourth, What if the property is gained from half personal and half common? Cass. vol. 5, file No. 26839**

- ከጋብቻ በፊት በአንደኛው ተጋቢ የተፈራ ቤት በጋብቻ ወቅት እድሳት የተካሄደለት መሆኑ ብቻ ንብረቱን የባልና ሚስቱ የጋራ ሃብት የማያደርገው ስለመሆኑ **(Vol. 11, file No. 45207)**

Con’t

2. Property acquired by succession or donation.

- The property which they acquire **after their marriage by succession or donation/gift shall remain their personal property (Art. 57). .Cassation vol 22 F.N 137869-should be proved)-proved by any evidence**

3. Property Acquired by Onerous Title.

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

i. exchange for property owned personally, or

ii. with **monies owned personally** or

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

Con’t

- But, **property acquired by onerous title only become personal property** **when the court, at the request of one of the spouses**, has decided that the property thus acquired shall be owned personally by such spouse (Art. 58 (2)). Should be proved only by approval of court. **Cassation Vol 17 F.N 95680-**
- **In the absence of court approval,** property acquired by onerous title **shall become common property of the spouses.**

Exceptions

- Property gained from succession is expropriated the compensation paid doesn’t need to registered.
- However, if the money gained through succession used to buy certain property/house/, it should be registered to be a personal property(If not it become a common ppty) **Cass. Vol. 13, file No. 65708)-** and **(file.No. 203715- unpublished cass. decision)**

2. Common Property

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

1. Property derive from personal effort.

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

2. Property derive from common or personal property

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

Con’t

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

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

4. Donation or will bequeathed conjointly

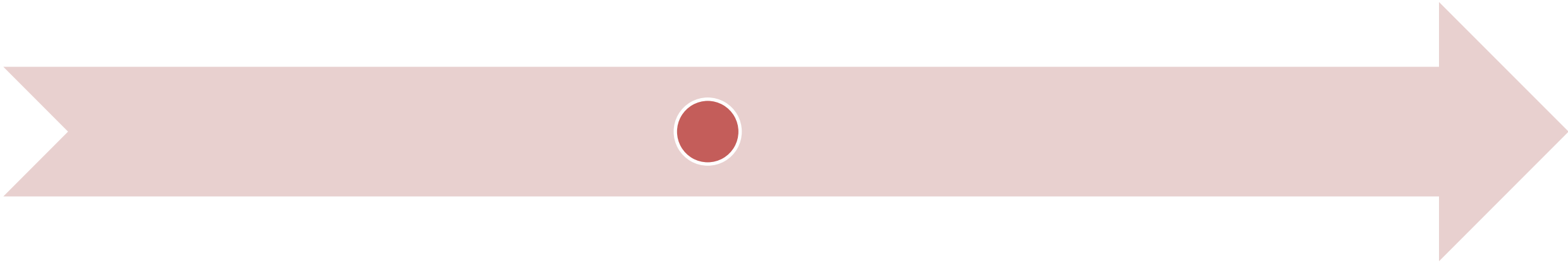
- Unless otherwise stipulated in the act of donation or will, Property donated or bequeathed **conjointly to the spouses** shall be common property.

Con’t

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

Chapter 7-

IRREGULAR UNION



- An irregular union is the state of fact which is created when a man and a woman live together as husband and wife **without having concluded a valid marriage.**
- Irregular union is a union that resembles **marriage but not marriage**.
- It is similar with marriage in a sense that the **couples live together** as husband and wife.

- Their conduct is similar with that of the married couples.
- It is **necessary and sufficient** in order to have an irregular union that the behavior of the man and of the woman be **analogous to that of married people**

- The difference between **marriage and irregular union** is on **celebration**.
- For a certain union to be called marriage, there shall be **celebration according to one of the modes for the conclusion** of marriage.
- But such celebration **is not there** in the case of irregular union.

- There may be **some sort of celebration at the commencement of irregular unio**n. But, what matters is whether that celebration or act constitute one of the **mode for conclusion of marriage.**
- If it does not constitute celebration or act that is needed in all modes for conclusion of marriage, that **union is irregular.**

Cassation decision File numb-206403(not published)-

- In order to have an irregular union, it is enough to have the behavior which is **analogous to that of married people.**
- They **need not represent themselves to third parties as being married.**

- The mere fact that a man and a woman keep up **sexual relations between them, even if repeatedly and notoriously, is not sufficient by itself to constitute** an irregular union between such man and woman.
- Thus, **to consider certain union as irregular union**, the couple should treat one another as **husband and wife** and the community shall treat them as such.

❖**Is there essential condition for interring into irregular union?**

❖Though the law clearly provided the difference between marriage and irregular union, there is a gap with regard to the essential conditions for entering into irregular union.

- The law say nothing about essential conditions for interring into irregular union.
- Affinity is the only conditions that is prescribed by the law.
- An irregular union shall not create any bond of affinity between the man and the relatives of the woman , and between the woman and the relatives of the man.

- The provisions concerning impediments to marriage in the case of affinity shall, however, apply in the case of an irregular union.
- Conditions that impede marriage such as **age, consent, relation by consanguinity, bigamy** and the like that impede marriage **are not clearly prescribed by the law** whether they

- When we see this fact from **the sprit of the law**, it is **justifiable to prohibit irregular union for non-fulfillment of these conditions.**
- Since the **purpose of both marriage and irregular union** is the same, the conditions that are needed for their conclusion must be the same.

- Though it is justifiable to prohibit irregular union for non-fulfillment of these conditions, **it is still difficult to solve the case when irregular union is created** in violation of this conditions.

- Questions like **which authority has a mandate to terminate such union?**; **who has right to claim for the termination?; *when such claim shall be made?*** and other questions may be raised.
- Generally, there is a **clear gap in law concerning essential conditions** for irregular union.

Effect of Irregular Union

- **Personal effect** of irregular union **is not clearly** regulated by the law.
- But one can infer the personal effect of irregular union from **its definition**.
- Irregular union is the state of fact in which the behavior of the man and of the woman **is analogous to that of married people.**

- Personal effect of the marriage shall be practiced by these persons to say that their behavior is analogous to that of married people.
- They **shall perform the acts that are expected from married couple** to have a behavior which is analogous to that of married people.

Pecuniary Effect of Irregular Union

- Property acquired during such relation shall be common property provided that the relation has lasted for not less than three years.
- To have common property, **the relation shall continued for more than three years.**

- Once the relation lasted for three years and above, property acquired **during such relation** shall be common property.
- But, still there is a problem with the term "**property acquired during such relation.**" **What does it mean? Does it include property that is property acquired by succession or donation? Does it include property that is acquired by onerous title?**

❖Without prejudice **to agreements entered into between the man and the woman** engaged in an irregular union concerning the administration of their property, matters pertaining to the administration of property, **shall be as per the provisions dealing with administration of common property under marriage**.

❖**With regard to debt,** the man and the woman engaged in an irregular union shall be **jointly and severally** liable for all debts incurred for their maintenance, or for the maintenance of their children born of such union.

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

Termination of Irregular Union

- A man and a woman engaged in an irregular union may**, at any time, put an end to such union.**
- There **is no need to apply to court** for termination of irregular union.

- There is no need to have reason for termination of irregular union.
- The party who terminates **the union shall not be liable** to pay damages unless **he commits fault.**

Proof of Irregular Union

- An irregular union may be proved **by the possession of such status**.
- A man and a woman may have the **possession of the status** of persons living in an irregular union when, although **they are not married, they behave as such, and when their families and the community consider them living as married couple.**

- Where a person alleging the existence of irregular union proves such status, the court may presume that they live in an irregular union.
- This presumption may **be rebutted by producing any kind of reliable evidence.**

Chapter 8
Filiation



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

i. Who is the mother of certain child?

ii. Who is the father of certain child?

iii. To whom certain child belongs?

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

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

Maternal Filiation

- **Maternal filiation** is the way of **establishing/finding the mother of the child.**
- **Maternal filiation** is ascertained from the sole fact that the woman has **given birth to the child.**
- Giving birth to certain child will give rise to the right as well as the **duty of maternity.**

- A woman **who gave birth** to certain child has right to be called the **mother of that child.**
- From this, it seems **an easy task to know** the mother of certain child.
- But, **due to advancement of technology** in genetic engineering, an issue may be created.

- For example, it is not as such an easy to know the mother of the child in the case of ***surrogacy***.
- **In this case,** there are two mothers, i.e. **biological mother** and **surrogate mother.**
- So, who is the mother of the child under our law **in the case of surrogacy?**

- **If apply the provision of the family code, surrogate mother** is considered as **a mother of the child** because **she gave birth to the child.**
- But, **this is not the intention of the law maker** since **surrogate mother has no blood relation with the child.**

- In addition**, as per art. 36 (1 (c))** of the constitution, every child has **the right to know** and **be cared for by his or her parents**.
- When the constitution give **the right to know and be cared for by his or her parents to the children**, it is clear that **parents means biological parents.**

- When we deeply analyze the **intention of the law**, family law incorporated maternal filiation **to protect the right of children.**
- Therefore, for the strongest reason, the mother of the child in the case of surrogacy shall **be the biological mother.**

Paternal Filiation

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

i. **By Presumption**

ii. By acknowledgement

iii.By judicial declaration.

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

1. Presumption of Paternity

- Paternal filiation results from the maternal filiation when **a relation provided for by the law** has existed between the mother and a certain man at **the time of the conception or the birth of the child.**
- A child **conceived or born in wedlock** has the **husband as father**.
- **DNA** is not a defense: **Cassation 23-File Numb. 148570 and File numb. 211047,182459 (not published)**
- **You can only bring disowning application to the court on onother file. (Vol 10- file numb. 44612)**

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

2. Acknowledgement of Paternity

- When the father of the child **is not determined by applying the provisions of the preceding** Articles, the paternal filiation of the child may be established **by an acknowledgement of paternity**.
- Acknowledgement of paternity is the state of fact when certain man declare himself **as the father of the child by his free will.**

- An **acknowledgement is deemed** to be made when **a certain man made a declaration that he considered himself** as the father of a certain **child merely conceived or born.**
- Regarding the **form of this acknowledgement**, the declaration might be made **by a man before an officer of civil status** or **by a Will he made in writing(but if somebody deny the child under the will, it doesn't mean that he is not a father-vol 5-file num. 30959, vol-18 file numb.99954)** or **by a document attested by any competent authority** that he is the father of the child.

- The **declaration shall be made personally** by the father of the child even though **he is a minor or judicial interdiction**.
- In principle acknowledgement of paternity is personal to the man who is declaring such and **representation is prohibited.**
- But, it can be made **through representation**, if such mandate is given by **a special power of attorney approved by the court** or **by a legal representative judicial interdiction,** with the **permission of the court.**

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

- If the mother of the child is died or is not in a position of manifesting her will, the acknowledgement of paternity may be accepted by the **maternal grandfather or grandmother of the child.**
- In default of maternal grandparents, it may be accepted by another **maternal ascendant** or by the guardian of the judicially interdicted person.

- An **acknowledgement of paternity** shall be of no effect unless it has been accepted **by the child himself** when it is made after **the latter has attained majority.**
- The acknowledgement of paternity shall be deemed to be accepted where the persons **who have a right to accept have not raised** any protest against such acknowledgement within one month after they came to know it.

Revocation of acknowledgement

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

Annulment/invalidation of acknowledgement

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

Restrictions

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

Judicial Declaration of Paternity

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

Con’t

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

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

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

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

Con’t

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

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

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

- Gara biraatin namonni osoo abbaa hin taane sababa adda addaan fakkenyaf walitti siqina cimaa haala obbolumman yookiin hiriyumaan haadha mucaa wajjiin jiru irraa ka’un gocha kununsaa mucaaf kennu danda’aa. Yeroo kana abbaadha jechuun sirrii hin ta’u.

- **READ**
- **Federal cassation bench, vol. 10, File No. 42682**

Remark

- About DNA **federal cassation bench vol. 11, file No. 63195)**

Defense for the action of judicial declaration of paternity

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

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

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

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

Legal Conflicts in Regulating Paternity

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

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

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

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

Absence of Agreement

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

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

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

Assignment of Paternity

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

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

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

- **Contestation** is simply challenging the **maternal filiation of the child.**
- The maternal filiation of the child may be contested at any time by any interested person.
- The action to contest filiation may not be instituted **except with the permission of the court.**

- Such permission **shall not be granted** unless there are **presumptions or indications** resulting from concrete facts enabling the court to grant permission.
- Where the filiation of the child results from the **certificate of birth** and is corroborated by a possession of status, permission to institute an action to contest filiation may not be granted.

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

Disowning

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

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

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

Con’t

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

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

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

Con’t

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

Con’t

- They may also result from the fact that the woman has concealed the birth of the child or her pregnancy to the man under circumstances which are apt to create doubts as regards his paternity.
- The adultery of the mother or her admission that the child has another father are not sufficient, by themselves, to constitute serious circumstantial evidence.

Who can apply for disowning?

- **Only the person to whom the paternity** of the child is attributed by legal presumption may **institute an action to disown.**
- **No action to this effect** may be made by the mother or by a man who claims the paternity of the child or by the public prosecutor or by the child himself.

Con’t

- **An action to disown may**, **with permission of the court**, be instituted by the **judicially interdicted** person himself.
- The action may, with the same permission, be instituted in the name of the interdicted person by his guardian.

Exception

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

Chapter Nine
Adoption

Q. What is adoption?

- It is the creation of parent child relationship by judicial order between two parties who usually are unrelated. The Ethiopian civil code and RFC define adoption as *a bond of filiation created artificially by a contract of adoption between the adopter and the adopted child.*

Essential Conditions And Effects Of Adoption

Q. Which laws govern adoption of child in Ethiopia in general?

- Adoption in Ethiopia both in country and inter country is governed by international laws and conventions to which Ethiopia is the signatory and by its national laws particularly the RFC and regional family laws.

Q. What are the essential conditions for establishing valid adoption?

- The essential conditions are;

a. **Capacity of the adopter**: in which the civil code provided that only a person attain majority can adopt (art 797), however, under RFC the minimum age to adopt child is 25 years. At the vein if the adoption is take place by the spouse at least one of them shall be 25 years old. (art 184).

b. **Capacity of adopted child:** With regard to the adopted child he/she shall not attain the age of majority.

c. **Adoption by the spouse**; if the adopter is married the child is adopted by spouses jointly as per art 180 of RFC. But this does not apply where a person adopts the child of his spouse and one of the spouse is not in a position to manifest her will.

d. **Consent of the parent**: see art 190-193, in which consent is mandatory.

Q. Is there any effect on the adopted child as a result of children of the adopter?

- As per art 188 the existence of children of the adopter shall not constitute an obstacle for the adoption. however, the court shall take in to consideration even if the adoption is successfully completed, the potential effects of the existence of the adopter child on the well being and interest of the adopted child. (art 188(2)

Q. Is it possible to give children fro adoption even if the original parent of the child has the capacity to rear the child?

- Under Ethiopian family law it is possible to conclude that adoption is possible even if the natural parents are capable of rearing the child.
- However, the UNCRC permits adoption if the child cannot be reared by his families or other alternative methods. It should be reconciled in accordance with the status of international law under FDRE constitution.

N.B. in case of adoption the primary obligation of the court is to verify whether the adoption is to the best interest of the child before approving the agreement. (art 194(2) in addition before approving the agreement the court is required to take in to consideration conditions provides under art 194(4).

The effects of adoption

Effects of adoption

Marriage

Art 181 provides the adopted child for all purposes be deemed to be the child of the adopter, so cannot marry the prohibited degree

Succession (art 836) cum art 183(3) of RFC

Right and obligation (see art 198)

Inter-country adoption and safeguards to the children

Q. When the inter-country adoption is started in Ethiopia?

- In Ethiopia, the main cause for the start of inter country adoption as an alternative care for orphaned and abandoned children was the 1974/75 draught and famine that resulted in orphaned and abandoned children.

Q. What does inter-country adoption means?

- It refers to an adoption in which the adopter s and the child do not have the same nationality as well as one in which the habitual residence of the adopter and the child country is different.

Q. What are the common forms of inter-country adoptions?

- Nowadays in Ethiopia, there are two kinds of inter-country cases;

A. **Private inter-country adoption:** it is when the biological mother voluntarily relinquishes her children for personal reasons. It may also by both parents and guardians for reason such as lack of means an support.

B. **Agency inter-country adoption:** is the adoption of orphaned and abandoned children or children whose parents are ill and hence have no one else to act on their behalf. Thus, that is thee agency which acts on behalf of the child in case of adoption.

Q. Where should be the placement of the child?

- The UNCRC recognized that inter-country adoption may be considered as an alternative means of the child care, if the child cannot in any suitable manner cared for in the country of origin.
- That is why art 21 (e) of the UNCRC provides the placement of the child in another country should be carried out by the competent authorities and must not result in financial gain for the parties involve.
- The above principle is confirmed by MoLSA in 1996, art 3 of the directive.

Q. If so what are the criteria's in the selection of the adoptive parents?

- Children are adopted and expatriated where it is verified that;
  - a) The would be adopters income will enable him to raise a child
  - b) The adopter is healthy, that his social life is not tainted, that he is of a social mind and is not at all addicted to any dangerous drugs
  - c) The adopter have never been convicted of a crime or of being engaged in an illegal activity and
  - d) The written consent of the lawful spouse has been obtained with regard to the adoption

Q. What are the major safeguards fro children in inter country adoption?

- The major safeguards are;
  - i. **Follow-up work**: done by periodical visits by the expert from competent authority and asses the situation of adopted children in the child custody of residence.
  - ii. **The child right to identity and secrecy**: (art 8) of UNCRC the right to know the original family of the adopted child vs. the keeping in secret for the adopters the child is adopted one)
  - iii. **Prevention of unlawful acts in inter country adoption**: include the crime to offer or receive money or any valuable consideration for relinquishing or accepting a child for adoption. Since adoption based on the child need to have a family and not on the economic profit of intermediaries.

Q. Is it possible to revoke adoption?

- If an adoption is approved by the court, as a matter of rule, it is not revocable as clearly provided under art 195(1), however, as a matter of exception it is revocable on grounds provided under sub 2 of the same provision. (see also art 196(1)
- However the civil code under art 806 provide irrevocable nature of adoption for whatever reason.

Unit Ten

Obligation to Supply Maintenance

Preliminary introduction

- Obligation emanate from 2 sources, law and contract. The obligation to supply maintenance is grouped under the former one. Thus, persons under such obligation shall perform it, even though they are not consented to that effect
- Demanding maintenance allowance is not absolute right , rather there are certain limitation provided by the law. Nor it is the obligation to provide for any person demanding it, unless persons listed under art
- The rational behind such obligation is amoral duty that

Q. What are the subject matters of obligations to supply maintenance?

- According to Art.197 of the RFC, the person who is obliged to supply maintenance is bound to supply to his creditor things that are necessary for the livelihood of the creditor. Which must be given to him based on the social conditions and local custom of the area in which the creditor lives
- 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, depending on conditions of the creditor.

Q. Who are obliged to supply maintenance and for whom?

- As provided in Art. 198 of the RFC, a person may be obliged to supply maintenance to his spouse, ascendants, and descendants, his brothers and sisters. Although it is not expressly provided in this article, a person is obliged to supply maintenance to his/her adoptee or adopter as the case may be.
- According to Art.201 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.

Q. How maintenance should be paid (discuss the mode of payment)?

- 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. (art 202 and 203)

Q. Can a person attach or assign maintenance due to him?

- 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.
- Except the one who request previously provides maintenance that should be provided by the person obliged, the person entitled. (the one who previously provide maintenance for the ascendant of the person legally obliged to supply maintenance (like food or medicine), may claim the attachment or assignment of the maintenance)
- See art 206-207

Q. What if there are several person obliged to supply maintenance?

- Where several persons are liable to supply maintenance, the creditor 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 maintenance from anyone of such debtors (Art. 208)
- However, the debtor who has paid the allowance shall have recourse against those who have not paid their shares (Art. 209).
- See also art 210-213)

Q. What are the grounds of termination of the obligation to supply maintenance?

- The major grounds are;
  i. Agreement of the parties
  ii. The ability of the creditor to earn his/her livelihood
  iii. Inability of the debtor to discharge the obligation and
  iv. Condemnation of creditor (Art. 200 RFC)

Preliminary introduction

It is obvious that misunderstandings and disputes arise between spouses or partners in an irregular union. the main thing is resolving such disputes using various dispute settlement mechanisms. These mechanisms are generally divided into two: settlement of disputes by courts and settlement of disputes by out-of-court mechanisms (ADR).

Settlement of Disputes by Court

- Although Art. 118 of the RFC provides that any dispute arising out of marriage or irregular union is to be decided except for deciding divorce, by arbitrators chosen by the spouses, if reconciliation becomes difficult to arbitrators or if one of the parties or both of them feel that the way the arbitrators handle the arbitration process is wrong then they may appeal to a court having jurisdiction.
- The court is duty-bound to give an order regarding the matters to be settled after divorce, i.e., regarding maintenance of the spouses, the custody and maintenance of their children and the management of their property (Read Art. 81 and 82 of the RFC).

Q. How family disputes shall be entertained by the court?

- Therefore, according to Article 110 of RFC, the court sits **in camera** while consulting with the spouses either jointly or separately about these personal issues.
- By the same taken, according to Art.111 of the RFC, decision of the court should not incorporate the details of the case but only state the existence of sufficient causes for divorce which is meant to maintain reputation of the spouses.

Q. Is it compulsory to take family issues to ADR?

- taking the dispute to arbitrators is not compulsory; rather it is voluntary. But according to some sources what practically observed in courts is that the parties are not asked whether they are willing to take their case to arbitrators or not rather the courts direct them to arbitrators without doing what the law prescribes which is clearly against the spirit of the law

- **THANK YOU**