

FAMILY LAW

DEFINITION

The word family is not solely a legal idiom.

In fact, the study of family falls within the scope of different disciplines of social science such as sociology, anthropology and history.

Family is thus accordingly defined in different manner as it fits the different fields of study.

However, the origin of the word family, '*familia*', a Latin word, alludes to the house and thus refers to people who live under the same roof.

Generally, the concept of family is understood in two senses.

In the broader sense, family is defined as a collective body of persons who are united by marriage, by filiation or by adoption.

The Ethiopian law of family confers recognition to three sources of family relationship namely:

- Natural filiation (consanguinity),
- Affinity (relation by marriage) and
- Artificial filiation (adoption).

Thus, it constitutes family in the broader sense and it is commonly referred in Amharic as "Bete - Zemed" as opposed to 'family perse'. [Art 8, 9, 182 of the RFC].

Sources of family relations

Akin to many legal systems, Ethiopian family law recognizes three sources of family relationship:

- Natural filiation (which is the 'only true' blood relationship)
- Marriage
- Adoption (which is a fictitious filiation related by agreement)

N.B. The RFC does not offer definition for relationship by consanguinity. It fails to reserve a particular section. Chapter for provisions that deals with bonds of relationship by consanguinity and by affinity. It rather preferred to deal with these topics by stating the effects thereof (see art 8, art 9) ∴ It's perhaps worth referring, Book II, chapter one of the civil code to discuss sources of familial relationship in a considerable detail.

➤ Relationship by Consanguinity

This is the most natural relationship that derives from the community of blood. In other words, it refers to a relationship, which is created either by blood or by birth.

The series of relatives who descend from each other and /or related to each other by the community of blood form what is known as lines. This may be direct or collateral.

Thus, relationship by consanguinity, which is commonly referred as filiation, exists in (i) The direct line and, (ii) in the collateral line.

• The Direct line

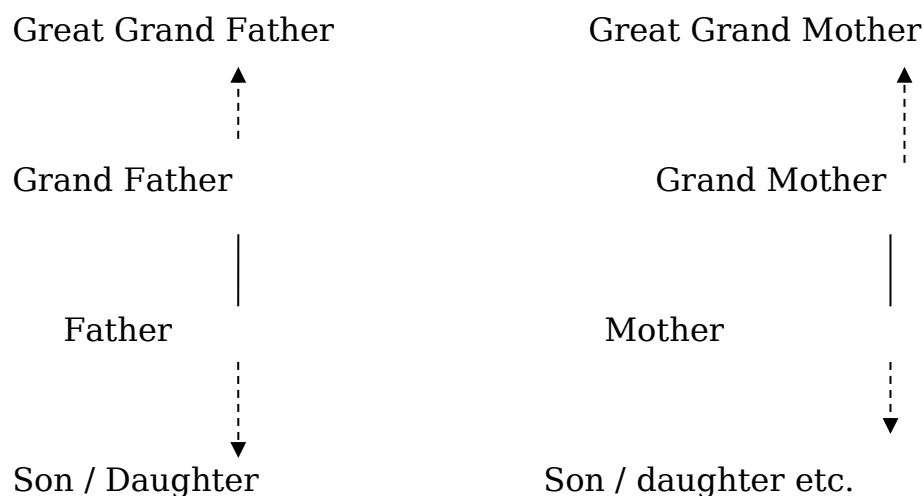
This kind of relationship exists between ascendants and descendants. They are relatives who descend from one another.

In other words, persons who are ascendants of the descendants or descendants of the ascendants are said to be related to one another in the direct line; i.e. a child is related to his father and his mother on the

direct line as he descends from them both and they are also related to the child in the direct line as they are ascendants thereof.

A vertical line going from one relative to the other represents such relationship, no matter the intermediaries there may be.

The following figure shows consanguinity relationship in the direct line, partly.



The arrows (- ->) indicates that the relation by consanguinity continues as the generation goes on i.e. there is no point at which the consanguinal relationship in the direct line stops. It goes on as the new generation comes up.

The collateral line

In the collateral line, relationship by consanguinity exists between persons who descended from one or more common ascendant(s) who is (are) the sources(s) of the community of blood.

This includes any form of blood relationship that exists between relatives who neither descends nor ascends from one another, but who rather are descendants (not ascendant) of a common ancestor to whom the source of relationship is Consanguineous brothers / sisters (half-brothers and / or sisters on the paternal side) have common father and common grandparents . . . on the paternal side but not on the maternal side. Uterus brothers and / or sisters who are half-brothers /sisters only on the maternal side, on the other hand, can trace their common ancestor on the maternal side. Thus, they are said to be consanguinal relatives on the collateral side. Consanguinal relation on the collateral side also exists between /among a person and his/her cousins, uncles, aunts, nephew, niece, etc.

It can be concluded therefore, collateral relation represents a unity of blood among persons who have a common older ancestor to whom the source of relationship can be traced either on the maternal or on the paternal side. A point worth noting here is that persons who can trace their common ancestor cannot trace same person(s) on the maternal and the paternal side at the same time.

Relationship by Affinity. /Single Affinity/

Affinal relationship, which is the direct and immediate result of conclusion of a valid marriage, is the second source of family relationship. Although the strength and closeness of the relation is relatively lesser compared to consanguinity relation the law extends its recognition to a relation, which emanates from marriage.

Relationship by affinity ("by alliance") is modeled on blood relationship and borrows from it, its lines and degrees.

So, when the two spouses conclude a valid marriage the husband will be affinally related in the direct line to those people who are consanguinally related to his wife "in the direct line. By the same token, the wife

will be related affinally in the direct line to those persons who are consanguinally related in the direct line to her husband.

Relation by affinity in the direct line is thus, a relation between the husband and ascendants or descendants of his wife, and a relation between the wife and the ascendants and/or descendants of her husband. So he who married becomes related in the degree of a son to the mother and father of his wife and she who marries becomes related in the degree of a daughter to the mother and the father of her husband and this is commonly referred to as son-in-law and daughter - in - law respectively.

On the other hand, relation by affinity in the collateral line exists between the husband and the collateral consanguinal relatives of his wife and between the wife and the consanguinal relatives of her husband related to him collaterally. Thus, he who marries becomes a relative to the degree of a brother to his wife's brother/sister by marriage, and she who marries becomes a relative to the degree of a sister to her husband's sister and / brother by marriage and are usually referred as brother - in - law and sister - in - law respectively.

Thus, a person acquires relatives in the direct lines and collateral lines by marriage. And to distinguish these relatives by marriage / affinity from the relatives by a blood (the only true relatives) - it has happened to be a convention to call them "in - law".

Degree of Relationship by affinity

The relationship of affinity also imitates blood relationship as regard degrees. The RFC gives no legal effect for affinal relationship in the collateral line beyond the first degree (according to the canonical approach) and the second degree (according to civilian approach) while it concedes recognition for a relation by affinity in the direct line categorically. This is implicit from the effects of affinal relation as stated under Art 9 though the code nowhere provides for a rule wherein number of degrees of relationship can be computed.

Sub article 1 of Art 9 states that a relation by affinity in the direct line is an impediment to marriage. Sub article 2 of the same, prohibits marriage between a man and the sister of his wife, and a woman and the brother of her husband. The relation between a man and the sister of his wife and a woman and the brother of her husband is collateral relation by affinity in the 2nd degree according to the civilian computation and in the 1st degree according to the canonical computation.

Therefore, there is no impediment to marriage among persons who are collaterally related by affinity beyond the first (as in the canonical means of computing) and beyond the second (as in the civil law approach of computing) number of degrees of relationship.

In contrast, Art 552 (3) of the c.c. states that a bond of affinity, which is derived from marriage, exists in the collateral line between a person and the collaterals of his spouse. The reading of this provision together with Art 553 leads to a conclusion that the civil code gives effect to collateral relation up to the third degree (without prejudice to the disparity in methods of calculating the number of degrees of relationship).

As regards, the obligation to supply maintenance (alimony) however, similar provisions are contained in the two codes. This obligation is extended to relatives by marriage / affinity in the lineal / direct line. Thus, payment of alimony to a collateral relative by affinity is merely a moral but not a legal obligation.

Relationship by Adoption

Adoption which is an artificial parentage created by an agreement that is sustainable at law is another source of familial relation that produces legal effect. The fictitious parent - child relationship emanates from an agreement of the adopter and the guardian of the adopted child subject to court approval.

The law recognizes such agreement as valid and confers legal status of parent and child between the adoptive and the adoptee. Hence, once a legal adoption is made the child is deemed to be the child of the adoptive parents and it joins the new family for all legal purposes.-Article 181 And as far as the law is concerned no distinction is made between natural and adopted children.

If follows therefore, a relation that ensue from adoption agreement exists not only between the child and the adoptive parents but it also persists between the child and all the relatives of the adoptive parents. Thus, all the consanguinal and affinal, relatives of the adopter, will be related to the adopted child by consanguinity and affinity respectively. 22

Therefore, a relationship which is analogous to that of natural filiation which derives from the community of blood is created between persons who are not so related naturally, by an adoption agreement and it is recognized as a third source of family relationship.

The legal effect of family relations

Once a family relationship is established either by affinity, consanguinity or adoption, the law confers rights and obligations on persons who are so related. The law also lays some impediments on such persons. To mention some:

(i) Rights which emanate from family relationship

1. The right of succession: Living relatives have the right to take the estate of the deceased relative if he dies leaving no will behind.- Art 826 and et-seq of the civil code.
2. The right of exercising 'parental power'. This refers to all the rights, duties, powers, responsibilities and authorities which a parent of the child has in relation to the person and the estate of the child by virtue of Art 219
3. The right of obtaining alimony / maintenance.

This is a right conferred up on a certain number of relatives who are destitute and who are specified as creditors of alimony by the law -Art 197 et. Seq.

4. The right to be appointed as guardian and/or tutor of a minor child relative- Art 225 of 226 of the RFC
5. The right to apply for a judgment of interdiction against insane / infirm relative and to be appointed as guardian and /or tutor for the same- Art 353 of the c.c.
6. The right to make opposition to intended incestuous marriage of one's relative Art. 18
7. The right to consent for betrothal of one's close relative -Art 560(2) cum. 562 of the c.c.

(ii) Obligations that ensue from family relationship

1. The duty to serve in the organ of guardianship and tutorship Art 219 cum. Art 225 and 226.

Being a guardian and a tutor is a right as well as an obligation. In principle²³ the functions of guardian or tutor are compulsory by their nature for the person who is vested on them. Art 237

2. The duty of respect and obedience imposed on descendant towards their ascendant.
3. The duty of relatives to supply to a destitute relative the means to feed, lodge and to take care of his health and education when the former is capable to afford it Art 197 et.seq

(iii) Incapacity

The gravest incapacity is the impediment imposed by the law not to conclude marriage with a close relative art 8(2) + art 9(2)

CHAPTER 2: CONCLUSION OF MARRIAGE

2.1 Betrothal

In earlier times, before two persons conclude marriage, they would go through the process of betrothal.

Mainly the betrothal was concluded between the parents of the future spouses. Betrothal is defined under article 560 of the 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.

Hence, under the Civil Code, the betrothal contract is to be concluded between family members of the future spouses and more emphasis is given to the choice, consent and interest of these family members rather than the future spouses. Moreover, in many circumstances the practice shows that betrothal was concluded when the future spouses are underage and sometimes not yet born. This means, the interest and choice of the future spouses was not considered at all.

On the other hand, the Constitution of 1995 recognizes the right of individuals to form a family with their own free and full consent. As result, the provisions of the Civil Code dealing with betrothal were found to be contrary to this fundamental right of individuals. Hence, the RFC has excluded the concept of betrothal as a whole.

However, some regional family codes maintain the concept of betrothal with modification. The major modification made relates to the definition given to betrothal. All the regional laws which incorporated the concept of betrothal defined it as a pact between the fiancé and fiancée to conclude marriage sometime in the future. This is unlike the definition given by the Civil Code which involves only the parents or guardians of the future spouses.

2.2. Definition of marriage

The family in the Ethiopian Constitution is recognized as the natural and fundamental unit of a society and an important legal and social institution. As a result, it is given legal protection. One thing that should be noted here is that a marriage may be regarded as either a status or a contract. As Jonathan Herring noted:

Marriage could be regarded as either a status or a contract. In law a status is regarded as a relationship which has a set of legal consequences which flow automatically from that relationship, regardless of the intention of the parties. A status has been defined as ‘the condition of belonging to a class in society to which the law ascribes peculiar rights and duties, capacities and incapacities.’ So the status view of marriage would suggest that, if a couple marry, then they are subject to the law governing marriage, regardless of their intentions. The alternative approach would be to regard contract as governing marriage. The legal consequences of marriage would then flow from the intentions of the parties as set out in an agreement rather than any given rules set down by the law.

Marriage is perhaps best regarded as a mixture of the two. There are some legal consequences which flow automatically from marriage and other consequences which depend on the agreement of the parties. The law sets out: who can marry, when the relationship can be ended and what are the consequences for the parties of being married.

In Ethiopia, marriage is regarded in both the Civil Code. The Revised Family Code and the regional family codes as an institution, rather than a contract

It is true that the three forms of marriage namely civil marriage, customary marriage and religious marriage contained in the RFC differ only in the formalities of their celebration. Civil marriage, shall be concluded before an officer of civil status (Art 1 (1) and Art 2); religious marriage by performing ‘such acts of rite as deemed to constitute a valid marriage, by either or both spouses’ religion- Art 3, and customary marriage by performing such rites as deemed to constitute a valid marriage by the custom of the community in which they live or by the custom of the community to which either or both of them belong – Art 4.

Nonetheless, the term marriage also designates the union of the man and the woman who created a bond of marriage among themselves. This can be inferred from Art 40 which reads ‘marriage produces the same legal effects without any distinction to the form according to which it has been celebrated. When marriage is said to have the same legal effects whatever the form according to which it has been celebrated, it can be understood easily that such effects are the effects of the union, which is constituted by the fulfillment of the formalities; and not the formalities themselves.

2.3. Modes of Conclusion of Marriage

The Revised Federal Family Code as well as the Regional Family Codes recognized three modes of conclusion of marriage. These are: Civil Marriage, Religious Marriage and Customary Marriage. For a marriage to be considered as being concluded before an officer of civil status, a man and a woman need to appear before the officer for the purpose of concluding marriage and give their respective consent to enter into marriage.

2.3.1 Civil Marriage (Marriage Concluded before an Officer of Civil Status)

For a marriage to be considered as being concluded before an officer of civil status, a man and a woman need to appear before the officer for the purpose of concluding marriage and give their respective consent to enter into marriage. Hence, the phrase civil marriage basically refers to the fact that the marriage has been solemnized in front of an officer who is empowered to accept the consent of parties wishing to enter into marriage.

The 1960 Ethiopian Civil Code provides for the establishment and the duties of the office of civil status. However, implementations of the provisions which deal with this office have been made to wait for the issuance of an Order to be published in the Negarit Gazeta, which has never come into life.

Thus, the law governs not only the formalities required to constitute a union; it also provides for the rights and obligations arising from the fulfillment of such formalities.

The same goes with the provisions governing the 'dissolution of marriage'-Art 74 et.seq It is the union that can be dissolved and not the celebration that could take place years before.'

Therefore, even if the revised family code (also the civil code) of Ethiopia, fall short of defining marriage, from the phraseology of the provisions, it can be concluded that 'marriage' refers to both the formality and the institutional aspect.

Accordingly, it will be up to the reader to understand which aspect is connoted by the term marriage, depending on the context in which it is used.

2.2 Essential Conditions of Marriage

Marriage is not strictly personal affair for two individuals. It is an important social institution.

The society, therefore, has an interest in the establishment of this institution, but only when it fulfills its social function. For the fulfillment of such function, the law thus provides essential conditions of marriage, which ought to be adhered to irrespective of the form in which it might be concluded. It is held that failure to meet these conditions result, one way or another in the total and irreparable disruption of community life"

These essential conditions stipulated in the RFC may according to their characteristic be grouped into capacity, consent and other impediments.

2.2.1 Capacity

Marriage originates from a juridical act, and like any other juridical act, capacity is a requirement for one to conclude a valid marriage. Under the RFC, factors that affect capacity during marriage are age and mental state of an individual who is concluding marriage.

2.2.1.1 Age

Generally, the law of persons specifies the age at which an individual attains majority. However, due to some unique features of rights and responsibilities arising from marriage, most jurisdictions provide for a minimum age to conclude a valid marriage; while few others govern capacity to marry by the law that governs capacity in general.

Like the age of majority, the minimum age requisite for a valid marriage is arbitrary and there is no worldwide uniformity in this respect. Nonetheless, despite the disparity held in different jurisdictions as

regards marriageable age, “taking legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age . . .”.seems to be the prevailing international consensus.

Obliviously, puberty has always been a condition of marriage. Nature imposes this condition. However, puberty takes place at varying ages according to the individual. An age has therefore been established at which an individual is considered pubescent. There, thus exists a legal puberty which may or may not coincide with the real puberty.

Fixing the minimum age, however, is not only about physical maturity. One should also be capable of shouldering responsibilities of marriage and family. It is, therefore necessary that an individual should be physically and morally matured when he enters into marriage, and accordingly, the law fixes the minimum age by taking this into consideration.

Under the RFC, marriageable age is fixed at the age of majority that is eighteen, for both sexes–Art 7(1). In the civil code, it’s eighteen for male and 15 for female – Art 58(1).

It was argued that under Ethiopian law, since a person is presumed to be capable at the age of eighteen, fixing a marriageable age below the age required for attaining majority takes only puberty into consideration disregarding one’s capacity to assume responsibilities of marriage. “The civil code is inconsistent in this regard in allowing a girl of age fifteen to enter into a lifetime commitment such as marriage while prohibiting her from concluding juridical acts before attaining eighteen.”

Since concluding marriage leads to a number of responsibilities among which the upgrading of children, and since these responsibilities are usually stronger than ordinary juridical acts which do not necessarily involve the interest of the society, a person who intends to conclude marriage should at least have the capacity required for performing juridical acts.

Besides, fixing different minimum age is also said to be against the constitutional right of equality during marriage.

“The current Ethiopian constitution has reiterated the equality of the sexes. Further, Art 34(2) provides that marriage shall be entered into only up on the full and free consent of the would be spouses. A girl who has not matured mentally however, cannot give free consent to the marriage. Moreover, sub 1 of the same constitutional article provides that men and women have equal rights while entering into, during marriage and at the time of divorce. This equality right can be exercised only when both spouses have attained the level of maturity needed to assert rights and interests.

Accordingly, under the RFC, equal marriageable age has been set for both sexes and the capacity to marry is said to exist at the same time when a person is presumed to be capable of performing juridical acts; i.e. at the age of 18. – Art 7 (1)

This article is not, however, without exception. The ministry of Justice may, on the application of the future spouses, or the parents or guardians of one of them, for serious cause, grant dispensation of no more than two years. Art 7(2).

Though the code does not specifically stipulate, as what would constitute a ‘serious cause’ it seems that ‘serious cause’ has to be examined vis-à-vis the concept of marriage and its function in the society. In some jurisdictions, the pregnancy of the woman or birth of a child is considered as a serious cause for dispensation. In any case, however, there is an absolute bar of sixteen years; i.e. any person who hasn’t attained sixteen years of age, irrespective of any serious ground that possibly warrants dispensation, can’t conclude. marriage.

A point worth mentioning here is that dispensation by the competent Minister should always be granted prior to the conclusion of marriage and therefore, dispensation obtained after celebration doesn’t validate the marriage consequently.

2.2.1.2 Mental Capacity

Albeit, a person who attained the age of eighteen is generally presumed to be capable of contracting marriage, his/her capacity may still be affected by insanity or mental deficiency.

Marriage just like any other juridical act presupposes the valid consent of the parties to it ie. –The consent of the would be spouses. Thus, persons who are completely deprived of the use of reason --- are incapable of contracting marriage, as they are incapable of giving a valid consent. Marriage is not only a contract to which consent must at a certain time be given, it is also a status, which stretches out, and must last a whole lifetime, entailing heavy burdens which he who gets married must be able to bear. It is, therefore, generally accepted that, from both a social and legal point of view, an appreciation of the responsibilities involved in the marital status is required.”

Under Art 15(1) of the code a person who is judicially interdicted may conclude marriage only if she/he is authorized, for that purpose, by the court. Here insanity by itself is not sufficient impediment to marriage. The criteria has been reduced to a formal test, namely whether or not an individual has been deprived of his legal competence by a court order. The actual condition of insanity therefore doesn’t incapacitate an individual from concluding marriage as envisaged under Art 15 (1), unless there is a court order withdrawing his capacity to enter into legal transaction. Such order has the effect of imposing general and permanent incapacity on the individual until it is withdrawn.

To secure the authorization of the court an application may be made either by the interdicted person himself or by his guardian.-Art 15(2)

2.2.2 Consent

Marriage just like other juridical act calls for the consent of the parties as an essential element. The marriage relation that is founded on the mutual consents of the parties partakes the intention to enter into a marital relation as an essential element of consent.

“The consent required to constitute marriage is a consent to be bound by the [juridical act], and to assume the duties and responsibilities imposed by law on the parties to the status, and is predicted on an understanding and appreciation of the nature of the [juridical act] and of the relation to which it commits them.”

Accordingly, Art 6 of the code states ‘a valid marriage shall take place only when the spouses have given their free and full consent.’

As a general rule, the law does not look behind the existence of consent, which was clearly manifested to determine its reality. Rather, the law tries to make sure that the words to be uttered by the parties at the time of conclusion of marriage result from their understanding of the effects of marriage and to be bound by them. It seems that the information to be given by the officer of civil status under Art 25(3), to the future spouses as to the consequences of their declaration, is intended to serve this purpose.

It is essential, however, for the validity of the marriage that the consent should be defect free i.e. where the appearance of consent was based on mistake, or where the consent was procured by force, ... the law will in proper case give relief. Therefore, as one writer puts it the ‘two aspects of consent i.e. existence of consent and integrity of consent’ should be fulfilled.

Under Art 13 of the code, “marriage concluded as a result of error in consent shall not be valid”. (sub Art 1). But it is not every mistake that affects the validity of marriage. As stipulated under Art 13(2) “consent is deemed to be vitiated as a result of error /only/ where such error is fundamental error.” Here the law doesn’t give a clear idea as to what constitutes fundamental error. But without affecting the generality of Art 13(1) and (2), sub Art (3) lists some cases, which will be considered as fundamental errors.

Here a controversy might occur as to the very nature of Art 13(3), i.e. whether it is an illustrative or exhaustive provision. The comparable provisions in the civil code, Art. 590 restrict mistakes that vitiate the consent of the parties only to those that are the results of an error of substance of one of the spouses, on

the person of his spouse. Such general restriction is followed by an exhaustive provision-(Art 591) which further abridged the errors of substance solely to, those listed from sub art (a) – (c).

When we come to the Revised Family code, there is no clear provision, which tells the exhaustive nature of Art 13(3). The pertinent question here is that is it only those errors listed under Art 13(3) that will be taken as defects that affect the validity of marriage? Or is the law trying to consider such errors as fundamental in all cases, while leaving the rest to be determined by the court depending on the particular cases?

Art 1698 of the civil code defines fundamental mistake as a mistake “which relates to an element of the contract which the parties deem to be fundamental or which is fundamental having regard to good faith and to the circumstances in which the contract was made.” If we understand fundamental error in this sense, it seems that what is and what is not fundamental depends not only on the significance of the matter on which the parties made a mistake but also on the intention of the parties. What is fundamental in one case may not be fundamental in another depending on the expectation of the parties. Yet, the law should consider, few cases, which should unquestionably be considered fundamental, and the parties will not be required to prove their intention in such cases. Thus, it seems that Art 13(3), yet again, without affecting the generality of Art. 13(2) lists down such errors, which are considered to be fundamental by virtue of the law.

The list under Art 13(3), however, does not mean that there will be no other fundamental mistakes. Having regard to the true expectation of the parties there could be other errors, which affect the very genuine consent of the parties. In such cases, one can’t say that they expressed their true intention to be bound by the union. Besides if errors that affect the validity of the contract are only those listed under Art 13(3), there is no need for putting a general criteria in reference to which one could distinguish between errors which vitiate consent and which do not. This is because the law has already decided what particular errors vitiate consent.

The wording of the Amharic version also seems to allude to the above construction.

Those fundamental errors listed under 13(3) are: error on the identity of the spouse, where it is not the person with whom a person intended to conclude marriage (sub a). One may envision here the case of identical twins. But a mistake as name only or status induced by false personation of the party will not be considered here. Error on the state of health of the spouse who is affected by a disease that doesn’t heal or that can be genetically transmitted to descendants is the second fundamental error (sub b). The third fundamental error is when the spouse doesn’t have the requisite sexual organs for the consummation of the marriage-(sub c). Finally error on the behavior of the spouse who has the habit of performing sexual acts with person of the same sex (homosexuality or lesbianism) constitutes the last fundamental error under Art.13 (3) (d). This last behavior is also sanctioned under the penal code.

The other ground that vitiates consent is provided under Art 14 of the code. Not counting the need of furnishing consent with understanding of the consequences of such union, consent, must also, be given voluntarily. Therefore, marriage concluded as a result of consent, which is exerted by violence, shall not be valid.-Art 14(1).

It is not nonetheless, any duress that vitiates consent. Duress constitutes defective consent, only when it is directed at the spouse himself/herself, one of his ascendants or descendants, or any other close relatives. - Art 14 (1). The civil code limits persons whose being in danger deems to vitiate consent only to the spouse and relatives in the direct line. Close relatives therefore are not considered under Art 589 of the civil code. Some jurisdictions also specify persons who could be the source of the danger that vitiates consent. One example could be the violence exerted only by the other party or with his procurement.

In order to signify vitiation of consent, duress is also supposed to be “a serious and imminent danger or threat of danger.” Here the wording of this Article might be understood to imply that no such defect in consent exists when the danger is in the course of being performed, which is clearly absurd.

It would also seem to imply (for depending on how the sentence is read and the adjectives are related to nouns, various meanings are possible) that a mere threat of danger is sufficient ground for vitiating consent, whether or not serious and imminent. It seems also that a danger, which is imminent, is a danger, which is about to be carried out which makes it one case of threat. Therefore, in accordance with a recommendation given by Philippe Graven (commenting on Art 70 of the penal code) and having made the necessary changes the provision seems better if it is read as “... from a serious danger or a threat of a serious and imminent danger.

2.2.3 Other Impediments

To conclude a valid marriage, it is not sufficient that a person has the general capacity for marriage and has given a defect free consent. Although capacity and defect free consent are unquestionably necessary, there must be no special reason, which impedes his marriage. In the following cases, the law prohibits the marriage of a person, in consideration of a fact or of a status, which constitutes for him an exceptional prohibition of marriage.

2.2.3.1 Sex Difference

Sex difference of the spouses is also another condition, which is implied in the code. In all the forms of marriage, the phraseology of the provisions of Art 2,3 and 4 indicate that marriage is concluded “When a man and a woman” perform either the requirements of civil marriage, religious marriage, or customary marriage. Art 600 of the penal code that sanctions sexual performance between persons having same sex also implies that marriage must be concluded between persons having different sex, since consummation is expected from married persons.

2.2.3.2 Consanguinity and Affinity

In the first part of this course, we have seen that relationships by consanguinity and affinity are sources of family relation. The existence within prohibited degrees of either of the consanguinal or affinal relations between a man and a woman prevent a valid marriage from being concluded between them.

Under Art 9(1) marriage between persons related by affinity in the direct line is prohibited. Therefore a person may not marry any of the ascendants and descendants of his/her spouse i.e. father – in – law can’t marry his son’s wife, a mother in law can’t marry her daughter’s husband, also, marriage between one and her step father and his step mother is legally prohibited. In the collateral line, as well, marriage between a man and the sister of his wife and a woman and the brother of her husband is prohibited.

The justification for prohibiting marriage between affinies had its roots in the church. It was believed that marriage makes a man and a woman one flesh. Hence, if it is wrong to marry my sister, it must be equally wrong to marry my wife’s sister.

Today, social policy seems to be the rationale for prohibiting marriage between affines. According to Creetney:

The main justification for prohibiting marriage between affines is that such a prohibition helps to exclude sexual relationships from the home circle; there can thus be closeness between those who share the same household without the risk that the stability of the family will be disrupted by incestuous courtship, . . . if a man could look on his wife’s sister as a potential spouse, the trusting intimate, but asexual relationship of brother and sister might well be destroyed. Further, such marriage would cause a confusion of roles when the children of the marriage had to be told that their aunt had become their mother. Such arguments may appear to be even stronger in the case of marriage between a man and his stepdaughter. It might be thought that the law should protect girls from the danger of sexual abuse by those in authority over them.

Relationship by affinity and the prohibition (the impediment to marriage) subsists even if the marriage, which is the source of the affinal relationship, ceases to exist either by divorce or death of one of the spouses. However, if marriage is dissolved by court order due to violation of one of the essential conditions of marriage neither the relationship nor the impediment would subsist as the relation created by the man and the woman is not at the first place given a legal recognition as the institution of marriage.

And as regards consanguinal relations, marriage between a person and any of his ascendants and descendants is prohibited- Art 8(1). Also, in the collateral line, marriage between a man and his sister or ant and between a woman and her brother or uncle is legally for bidden - Art 8(2).

With regard to the prohibitions of marriage as between collateral relatives it's worth to note again that the degree of relation within a prohibited degree is reduced from 7th degree (in the civil code-Art 551 (1) and 552(3) to only three generations in both consanguine and affinal relations.

Genetic consideration one ground for prohibiting marriage between persons related by consanguinity. It is said that in union between relatives, the race weakens, children are often stricken with deafness, insanity, epilepsy or they do not live. Blood needs to be mixed. In addition, there is no reason why the social policy mentioned above vis-à-vis prohibition of marriage between affinal relatives can't serve as a justification for the prohibition of marriage who are related consanguinity.

Adoption and Filiation Not Established Legally

As a rule, to be an obstacle for marriage, natural filiation should be established by one of the modes of ascertainment provided in the code. Paternal filiation, in particular can be established regularly either by presumption of paternity-Art 126, acknowledgment of paternity-Art 121 or by judicial declaration of paternity- Art 143.

But if one restricts the legal effects of natural relationship only to those regularly established by one of the three ways, "scandal would be created by a man marrying his natural but not acknowledged, daughter or sister, such relationship being certain in fact and known by everyone.

It is therefore, provided under Art 10 of the code, that, "the existence of a bond of natural, filiation which is commonly known to the community is sufficient to render applicable the impediments to marriage referred to in Articles 8 and 9, notwithstanding that the filiation is not legally established. This can be considered as an exception to the law of filiations, whereby natural filiations can be established to serve a particular purpose.²⁷

Another case where relationship by consanguinity and affinity serve as obstacles to marriage is in the case of artificial filiations - adoption. The law of adoption assimilates the status of the adopted child to that of one born of the adopters. Under Art 180 of the code, adoptive filiation may be created by an agreement between a person and a child.

The effect of such agreement is that an adopted child will be considered, for all practical purposes to be the child of the adopter - Art (8). Therefore, as the adopted child assumes full membership of the adopter's family, the law prohibits marriage between the adopter and the adoptee.

The scope of the bar extends to exclude marriage not only between the adopted child and the adopter, but also between the former and the descendants and ascendants of the latter. This is the extension of the application of the prohibition of marriage between persons related by consanguinity to the status created by adoption. The adopted child is also deemed to be within the prohibited degrees of affinity with the spouse of anyone of the above mentioned relatives of the adopter as he has affinal relationship with them, which ensues from the status, created by an adoption agreement.

The assimilation of the status of the adopted child to that of natural filiation, however, will not be effective with regard to the ascendants or collaterals of the adopter who have expressly opposed the adoption, if the

opposition is registered in a court registry within one year from the approval of the adoption agreement by the court. -Art 182 (1) and (2).

The above prohibition is without prejudice to the one that exists between the adopted child and his family of origin. The adopted child retains his bonds with family of origin- Art 183. Accordingly, an adopted child remains within the same prohibited degrees in relation to his natural parents and other relatives as if he hadn't been adopted.

Besides, it seems that the prohibition once existed remains intact even if someone else subsequently adopts the adopted child due to the death of the original adopter or revocation of their adoption agreement - Art 189(2) cum. Art 195(2)

2.2.3.4 Bigamy

The legal concept of marriage in Ethiopia is a monogamous union of a man and a woman to the exclusion of others. Under Art.11, a person shall not conclude marriage as long as he is bound by bonds of a preceding marriage. If therefore, a person was once married he can't conclude a second marriage unless the preceding marriage is dissolved either by death or declaration of absence of the other spouse, by court order due to the violation of one of the essential conditions of marriage or divorce.-Art 75 The impediment of bigamy, thus, applies even to marriages contracted in the belief that the existing marriage is invalid or pending divorce proceedings, for a voidable marriage exists until annulled and a valid marriage continues until terminated by death or divorce.

2.3.4 Personal Appearance

Marriage being a juridical act of highly personal nature, it ought to be solemnized in the presence of the parties, and the use of the proxy, which is freely permitted in the commercial world, is prohibited. Under Art 12 (1) of the RFC, 'Each of the future spouses shall personally be present and consent to the marriage at the time and place of its celebration.'

In case of serious cause, however, where postponing the date of marriage is difficult and either of the future spouses can't appear personally for a serious cause, Art 12(2), by way of exception provides for representation to be allowed by the Ministry of Justice. The code however doesn't make it patent as to what constitutes a serious cause. Yet, the consent of the future spouses though not made personally, is a necessary requisite for the conclusion of a valid marriage.

When Art 12(2), provides that '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', it is not clear whether the legislator intended to say that the person's consent is required as regards the representation itself or that he should in advance give his consent to take the other person as husband or wife. If consent is to be made about, representation it should be given with particular reference i.e. it should not be about representation in general but of a particular individual. The case of judicially interdicted person, however, seems to fall outside the scope of application of Art 12(2) since such a person cannot give a defect free consent and so he can't be said to have given his consent for representation.

A question that can be raised in relation to Art12 (2) is 'How would the conclusion of marriage by proxy be viewed in the light of the provision of Art 25 of the RFC? In situations, falling under Art 12 (2) could one possibly say that the provisions of Art 25 are to be made applicable mutatis mutandis? i.e. can we say in case of marriage by proxy under Art 12(2), the proxy would be required to fulfill the same formal requirements of Art 25? If reply is made to the positive, how would, for example, the proxy know for sure that the essential conditions of marriage are not violated?

Incidentally, it is possible to note that the representation permitted by way of exception under Art 12(2) is only for the purpose of conclusion of marriage, and as such, is not for its consummation.

2.3.5 Period of Widowhood

Each time the wife survives the dissolution of her marriage the law imposed upon her a period of 180 days during which time she can't remarry. Planiol, discussing the rationale behind such delay before remarrying said, "This rule is not based upon reasons of propriety – a kind of legal mourning imposed on widows- because it may apply to women who are not widows, and the men, even widowers, are never subjected to it. Its motive is to avoid uncertainty of paternity in the case of birth of a child. In reality, the law, in order to determine paternal filiation had to evaluate rather broadly the possible duration of pregnancy in such a way as to include cases of extreme length or shortness of time. It assigns to pregnancy a duration, at the most, of 300 days; and at the least, 180 days."

Art 128(1) of the RFC assigns the same duration of pregnancy. A child shall be deemed to have been conceived in wedlock if he is born more than 180 days after the celebration of marriage and within 300 days after its dissolution. Therefore, conception necessarily takes place within the 121 days interval. Art 16(1) based on the above consideration prohibits a woman, whose previous marriage is dissolved, from remarrying before the lapse of 180 days.

N.B. However, as the legal rules pertaining to filiation stands now one cannot say such prohibition exacted on a woman not to conclude marriage before the lapse of 180 days, resolves the confusion that arises regarding legal paternity. (See the discussion under Chapter 6.)

Art 16 (2) provides for exceptional circumstances where the period of widowhood may not apply. It seems that the existence of the circumstances mentioned under this provision by themselves guarantees that there will be no confusion of legal paternity. Where the woman gives birth to a child after the dissolution of marriage (sub 2 (a)), or where the woman remarries her husband (sub 2(b)), it is clear that there will be no confusion of paternity and no need to delay the marriage. The same goes for sub 2 (b), where it is proved by medical evidence that the woman is not pregnant

Art 16(2) (d), provides for judicial shortening of the delay. The court may dispense the woman from observing the period of widowhood. This provision envisages a number of circumstances whereby confusion of paternity may not arise. One example could be sterility, and the court has the power to dispense the woman from the limitation of the period of widowhood upon the proof of such circumstances.

2.3 OPPOSITION TO MARRIAGE

The non-fulfillment of any one of the essential conditions that we have seen in the previous section is an impediment to marriage. An impediment is therefore a fact prior to marriage, which presents an obstacle to it. Hence, the existence of any such impediment is an obstacle to the celebration of marriage.

The code provides for a mechanism by which marriages, which do not fulfill the essential conditions, would be prevented from celebration. Pursuant to Art 17, opposition may be made when marriage is to be concluded in violation of one of the essential conditions of marriage. A person who may make the opposition varies depending on the type of impediment that exists. These persons as enumerated under Art 18 are:

- a. Parents of the minor and the public prosecutor, in case of age,
- b. In case of relationship by consanguinity and affinity, the ascendants of the future spouses, or the ascendants of one of them or the brothers or sisters of the future spouses, who have attained the age of eighteen years, or the public prosecutor;

Here, it seems that, the interest of those brothers and sisters who didn't attain the age of eighteen can be protected by their ascendants or through the public prosecutor.

- c. In case of bigamy, the person alleging to have had a prior marital relationship with the bigamous spouse or the public prosecutor; and
- d. In case of judicial interdiction, his guardian or the public prosecutor

Opposition to marriage by the judicially interdicted person may be made only when there is no authorization by the court as envisaged under Art 15(1). The guardian who is authorized to apply for

authorization by the court under Art 15 (2) is also empowered to make opposition under Art 18(d). These provisions give the impression that the guardian has the responsibility of acting in either way by taking the interest of the judicially interdicted person into consideration.

When it is made, the opposition is required to comply with the prescribed form under Art 19 (1)- it must be made in a written form- to be submitted to the officer of the civil status within fifteen days from the notification of the marriage. Therefore, the publication of the date of marriage by the officer of civil status enables those persons, empowered under Art 18 to make an opposition to the intended defective marriage. -Art 24 Then after, the law requires the officer of civil status to receive the opinion of the future spouses before deciding on the opposition. Art 19(2)

Once the officer of civil status receives an opposition and the opinion of the future spouses, depending on the validity of the opposition, he makes a decision either to celebrate the marriage or to sustain the opposition-in which case he refuses to celebrate marriage-within five days. -Art 20(1)(2)&(3).

The decision of sustaining the objection by the officer, which will be accompanied by the reasons for his refusal, is alone subject to appeal. -Art 21(1). Where the court overrules the decision of the officer not to celebrate marriage, the officer will celebrate the marriage. In this case, the officer will not be liable under Art 615 of the penal code even if there existed an impediment.

But what if the officer decided to celebrate marriage, while, there was an impediment?

A distinction should be made between opposition, which is regular and permitted by law, and a simple warning which has no definite form and rule. In case of opposition, by persons authorized, the officer is bound to investigate and ascertain the existence of the impediments. The simple warning, sent to him by any person in any kind of form, on the other hand, doesn't bind him; he is a judge as to what he should do. He may refrain from celebrating the marriage or he may disregard the warning in which case the warning may place the officer of civil status in a state where his good faith may be questioned and renders him liable to penalties provided by the law.

It is also worth to take note of the fact that there is no express provision that authorizes the individuals under Art 18 to make opposition in religious and customary marriages; and also that there is no provision that imposes a duty, on those persons celebrating religious and customary marriages such as the religious authorities and the 'Shimageles' to ascertain on the non existence of either of the impediments to marriage. However, as we shall see in the next section, as the effects of the violation of the essential conditions of marriage are akin to all types of marriage those persons who are authorized to celebrate either religious or customary marriage are expected to ensure the non existence of an impediment to save the marriage from being either void or voidable as the case may be.

It's also worth to state that 'Absence of opposition' is not an essential condition for the validity of a marriage. Opposition is a mere procedure by which the absences of the essential conditions are brought to the knowledge of the officer of civil status. A valid opposition exists when one of the impediments to marriage exists; and the presence or absence of an opposition doesn't necessarily indicate that the presence or absence of impediments.

2.4 VARIOUS FORMS OF MARRIAGE

We have already seen that there are essential conditions, which must be fulfilled before the celebration of marriage; and if there is, any impediment, opposition to the celebration may be made. Now, assuming that the essential conditions of marriage are fulfilled; or at least there is no opposition made to the officer of civil status; or, even if there was opposition, either the officer of civil status overruled it, or the court overruled the officer's decision not to celebrate, we will see the formality aspect of marriage.

The revised family code, just like the civil code, recognizes three forms of celebration of marriage. These are:

1. Civil marriage (marriage to be concluded before an officer of civil status- Art. 1(1).
2. Religious marriage- Art. 1(2).
3. Customary marriage- Art. 1(2).

At the earliest stage of the drafting of the revised family code, the code was destined to regulate civil marriage only. Later, however, the other two forms of celebration of marriage were also integrated in the code. Explaining the rationale behind incorporating the other two forms of marriage it is said:

Religious and customary marriages were not within the purview of the draft legislation. Given the Ethiopian reality, it is difficult to believe that civil marriage will be, the only form of concluding marriage. Rather majority of the marriages have been concluded through religious or customary forms. Therefore, in the workshops that were organized to evaluate the draft legislation, there was a consensus that a family law that doesn't regulate religious and customary marriages is not complete. ... It will be highly ambitious to recognize only civil marriage as a sole form of concluding marriage. For some time to come, even in the major towns of this country, religious and customary marriages will continue to be practiced. Therefore, there is a need to award legal recognition to reality on the ground. Hence, provisions on religious and customary marriages have been incorporated.

It is clear that the legislator recognized religious and customary marriages due to the impracticability of recognizing only civil marriage. Yet, one can easily understand from the organization of the code that the legislator intends to, adopt civil marriage progressively as the only form of marriage. Subjecting religious and customary marriages to the essential conditions provided in the code (Arts, 26(2) & 27(2)) and as well bringing religious and customary marriages to the knowledge of officer of civil status (Art. 28 et. seq could be taken as substantiation for this trend.

2.4.1 Civil Marriage

The law prescribes certain preliminaries, which must take place before celebration of marriage; it also lays down some rules about the ceremony itself. Civil marriage is to be concluded before the officer of civil status-Art 2. The competent officer before whom a man and a woman may conclude marriage is the officer of civil status of the place where one of the future spouses or one of the ascendants or close relatives of one of them has established residence by continuously living, there, for not less than six months prior to the date of marriage (Art. 22).

Thus, a marriage can't be contracted at any place. The right to marry is a right, which is localized. The law desires that the spouses marry in the commune in which they reside, because they are better known there than elsewhere. It is there; above all, where there is a chance that opposition will arise, if there exists an impediment.

At least one month before celebration of the marriage, the future spouses should inform the officer of civil status of their intention to conclude marriage.-Art 23. If it is an ill-considered marriage, they have the chance of changing their intention within such period. Besides, it is during this period that opposition might arise. The officer then, decides the exact date of celebration by consulting the spouses.-Art 24

On the day of celebration, the future spouses shall be present /unless there is dispensation under Art 7(2)/, together with their two witnesses for each -Art 25(1). Once the future spouses and the witnesses, being informed of the consequences of their declaration-Art 25(3), assert publicly, under oath, that the essential conditions of marriage are not violated-Art 25(2); they shall express openly that they consented to conclude marriage on their own free will-Art 25(4). The spouses and their witnesses then sign in the register of civil status.-Art 25(5), following which the officer shall pronounce them husband and wife and issue them a certificate of marriage.-Art 26(6).

2.4.2 Religious And Customary Marriages

The conclusion of religious marriages and the formalities thereof shall be made in accordance with the religion of the future spouses or of one of them.-Art 3 cum. Art. 26(1). Customary marriages, on the other

hand, shall be concluded in accordance with the custom of the community in which they live or by the custom of the community to which they belong or one of them belongs.-Art 4 and 27(1)).

The law also recognizes marriages celebrated abroad in accordance with the law of the place of celebration and as long as it does not contravene public moral.-Art 5. The requirements here are

1. Validity in light of the law of the place of celebration.
2. Not being against public moral which means that such marriages are not required to fulfill the essential conditions of marriage like religious and customary marriages.

2.5 REGISTRATION OF MARRIAGE

The object of system of registration is to ensure that there is public record of an event, which has important legal consequences both for the parties themselves and for third parties. The parties need such a record as an evidence of their marriage and, so that they can present proof of it to others. Third parties need it so that they can determine the status of the parties and the status of themselves and others in so far as that is dependent on the marriage of the parties.³⁹ Here, as illustration, the instances where marriage between two persons could be an impediment of marriage for others may be mentioned. A child who needs to establish his paternal filiation by the legal presumption based on the existence of marriage between his mother and her husband is also a case at point.

Under the code, marriage is to be registered by a competent officer of civil status. -Art 28(1). Here, competent officer doesn't necessarily mean the person before whom the spouses celebrated their marriage, for customary and religious marriages are also required to be registered by this provision. The officer of civil status who registered the marriage under Art 28 (1), issues a certificate of marriage to the spouse; the presentation of which by itself is sufficient to prove the existence of the fact of marriage irrespective of the form in which it is celebrated.

In the case of civil marriages, we have seen that the officer who has celebrated the marriages issues the certificate immediately, after pronouncing them husband and wife.-Art. 25(6) Nonetheless, it would be erroneous to assume that the existence of marriage in the eyes of the law depends upon the existence of the certificate. Whether the certificate is issued immediately or not, the marriage shall have effect from the date of its conclusion.-Art. 28(3) What's more, the issuance of the certificate by itself doesn't guarantee the validity of marriage. Hence, if there is violation of one of the essential conditions of marriage provided by the code, notwithstanding the issuance of the marriage certificate, the marriage may still be dissolved according to Art.31 et. seq. Perhaps, the certificate may show validity as far as the fulfillment of the formalities are concerned.

Since registration of marriage has got important legal implications, where the spouses fail to have registered their marriage and the officer becomes aware of the marriage, the law requires him to draw up the record of marriage by his own motion. -Art 29(1). The officer, then, will have the spouses and their witnesses sign the record of marriage.-Art 29(2)

In all cases, the record shall contain the full names, dates and places of birth and addresses of the spouses and their witnesses.-Art 30 (a) and (b).It shall also enclose the form of the marriage, the date of its conclusion and registration.

2.6 Effects of violation of the essential conditions of marriage

In the preceding parts of this lesson, we have seen essential conditions in the presence or absence of which a marriage can't be concluded. We have also seen when and by whom an opposition to marriage can be made. Once the essential conditions are fulfilled and, at least, there is no opposition to marriage, marriage can be concluded in one of the three forms of concluding marriage.

Now, we will see the consequences of marriages concluded without fulfilling either the essential conditions of marriage or (in the case of civil marriages) one of the formality requirements provided under Arts 22 et. Seq. Any and all conditions, which must be fulfilled before the celebration of marriage, are called “impediments to marriage.” An impediment is therefore a fact prior to marriage, which presents an obstacle to it.⁴⁰ The causes of impediments are diversified sometimes it is a condition of consent or capacity, which one of the spouses lacks; sometimes it is upon special circumstance that the law bases the prohibition to marriage; and sometimes there is a formality that should have been carried out, but which has been omitted.

Below we will try to see the consequences of violation of the impediments under the Revised Family Code:

2.6.1 Capacity

2.6.1.1 Age

We have seen under Art 7(1) that a man and a woman must at least attain the full age of 18 years judge to conclude marriage. The only exception to this requirement is if dispensation is granted for serious cause for not more than two years.-Art 7 (2)

Should a marriage take place when one or both parties are under age, without the requisite dispensation, or under 16 years of age in any case, the marriage shall be dissolved under Art 31 (1). The application for dissolution could be made either by the public prosecutor or any interested person. The law doesn’t make it clear as who the interested person is, but it seems that anyone can inform the public prosecutor as to the existence of the impediment.

The time during which an application for dissolution can be made is not unlimited. The code provides for the validation of a union, which violated the provisions of Art 7 (1) if the party/parties have attained the minimum age before an application for dissolution is made.-Art 31 (2). Thus, the passage of time may validate marriage which was defective at the time of conclusion. Therefore, an application for dissolution can be made only from the date of celebration of marriage until the spouses attain 18 year of age.

2.6.1.2 Marriage of a Judicially Interdicted Person

A judicially interdicted person can conclude a valid marriage only by securing the authorization of a court. - Art 15 (1). If marriage is concluded by such person without prior authorization of the court, however, the dissolution of such marriage may be requested from the court by the judicially interdicted person himself or by his guardian.- Art 34 (1).

It is noticeable that the public prosecutor is one of the persons who may oppose to marriage by judicially interdicted person.-Art 18 (d) However, the public prosecutor is excluded here from persons who may apply for dissolution.

The right of application for dissolution by the interdicted person himself will be barred six months after the date of termination of his disability.-Art 34 (2). When it comes to the guardian, an application may no longer be made six months after the day on which the guardian came to know the existence of the marriage. This is without prejudice to absolute bar on the right of action of the guardian after the cessation of the disability of the interdicted person.-Art 34 (3).

2.6.2 Consent

Under Art 35, a person who has concluded marriage under the influence of duress is the only person who may apply for dissolution.-Art 35(1). If the application is not made within six months after the cessation of the violence, however, the marriage will be validated. It is, then, only by other grounds such as divorce that this marriage can be dissolved. There is also an absolute bar of two years after the conclusion of marriage to apply for dissolution under Art 35 (2).

Similarly, fundamental error may be involved as a ground for dissolution only by the person who committed such error. The same period of limitation, i.e. six months after the discovery of the error and two years, in any case, after the conclusion of marriage are provided under Art 36 (1) and (2).

In addition to the above civil sanction persons responsible for marriage between minors, including the officer of civil status, could be liable under the penal code⁴¹ if they were aware of the existence of such impediment before or during celebration.

2.6.3 Consanguinity and Affinity

If marriage is concluded in violation of the provisions of Art 8&9 i.e. between persons related by affinity or consanguinity (remember that adoption and filiation not established legally produce similar effect), it will be dissolved on the application of any interested person or the public persecutor.

Unlike the minimum age requirement, the violation of prohibition against marriage between persons related by affinity or consanguinity can't be validated through time. The application for dissolution of such marriages can be made at any time, but before the death of either of the spouse, or before divorce. This is because death or divorce by themselves result in the dissolution of the marriage.

Penal sanction also follows from the violation of the above provision under Arts 614 and 615 of the penal code. Under the penal code it is not only marriage between relatives that is sanctioned. A mere sexual intercourse between such persons by itself constitutes a crime (incest), which is punishable under Art 621 of the penal code.

2.6.4 Bigamy

If a couple are married bigamously, in violation of the provisions of Art 11, the dissolution of the marriage shall be ordered on the application of either of the spouses of the bigamist or the public prosecutor.-Art 33 (1). Obviously the application by either of the spouses is for the dissolution of the 2nd (bigamous) marriage. This presupposes the validity of the first marriage.

An application for dissolution, however, can be made only during the lifetime of the former spouse of the bigamist. If the spouse of the bigamist of the previous marriage died no application for dissolution is allowed.-Art 33 (2), i.e. the second marriage is no more bigamous and will be validated by the operation of the law.

The applicant has got the burden of proof to show that the former spouse is alive at the time of the application for dissolution. Pursuant to the civil code the applicant is expected to prove the fact that the former spouse of the previous marriage was alive at the time when the 2nd marriage was celebrated. The civil code on the other hand provides under Art 613 "The marriage contracted by the bigamous spouse shall become valid on the day when the former spouse dies." Here one can't see the purpose of proving the fact that the former spouse was alive at the time of celebration of the 2nd marriage. This is because an application for dissolution can't be made without proving the fact that the former spouse is alive at the time of application for dissolution. A former spouse who was not alive at the time of celebration of the second marriage can't be alive during an application for dissolution of the same marriage

The revised family code, therefore, requires the proof of the fact that the former spouse is alive at time of an application for dissolution. In the absence of this proof the bigamous marriage seems to be presumed as valid.

The only form of dissolution that has the effect of validating the bigamous marriage under the RFC is death. It's not clear whether the other forms of dissolution, i.e. divorce and dissolution by the order of the court, have the same effect of validating the 2nd marriage. It is argued that the logical answer would seem to make such forms of dissolution, additional grounds that validate a bigamous marriage.

Apart from the above civil sanction Bigamy also is followed by penal sanctions under -Art 616 of the penal code.

2.6.5 Period of widowhood, Incompetence of officer of civil status and Non-observance of formalities

The non-observance of the period during which a woman may not conclude marriage doesn't result in the invalidation of the marriage - Art 37.

Similarly, the conclusion of a marriage before an officer of civil status who is not authorized under Art 22 doesn't result in the dissolution of the marriage.-Art 38; and the same goes for failure by the officer of civil status to inform the future spouses of the consequence of their declaration under Art 25 (3) and to pronounce them husband and wife and issue them a certificate of marriage under Art 25 (6) and Art 39.

Generally, impediments to marriage in the Revised family code fall, mainly, into three categories. Even if we said earlier that any impediment to marriage is an obstacle to its celebration, the law does not attach the same effect to all of them. Firstly, there are impediments to the celebration of marriage, which do not affect its subsequent validity. Such impediments are merely prohibitory i.e. the law allows the marriage to endure if it has been celebrated irrespective of violation of certain validity requirements of marriage. Contained in these group are marriages celebrated within the period of widowhood-Art 37; civil marriages celebrated without fulfilling the formality requirements of Art 25(3) and (6), and civil marriages celebrated before an incompetent officer of civil status.-Art 38 and 39. In all of these cases the obstacle to the marriage should prevent the marriage from taking place; if however, it does so, then the marriage will be valid despite the impediment. This is because the dissolution of marriage is a serious matter, "the consequences of which, painful and scandalous, are often greater evil than the violation of a legal rule. The law . . . while not desiring that such a marriage takes place and forbidding [officers of civil status] from celebrating it, it permits the marriage to stand when it has taken place. These are, therefore, prohibitions without nullity."

The second group of impediments contains those which ought to prevent the marriage from taking place and which render it [dissolvable] if it does. These are known as 'relative impediments'. The distinguishing aspect of this group is that the marriage, although [dissolvable] after celebration, can be subsequently validated. This means that the marriage which is [dissolvable] after its celebration due to a defect therein can subsequently become valid through the ex post facto removal of the impediment or by the passage of time.⁴⁶ This process is known as validation.

Falling in this category are marriages dissolvable due to non-attainment of the marriageable-age which will be valid once the spouses attain majority-Art 31(2), bigamous marriages when the former spouse of the bigamist has died- Art 33 (2), marriage of a judicially interdicted person if six months has lapsed after the date of withdrawal of interdiction, when the disability of the interdicted person has ceased depending on who may apply for dissolution Art 34(2) and (3), marriage celebrated under duress (six months after the cessation of violence and, in any case, two years after the conclusion of the marriage-Art 35(2); and marriage celebrated in error (six months after the discovery of such error and in any case, two years after the conclusion of the marriage- Art 36(2).

The doctrine of validation is said to have its roots in canon law. The purpose of the doctrine of validation is said:

"Briefly, the object of validation is to render valid marriages which although vitiated by a defect, show sufficient stability. The law thus intends to give effect to spontaneous cohabitation as a result of which the spouses demonstrate their resolve to continue as husband and wife . . . the law merely gives effect to a de facto status and thus reinforces the existing fabric of the marriage without imposing upon the parties any extraneous duties of formalities . . . the principle of validation is given effect by prohibiting the avoidance of defective marriages which no longer suffer from the original defect or which, as a matter of public policy, should be ratified."

Therefore, the doctrine of validation gives legal status to marriages, which originally contained defect. One ground for validating such marriages could be the disappearance of the defects by cessation, as in the case

of duress or bigamy. The law also validates marriages, which might still be affected by the original defect, as in the cases of duress, and error where there is an absolute limitation of two years after the conclusion of marriage. Public policy seems to be the rationale behind such validation.

Absolute impediments form the third category. These obstacles are so grave that they can never be cured and therefore the marriage can never be validated. Absolute impediments are provided under Art 8 and 9 of the Revised Family code. Marriage between persons related by affinity or consanguinity is prohibited. "If a couple are married despite this impediment their marriage remains [dissolvable]. It is open to an application for dissolution by any interested person or the public persecutor"

It seems, that those impediments as to the consequences of which the code is silent form a fourth category. The code, for example, doesn't provide for the effect of violation of Art 12(1), which provides for personal appearance (this is without prejudice to the provision governing dispensation under Art 12(2). The code also fails to specify, at least clearly, the effect of violations of the formality requirements, other than sub 3 and 6, of Art 25.

One may argue here that since Arts 37 et seq. provide for impediments that don't affect the validity of marriage by a contrario reading the rest of the impediments render marriage, dissolvable. But such interpretation, if at all it holds true, doesn't fill all the gaps created by the code's silence. In addition to their effect, the code should also specify who may apply for dissolution. This is because the right of action for dissolution depends on the ground itself. In the cases of Age, consanguinity and affinity, application can be made by any interested person or the public prosecutor. When, on the other hand, the impediments relate to duress or error, only the spouses who did not give their defect free consent may apply. In bigamous marriages, only the former and latter spouses of the bigamist have such right of action. Even the bigamist spouse is precluded from bringing an action for dissolution. Finally, in the case of judicially interdicted person application can be made subject to the conditions provided - either by the guardian or the interdicted person himself. Therefore, even if we agree as to the dissolvable nature of marriages by impediments, the consequences of which are not specified, there is still a problem to determine who may apply for dissolution.

The code, like many other jurisdictions, gives the right of action on the basis of the nature of the impediments. Where the defect appears to be of a private nature, only the spouses and their representatives (as in the case of judicial interdiction) may apply for dissolution. When, on the other hand, "the gravity of the defect offends the public interest and thus transcends the personal and private wishes of the spouses," any interested person and the public prosecutor may apply for dissolution. This may serve as a guideline to determine persons that may apply for dissolution of marriages affected by impediments, and the effect of which is not expressly stated in the code.

If marriage is dissolved by order of the court as a result of violation of the essential conditions it obviously affects the personal and property relations of the spouses as well, of course, as other interested persons.

The effects of dissolution of marriage by order of the court for violation of the essential conditions of marriage are not separately governed in the Revised Family code. The code simply provides the order of court as one cause of dissolution of marriage in addition to divorce and death or declaration of absence.-Art 75

In some jurisdictions, judicial dissolution of marriages affected by absolute impediments have a retroactive effect; while in those affected by relative impediments it has only prospective effect. Even if such dissolution has a retroactive effect, i.e. the spouses are rendered single as if they were never married, however there are usually matters that can't be returned to their original place. One example could be children born in such union whose right can't be affected by the dissolution of the marriage.

Under the civil code, dissolution of defective marriages has more or less the same consequences as divorce. According to Art 696(2) of the c.c the court "shall be guided by the rules regarding the liquidation of the relations between spouses in cases of divorce." It shall in particular have regard to the good or bad faith of

the spouses... the interest of the children, if any, born of the dissolved union and the interest of third parties in good faith.

Since there is no provision that governs the effect of dissolution of marriages as a sanction of the conditions of marriage, in the revised code, it seems reasonable to assume that the divorce practice will be generally followed.

This, however, is only with regard to matters mentioned under Art 696 of the civil code. Parental rights and obligations, for example, should be adjusted in light of the new relationship between the parties.

The relationships generally described as those of affinity on the other hand, come to an end. Consequently the impediments of affinity no longer exist between persons related by the dissolved marriage.

2.7 Summary

“Marriage” designates the formalities of celebration and the union created by the man and the woman upon the fulfillment of the formalities of celebration.

The Ethiopian Family Law gives recognition to three forms of (celebration of) marriage; namely civil, customary, and religious marriage; all of which be subject to the essential conditions of marriage. The law provides formalities to be followed for civil marriages.

Similar to other juridical acts, the conclusion of marriage requires the capacity, defect free consent of the parties, and complying with the formality requirements. The formalities vary depending on the form of marriage. There are also other conditions common to all forms of marriage.

Persons authorized by the law may file an opposition to the conclusion of marriage, if it is intended to be concluded without fulfilling the essential conditions of marriage. However, in exceptional cases, the appropriate authorities may grant dispensation, or authorize the conclusion of marriage even if an impediment to marriage exists.

Marriage concluded without fulfilling the essential conditions are followed in most cases, by civil sanction. Some others entail criminal liability. On persons who participate in its celebration.

Marriage will be registered by the competent officer of civil status irrespective of the form according to which it is celebrated; albeit the effects thereof do not depend on its registration.

The sanction hinges on the type of impediment that renders the marriage defective; there exist three kinds of impediments, namely, absolute impediment, relative impediment and prohibitory impediment

The effects of dissolution should be governed by the principles governing the effect of divorce, and having regard to equity, good faith, and interest of children.