- ✓ Article 1 of the Civil Code declares that "the human person is the subject of rights [and duties] from its birth to its ***death***".
- ✓ Human person will no longer have rights or duties as of death. The same - albeit with certain slight qualifications - goes also for an absentee, whom the law assimilates to the dead, at the time when he is duly declared absent.
- ✓ The implication of the provision is that a person will permanently stop to have both rights and duties from the moment at which he is considered dead in terms of the language of the law.
- ✓ That does not, though, in any way mean that the rights and duties of such a person will die, or be disposed of with him – at least not in its modern sense.
- ✓ The vast majority of the rights and duties that the dead had acquired while alive will, however, pass to other persons – usually his surviving next of kin. Nevertheless, the devolution does not happen arbitrarily. The law systematically regulates how a person's estate is disposed of upon death.
- ✓ The ***Law of Successions*** is that branch of law which governs the manner in which, and, of course, to whom, the rights and duties of a dead person, technically referred to as the deceased, should pass.
- ✓ Those rights and duties that devolve by succession were acquired by the deceased during his lifetime. And they are generally of proprietary nature.

CHAPTER ONE: Devolution of successions

- ✓ It deals with the issues like, what constitutes the inheritable property of the decedent (or the deceased), what rights and powers does the testator (will maker) have, what rights and obligations of the heirs and/legatees have, the mechanisms of devolution of succession (via intestate and testate ways), the formalities of making a will, mechanisms of revocation and lapse of will, etc.

GENERAL CONSIDERATIONS OF THE DEVOLUTION OF A SUCCESSION

The Concept of Patrimony

- ✓ Patrimony is the estate that descended from the father to his descendants. However, this does not exclude the estate that descends from the mother to her descendants and/or from other ancestors in the paternal as well as in the maternal line.
- ✓ In the law of property, patrimony may have a different meaning. A person's rights and obligations appreciable in money looked upon as a whole are called his/her patrimony. There is a link between a person and patrimony. This link can be expressed in the following four ways:
  - Only persons have patrimony with the exclusion of other beings. Persons are beings that are capable of having rights or owing obligations.
  - Every person necessarily has a patrimony, irrespective of the fact that the person has no property at all. Patrimony is linked to the personality of the person.
  - Patrimony is a unit. All the property and all the charges of a person form a single mass. However, this principle of unity of patrimony is subject to exceptions. One example of the exceptions is — an heir seems to have two patrimonies.
  - Patrimony is inseparable from the person.

1.1.2. Opening of Succession

- ✓ As it is expressed in Article 826 of the Civil Code, the succession of the person opens at the place he/she had his/her principal residence at the time of his/her death.
- ✓ According to Article 174 of the 1960 Civil Code, the residence of the person is the place where he normally resides. The normality of residence will show that the person's socio-economic life in the society. When a person has many residences, one of such residences may be considered as a principal residence of such person. For the purpose of opening of the succession of the deceased, it is appropriate to consider the principal residence of the deceased the place where he/she has most of his/her inheritable property.
- ✓ The succession of the deceased shall open just at the time of his/her death.
- ✓ Some obligations of the deceased could pass to his heirs and/or legatees.

Things making up a Succession

- ✓ What transfer from the deceased to his/her heirs and legatees are those rights and duties of the deceased which arise from various relations which the deceased had with third parties during his/her lifetime.
- ✓ contractual relations the deceased had with third parties; contract of insurance between the deceased; rights which arise from court proceedings between the deceased and third parties; and those rights generally referred to as property rights – those rights we create and exercise against things, corporeal (movable or immovable) or incorporeal.
- ✓ All the inheritable property left by the deceased at the time of his/her death are called the hereditary estate. The hereditary estates are not limited to corporeal (tangible) things. They also include incorporeal (intangible) things such as the works of the mind or literary rights.

a. Life insurance

- ✓ As prescribed in Article 827 of the Civil Code, life insurance could or could not constitute a hereditary estate.
  - Life insurance is a contract.
  - The contract is made between the insurer (insurance company e.g. the Ethiopian Insurance Corporation) and the subscriber (a person who buys the life insurance policy and makes a periodical payment of premiums to the insurer).
  - The insurer undertakes or commits itself to pay the agreed amount of money to the beneficiary upon death of the subscriber.
- ✓ Art. 701 of the Commercial Code provides for the beneficiary of the life insurance as follows:
    - The subscriber's spouse, even where the marriage took place after the policy was entered into.
    - The subscriber's children, whether or not born at the time when the policy is entered.

b. Pensions and Indemnities

- ✓ The main purpose of pension scheme in Ethiopia is to support the person who was a public servan during the time when he/she is unable to work.
- ✓ In addition to this, the pension scheme has the purpose of supporting those persons who were maintained by the pensioner during his/her life time.
- ✓ **Pension** is money payable to the spouse, children or parents of the deceased person based on conditions specified under Proclamation № 345/2003. According to Art 35(1) of this Proclamation, if a person who is a government employee dies, the widow or the widower would be entitled to receive 50% of the pension to which the deceased was or would have been entitled. Pension money is not the estate left by the deceased at the time of his death. The spouse or the relative of the pensioner has no right to pass the pension allowance to which he/she is entitled to his/her heirs when he/she (the spouse or the relative) dies. Therefore, pension allowance does not constitute the hereditary estate of the deceased.
- ✓ **Indemnity** is money to be paid to the spouse or relatives of the deceased person. For instance, if the person who is entitled to receive the indemnity payment dies, the money cannot go to his heirs.
- ✓ A person's succession may be conducted in one of the two types of successions. As it is prescribed in Art. 829, succession could be either testate or intestate. It could also be the combination of the two types.
- ✓ **Testate succession** is a succession in which the estate of

the deceased person shall pass to his heirs and/or legatees according to the order of the deceased in the will he/she made. If the deceased made a valid will, his/her succession would be conducted in accordance with the will. A person who left a will is called a testator.

- ✓ If the testator had no will at all, or his/her will is not valid, the succession of such person shall be conducted by the operation of the law. That is, in the case where there is no will, or where the will is invalid, the law shall distribute his estate among his heirs.
- ✓ Sometimes it may happen that the succession is a combination of both intestate and testate. Many circumstances could lead to such a situation. For instance, property which was not included in the will may be discovered later; the will may be partially invalidated; the testator may appoint a universal legatee who is not a legal heir to take only some portion of the hereditary estate and with respect to the rest of the estate he/she may keep silent; etc.

1.1.4 Capacity to Succeed

- ✓ The law requires someone who alleges to have a right in the succession of the deceased to fulfill some requirements.
- ✓ The capacity to succeed depends mainly on two conditions. The first one is; the heir and/or legatee must survive the deceased person. The first condition is an objective condition and the heir and/or legatee shall lose his right to succeed the deceased for reasons outside his volition. This is such heir and/or legatee must not be unworthy. This is a subjective condition which occurs with a willful act of the heir and/or legatee. (Read Articles 830 & 831 of the Civil Code)

The Condition of Survivorship

- ✓ This condition requires the heir to be alive at the time of the death of the deceased.
- ✓ If the heir lives even for a very short time after the death of the deceased, we believe that he/she has survived the deceased. (Article 830)

Commorients

- ✓ After an accident, death may not occur immediately and some persons die before others.
- ✓ When persons who have reciprocal rights to succeed each other die together, we could know by a post–mortem examination who survived whom. However, this examination is not always successful. It could be impossible to determine who died first and who died second by a post–mortem examination.
- ✓ ***Art. 832. — Persons dying simultaneously:*** Where two or more persons are dead and it is not possible to prove which of such persons survived the other, the succession of each one of such persons shall be regulated as if he had been the last survivor without, however, receiving anything from the succession of the other persons.

Death of Heir

- ✓ According to Art 833, all the rights of the heir in the succession of the deceased shall pass to the heirs of the heir. Even if an heir dies sometime after death of the deceased, the heir is said to have died after getting the right to succeed the deceased.

Unworthiness

- ✓ An heir and/or a legatee can become unworthy because of his criminal actions. The rationale behind this rule is that a person may not profit from his/her own crime.
- ✓ The first crime that could make an heir unworthy is his intentional murder of:
    - The deceased himself,
    - The deceased's descendant,
    - The deceased's ascendant or
    - The deceased's spouse.
- ✓ The heir and/or the legatee must be sentenced for his crime before he is considered unworthy.
- ✓ The second reason that makes a person unworthy is, his/her attempt to kill the persons enumerated under Article 838 (a).
- ✓ The third reason that makes an heir or legatee unworthy is a false accusation against the persons enumerated under Art 838(a). To make the heir or legatee unworthy, the false accusation must entail the condemnation of any of such persons to capital punishment or rigorous imprisonment for more than ten years.
- ✓ The fourth reason that could make an heir or a legatee unworthy is perjury. Someone commits perjury when he/she stands as a false witness against somebody. As the result of the false testimony of an heir or legatee, if one of the persons enumerated under Art 838 (a) of the Civil Code is condemned to a capital punishment or rigorous imprisonment for more than ten years, the heir or the legatee will become unworthy to succeed the deceased.
- ✓ The fifth reason relates to the interference with the right or power of the testator in making a will. The heir or the legatee in this case, by taking advantage of the physical state of the deceased, has prevented him from making, modifying or revoking a will. The deceased might have been sick for a long time and very weak physically. The heir or legatee may take the advantage of this weak condition of the deceased to prevent him/her from making, modifying or revoking a will. Such heir or legatee shall be condemned as unworthy.
- ✓ In order to be condemned as unworthy, the heir or legatee must have committed this latter offence only within three months before death of the deceased. If the offence is committed before this time, the law will not condemn the heir or the legatee as unworthy.
- ✓ If an heir or a legatee commits any of the offences which are listed under Art. 838 after the death of the deceased (which means after opening of the succession), he/she will not be deprived of his/her rights to succeed the deceased it is said here that the crime has no connection with the succession.
- ✓ Although the heir has committed the offences prescribed under Arts. 838 and 840, he/she would not lose his/her capacity as unworthy, if the deceased had given such heir an amnesty, or if he had forgiven him/her. The pardon may be either an expressed or an implied one. A very common way of pardoning an heir is expressing the pardon in a will.

Unborn child

- ✓ When the father of a merely conceived child dies, the law considers that the interest of the child requires his consideration as a person. Such a child shall not be treated as a non–existent being. In such a case, his/her interest requires that he/she is a person subject to rights. Hence, although he/she is an unborn child, the law allows him/her to participate in the succession. However, his rights in the succession shall be realized after his/her viability is proved.

Children born in marriage, outside marriage and adopted children

- ✓ The Ethiopian law of succession makes no distinction based on the status of a child whether such child is born in marriage, outside a wedlock marriage or he/she is an adopted child. The establishment of the paternity of an illegitimate child is duly obligatory before he claims to succeed the deceased, if the deceased is putative father.
- ✓ An adopted child, for all intents and purposes, is assimilated to a natural child. The only exception for this rule is, as prescribed under Art. 182 of the Revised Family Law of 2000, (or the corresponding provisions in the Regional Revised Family Codes) adoption cannot be effective against the ascendants and collaterals of the adopter who opposed the adoption.

Sex, age and nationality of heir

- ✓ In most of the customs in Ethiopia, male children are favored to succeed their parents. In some nationalities, female children are totally precluded from succeeding their parents. Particularly this was true as far as succeeding land was concerned. The FDRE Constitution has recognized the property rights of women. Art 35(7) of the FDRE Constitution provides as follows:"Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property."
- ✓ With respect to age, it cannot be a ground to discriminate heirs. As long as there is no valid will left by the deceased that discriminates the heirs based on their ages, the rights of the heirs to inherit the deceased cannot be affected by their age.
- ✓ The same is true with respect to nationality of the heir. But this rule is subject to the provisions of the Civil Code which restrict ownership of immovable property by foreigners. (Articles 390 — 393)

INTESTATE SUCCESSIONS

- ✓ In Ethiopia, most of the successions are intestate.
- ✓ When the deceased leaves no will at all or a court for various reasons invalidates the will made by him, it is said that the succession is intestate. In such a case, the distribution of the estate will be in accordance with the operation of the law rather than the volition of the deceased. In the intestate succession, the law follows "the presumed will of the deceased." This type of succession is older and more historic than succession by will.

Devolution according to the degree of relativity

- ✓ The provisions of intestate succession are based on the idea that — had the deceased made a will he/she would have distributed his/her estate by following the degree of relationship. That is, he/she would give his/her estate to his/her closest relatives in the first place. In the second place, relatives who are situated at a relatively distant position when compared with the relatives of the first degree shall succeed the deceased. Accordingly, the law considers the children of a person are his/her closest relatives.

1. First relationship

- ✓ Children or other descendants are number one candidates to succeed a person (Art. 842(1)). If he/she died before the death of the deceased, he/she would lose his/her capacity to succeed. The reason is he did not fulfill one important requirement, which is surviving the deceased. Although a predeceased heir lost his/her capacity to succeed the deceased, his/her own descendants will represent him. Therefore, representation could be taken as an exception to the rule of survivorship.

2. Second relationship

- ✓ If the deceased is not survived by his/her children or other descendants, the father and the mother of the deceased will be called to his/her succession. In the case where his/her descendants survive him/her, all other heirs of the deceased will be excluded from the succession according to the rules of the interstate succession. His/her father and his/her mother are in the second order in the queue of the relatives of the deceased. The father and mother of the deceased will take equal share of the whole estate of the deceased.
- ✓ In the case where one of the parents has died before the deceased, such parent shall be represented by his/her children (or other descendants). In the case where both parents have survived the deceased, half of the hereditary estate of the deceased goes to the father and the other half goes to the mother. This is based on the principle that heirs of the paternal line the maternal line shall have equal shares in the inheritance of the deceased, so long as they are at equal distance from the deceased. In the paternal line, we find the father of the deceased and his (the father's) descendants. In the maternal line, we get the mother of the deceased and her descendants. In a situation where the father predeceased the deceased and where descendants do not survive him, there is nobody to take the estate of the deceased in the paternal line at that level. In this case, the heirs of the maternal line take the whole estate of the deceased.

3. Third relationship

- ✓ A person has four grandparents, two on the paternal line and two on the maternal line. If the deceased is survived by all of the four grandparents, half of the hereditary estate shall be devolved on the paternal grandparents and the rest half will go to the maternal grandparents. Each of them shall be entitled to one-fourth of the hereditary estate. If one of them predeceased the deceased and is survived by descendants, he/she will be represented by such descendants.
- ✓ If a predeceased grandparent is not survived by descendants, his/her portion shall devolve upon the other grandparent of the same line. For instance, if the paternal grandfather predeceased the deceased and if he is not survived by descendants, the property that was destined to him or to his representatives will now be transferred to the paternal grandmother. In this circumstance, the maternal grandmother, instead of taking only one-fourth of the hereditary estate, she is entitled to receive half of the hereditary estate (if she is alive). If this paternal grandmother also predeceased the deceased, her own descendants will represent her. If her descendants do not survive her, there is nobody to receive the property on the paternal line of third relationship. Therefore, the whole hereditary estate will devolve upon the maternal grandparents. There are two maternal grandparents and each of them will be entitled to receive half of the hereditary estate.

4. Fourth relationship

- ✓ A person has eight great-grandparents, four on the paternal line and the other four on the maternal line. The distribution of the estate follows the same pattern as that of the case of parents and grandparents.

Paterna paternis-materna maternis

- ✓ Articles 842 to 848 describe the rule in which intestate succession is governed. That is, the closest relative of the deceased would succeed him/her. This rule has an exception. The exception is — although there are closer relatives of the deceased, a certain property may devolve upon far distant relatives. The law calls this exception as paterna paternis materna maternis.
- ✓ The exceptional rule of paterna paternis materna maternis is designed to allocate an immovable property that is obtained by the deceased from one of the lines by way of donation or succession to the heirs of the line from which the property is obtained.
- ✓ Art. 850 explains that the heir who is the closer relative of the deceased and should have succeeded the deceased, but lost his right as a result of paterna paternis materna maternis, will have a usufruct right on the immovable. A usufruct right is a right to use a property or to derive a fruit

from that property.

- ✓ According to Art 851, to apply the rule paterna paternis materna maternis, there has to be an heir in the line from which the immovable property is obtained, if the immovable property is obtained. If the immovable property is acquired from the paternal line, there has to be an heir in that line. In case of absence of any heir in the paternal line, the immovable property shall devolve upon the maternal line. The converse is also true.
- ✓ To apply the rule paterna paternis materna maternis, the following five conditions must all exist together. If one of them is missing, it cannot be applicable. The five conditions are:
    1. The deceased must die intestate. (The exceptional rule cannot be applied if there is a will)
    2. His/her own descendants must not survive the deceased. (If there are descendants, Art. 842 shall apply)
    3. The property must be an immovable one. (Art. 849 (1) & (2))
    4. The property must be acquired by the deceased from either paternal or maternal lines by way of succession or donation. (Art. 849 (1) & (2))
    5. There must be an heir in the line from which the property has originated. (Art. 851)

Escheat

- ✓ When there are no heirs of the deceased up to the 4th relationship, the property shall devolve on the State. This condition is usually said to be Escheat.
- ✓ Escheat is reversion of property to the state in the absence of legal heirs or claimants. The State takes the property of the deceased not by way of succession, but because such property has no one to claim it. Property which is bona vacantia (ownerless or vacant property) belongs to the State and it is via this principle that the Government is taking the property of the deceased that has no heir up to the 4th relationship. (Article 852)

Representation and renunciation

1. Representation

- ✓ It can be said that there two modes of succession, succeeding directly and succeeding through representation. Heirs who are closest to the deceased are called to succeed directly and personally. However, the persons who are to be called to succeed directly and personally might have died before the opening of the succession, by leaving descendants behind them. In such a case, the law allows such descendants to be called to the succession.
- ✓ Representation is an exception to the requirement of surviving the deceased. According to this exceptional rule of representation, the descendants of a predeceased heir can take part in the succession by taking the foot of the predeceased heir. When representation is effected it is per stripes, not per capita. That is, the descendants of the predeceased heir shall take what would be taken by the predeceased heir, had he/she been alive.

2. Renunciation

- ✓ An heir who is a successor may not necessarily be willing to participate in the succession. In such a case, he could renounce the succession.
- ✓ Renunciation is a refusal to accept the succession. A person may renounce the succession for various reasons. If he/she is relatively in a better economic position, he may renounce the succession to the benefit of his co-heirs. The heir who has renounced the succession shall never be seen as the heir of the deceased. He/she has forfeited his/her right in the succession and hence he/she will not be represented by his/her descendants. The reason is the one who has no right in the succession shall not transfer to his/her descendants what he/she does not have. However, as it is prescribed in Art. 854(2), the person whose succession has been renounced may be represented.
- ✓ With the same logic as renunciation, the heir who is declared unworthy cannot be represented by his/her descendants, as such heir has already lost his/her right to succeed the deceased, he/she has nothing to transfer to his/her descendants. To succeed the deceased through representation, there has to be bond of legal relationship between the deceased and the one who claims to succeed the deceased. (Arts 855 & 856)

WILLS

- ✓ A will is the most satisfactory means of arranging for the devolution of a person's property after death.
- ✓ While making a will, the testator makes a disposition of his/her property through a unilateral declaration of intention which does not require receipt by another party to become complete. The valid execution of a will requires that the testator possessed testamentary capacity at the time of execution and that the formal legal requirements were observed.
- ✓ A will is a juridical act that shall have a legal effect after the death of the testator or the will maker. It is an instrument by which a person makes a disposition of his/her property to take effect after his/her deceased, and which in its nature is ambulatory (that the will is of no effect until the testator's death, and a competent testator may change or revoke it at any time before his/her death) and revocable during his/her lifetime. A will is the instrument, which expresses the last wish of the testator.
- ✓ There are different kinds of wills made by fulfilling the formal requirements that the law prescribes. The law is very strict with respect to the formality of making a will.
- ✓ Will is different from donation in that donation is a contract whereby a person, the donor, gives some of his property or assumes an obligation with the intention of gratifying another person, the donee.

Conditions for the validity of wills

1. Personal nature of a will

- ✓ The testator should seek the assistance of no one else. He/she should make the will by himself/herself. No any other person may take part in the making of a will on behalf of the testator or by way of assisting him/her. Nor the testator could appoint another person to represent him/her as far as making, modifying or revoking a will is concerned. Except for will and other specifically stipulated juridical acts, another person may represent the testator. The following definition illustrates well this condition.
- ✓ The testator is not in a position to express his/her true wishes after his/her death. If someone is allowed to make a will on behalf of the testator, he/she can take advantage against the true intention of the testator very easily.
- ✓ According to Article 858 of the Civil Code, no two persons may make a will together using the same document. The law believes that the testator cannot express his/her free intention when he/she makes a joint will. That is, if the testator makes a joint will, such will could influence his/her free intention to some extent. A will is an instrument that the testator can repeatedly alter or revoke during his/her lifetime. It would be difficult for the testator to alter and revoke a will if he/she makes a will together with another person. In Ethiopia, even spouses cannot make a will together irrespective of the fact that they have community of property in marriage.
- ✓ A person may not bind himself/herself to make, to modify or to revoke a will to the advantage or disadvantage of any other person. That is, he/she cannot promise to make a will to the benefit of a relative, a friend or any other person. In addition, he/she cannot promise to make, modify or revoke a will to the disadvantage of any person.

2. Capacity to make a will

- ✓ Testamentary capacity is a special form of legal capacity.

Minors

- ✓ According to the Revised Family Code of the Federal Government and that of Regional States, a minor can make a will once he/she attains the age of 16 years. Art 295
- ✓ Even if the minor does not revoke a will, he/she made before the age of 16, after he/she has attained 16 years

that cannot be a reason to maintain such a will.

Judicially interdicted persons

According to Arts 861, 368 and 862.

1. An interdicted person may not make a will after his interdiction.
2. A will made by the interdicted person before his interdiction is valid.
3. Although the will made by an interdicted person before his interdiction is valid, the court has the power to invalidate such will either totally or partially.
4. Although the will made by an interdicted person after his interdiction, is invalid, the court has the power to maintain such will either totally or partially.
5. When the court maintains a will made by the interdicted person after he/she is being interdicted, it shall consider the following points:
    1. A legacy (money or property given to somebody through a will) must not exceed five thousands Birr and;
    2. The heirs-at-law of the interdicted person (the heirs- at–law could be descendants or other relatives) should get a minimum of three-fourths of the succession. That is, the outsiders (non-relatives) can take a maximum of only one-fourth of the succession.

Insanity

- ✓ As indicated in Art. 863, a will made by an insane person is valid unless it is proved that the person was a notoriously insane person at the time of making the will.
- ✓ When a testator makes a will, he/she must be careful not to include provisions that are contrary to law or morality. Moreover, the provisions of the will must not be difficult or impossible to execute.

Provisions Difficult or Impossible to Execute

- ✓ Article 865 (1) tells us that a testamentary provision which fails to specify in a sufficiently clear manner its beneficiary or its object shall be of no effect. From this it is clear that the provisions of a will must clearly indicate who will be the beneficiary and what things or portion of things has been allocated to such beneficiary.

Illicit Provisions

- ✓ In Art 866 the word “object” is to mean the aim, purpose or goal of the will. If the purpose of the will is unlawful, its provision shall be of no legal effect. Moreover, the provisions of a will shall be of no effect if their purpose or aim is immoral.

Violence

- ✓ The testator has to make a will only by his/her free volition. That is, the testator should not make a will under a threat or under any condition that could affect his/her freedom in the making of a will. Violence vitiates the freedom of making, modifying and revoking a will. The violence may not necessarily be directed toward the testator. It may happen against one of the testator's descendants, ascendants or against the testator's spouse. In this case, the violence or the duress may put under threat the life, honor or property of the testator or one of the above persons.

Undue influence

- ✓ According to the Ethiopian law of succession, undue influence is not a ground to invalidate a will. Undue influence is more of psychological than physical. Someone may exert an excessive influence on the testator to have a will made, modified or revoked to the benefit of oneself. Although such influence affects the mind of the testator, it is not considered as a serious threat. However, there are exceptional circumstances in which undue influence could be a ground to invalidate a will or reduce the amount indicated in the will. Especially, the exceptional circumstance is relevant when the one who exerts the undue influence has a special opportunity to exert pressure on the testator. Generally, the exceptional situations depend on two circumstances: (1) On the conditions of the testator; and, (2) on the identity of the person who exerts the undue influence on the testator.
- ✓ The conditions of the testator put him in a weak position in that he/she needs the help or assistance of other persons. The conditions that force him to seek the assistance of other persons could be his being a minor, sick, etc.
- ✓ The identity of the person who is exerting the undue influence is the one who, by taking the advantage of the conditions of the testator, gets benefit from the will of the testator. This person could be the guardian or tutor of a minor testator, or he/she could be a physician who prescribes or applies a medical treatment to the testator or he/she could be a clergyman who prays for the testator or gives him a spiritual assistance. A person, who takes part in the making of the will as a witness, interpreter, etc., can effectively exert undue influence on the testator and this situation is an exceptional one.
- ✓ According to Art 869 of the Civil Code, if a minor testator makes a will to the benefit of his/her guardian or tutor, the court may totally invalidate the will (the testamentary provision in relation to the undue influence) or may reduce the amount given to such guardian or tutor. A guardian or a tutor has a big opportunity to exert influence on a minor testator and get a benefit unduly. But this provision shall not be effective if the guardian or tutor is an ascendant of the testator.

Fraud

- ✓ It is not a ground to invalidate a will, if the will benefits the fraudster (the person who commits fraud). In the case of undue influence, the testator seeks others' help. In the case of fraud, the testator may not necessarily be in a weak position. For instance, the fraudster may promise to do something to the testator, if the testator makes a will to the benefit of such a fraudster. The fraudster may have no ability or capacity to perform his/her promise. Although the promise of the fraudster deceives the testator, it is not possible to invalidate the will that benefits the fraudster.

Error

- ✓ When a will is made as a result of error, the provisions of the Civil Code relating to invalidation of contracts shall apply. Generally, the mistake which led the testator to make the will in such a manner must be fundamental. The error must be of a kind that, had the testator known the truth, he/she would not have made a will in such a manner. Moreover, the mistake must be clear from the wording of the will itself or from another document to which the will refers.

Form and proof of wills

Form of wills

- ***Public wills***

- ✓ A public will is a will that is read in the presence of the testator and of four witnesses. The testator can write the will in the presence of the witnesses. He/she can also write the will in the absence any person. Reading the will in the presence of the testator and of four witnesses is not sufficient. There must be an indication of the fulfillment of this requirement in the will itself. If the will does not contain such an indication, it could be invalidated. The testator and the four witnesses should put their signature immediately after the will is read. The reason is: a will becomes effective after the death of the testator. The testator is not in a position to defend his/her positions if someone makes some fraudulent act against the will. To narrow the possibility of making any fraudulent act against the will, the law lays down very strict formalities.
- ✓ The law in Art 882 prescribes that the number of

witnesses could be reduced to two if one of them is a court registrar, a notary or a judge (See the Amharic version) in his/her official capacity.

- **Holograph will**

✓ Holograph will is a will that is totally made by the testator himself/herself in the absence of witnesses. Only literate persons may make a holograph will. It is the testator that writes a holograph will totally and if there is an additional word (even if it is a single word) written by the hand of another person, that is a sufficient cause to invalidate the will wholly. The testator must explicitly indicate, in the holograph will, that it is a will. Absence of such an indication is also a ground for the invalidation of the will. As a rule, the testator himself/herself should fully write a holograph will. If it is a handwritten will, it is possible to know for sure that it is written by the testator. The law requires a handwritten indication of the fact that the testator writes the will using a machine. The handwritten indication should be included on every page of the will. This is to confirm that the machine written holograph will has been really made by the testator.

✓ With respect to Art 888, the will refers to another document. When the will refers to another document or when it is impossible or difficult to understand the will without referring to another document, such a document must have been written and signed by the testator.

- ***Oral will***

✓ Oral will is a will made verbally to two witnesses. Art 892 of the Civil Code, the testator does not make an oral will under normal circumstances. He/she makes such a will when he/she feels that he/she is going to die within short period of time, particularly after accidents, shocks or similar situations. It can be said that oral will is not a proper will. The testator cannot make any order of his wish by way of an oral will. The law has listed down the contents of an oral will. The testator cannot add other testamentary dispositions, which are not included in Art 893.

✓ The law allows the testator to make several wills during his/her lifetime. This is also the manifestation of his right to make, revoke or alter a will at any time. The contents of different wills made by the testator may or may not contradict each other. If the provisions of various wills contradict each other and cannot be enforced together the latest will shall prevail. (Art 895)

Proof of will

✓ The one who claims a right in a will has to prove one or both of the following two things. First, he/she has to prove the existence of the will. That is, he/she has to show a will made by the testator. Second, he/she has to prove the contents of a will.

✓ From Art 897, provides some important points:

a) The existence and contents of a will (whether a public or holograph will) shall be proved only by producing the original will itself or the copy of the original will, certified to be true by the court registrar. The court registrar could issue the copy of the original will, if he/she had received the original will to be deposited in his/her archives. Otherwise, the claimant shall only present the original will.

b) To benefit from the will, approval by presenting the will itself is obligatory and no any other means of evidence can be possible.

c) If someone destroys or causes the destruction of a will by his/her fault or negligence, such a person may be obliged to pay compensation to the beneficiary of the will. To get compensation from the person who has destroyed or caused the destruction of the will by his/her fault or negligence, the beneficiary can prove the fact that he/she is a beneficiary by any means of evidence. For instance, he/she can prove that he/she is beneficiary of the will by producing witnesses.

Revocation and lapse of wills

Revocation of wills

✓ A will is always revocable, until the death of the testator. A testator may make an agreement with a beneficiary not to revoke the will. However, sometimes elderly people who have no descendants of their own may promise to leave some property to a person, on condition that the latter nurses the former. This promise cannot be enforced as the will is still able to be revoked.

✓ There are various ways in which a will may be voluntarily revoked:

- **By another will:** The testator may, in his will include works like: 'I hereby revoke all former wills and testaments made by me'. The testator may revoke specific clauses of a will, while leaving the rest of it intact. If the two wills are not inconsistent. The second will may thus operate as a kind of codicil. A codicil is a formal document which varies, but does not revoke, a will.

- **By an express intention to revoke, made in the same manner as a will, i.e., this must comply with the formalities set out by the law:** A will may be revoked by any other written instrument, provided it is executed with the same formalities as are required for a will

- **By destruction:** A will may be revoked 'by the burning, tearing or otherwise destroying . . . with the intention of revoking the same'. Merely throwing the will in a waste-paper basket is not sufficient, even if the testator indicates to a third person that he/she considers it to be an act of revocation.

– **By alienation of the thing bequeathed:**

Lapse of wills

1. Failure to deposit a holograph will

✓ According to Art 903 of the Civil Code, a holograph will shall lapse where it is not deposited with a notary or in a court registry within seven years since it has been made.

2. Birth of child

✓ If a child is born after a will is made (whether a public or a holograph will) such a will, shall lapse if the newly born child accepts the succession. Art 905 of the Civil Code,

3. Dissolution of marriage

✓ According to Article 906 of the Civil Code, legacies made in favor of a spouse of the testator shall lapse where the marriage of the testator with that spouse is dissolved through divorce or court order when the marriage is concluded without observing the conditions for the validity of marriage. However, such a legacy cannot lapse where the marriage is dissolved by death.

4. Death, unworthiness, or renunciation by a legatee

✓ Art 907 lays down the rule of lapse of legacies. According to Art 907, three factors cause the lapse of legacies.

a. When the legatee dies before the testator. In this case, the legatee has no capacity to succeed the testator since he does not fulfill the requirement of survivorship.

b. When the legatee cannot succeed the testator. This has a relation with unworthiness. When a legatee is condemned as unworthy, anything destined to his benefit shall lapse.

c. When the legatee does not want to take the legacy. This has something to do with the renunciation of the legatee to the succession of the testator. The law passes the legacy when anyone

renounces the succession of the testator, as it does not consider him as the legatee of the testator.

Contents and interpretation of wills

Contents of wills

- ✓ The testator can determine the contents a will he/she makes freely so long as the contents of his/her will do not violate the law or so long as they are not contrary to public moral. Art 909 lists down the contents of a will. But this should not be seen as an exhaustive list. It only gives us illustration. These enumerations may guide the testator. However, it does not mean that he/she has no power to declare dispositions that are not listed in Art 909. The only limitation with respect to the contents of a will is, the testator cannot declare in his will anything illegal and/or immoral.

Interpretation of wills

- ✓ In Ethiopia, there is no obligation for a will to be drafted or executed by a professional person.
- ✓ Courts, especially the Supreme Court may construe (or interpret) a will. The essential task of the court is to give effect to the intention of the testator. But this intention is to be deduced from the words used. It is not permissible to re-write the will simply because the court suspects that the testator's words did not really specify his/her real intentions. In order to understand the language employed by the testator, however, it is possible to 'sit in his/her armchair'.
- ✓ The general rule is that words must be construed in their usual, or literal, sense. But this is subject to the 'special vocabulary' of the testator. And it also must yield to the special circumstances of the testator. Suppose a testator left a legacy to 'my wife'. He was not lawfully married, but lived with a woman in an irregular union, whom he was accustomed to call 'wife'. The lady would surely take the legacy, despite the fact that the word 'wife' was a misuse of the language.
- ✓ There are also well-developed 'canons' or rules of statutory interpretation, which assist a court in construing laws made by the Parliament. As a general rule, these canons may be applied to the construction of any document, including a will. But, since the ordinary testator is unlikely to have the same drafting skills as a Parliamentary draftsman, the courts must use these canons with more care when they apply them to interpret wills. (Articles 910 and 911)

❖ ***Legacies by universal title***

Sometimes it is difficult to distinguish between universal legacies and singular legacies. Art 912 (1) provides four aspects of universal legacies.

- ➢ When the testator gives his/her whole estate to one person, the property given to the beneficiary is a universal legacy and the beneficiary is a universal legatee.
- ➢ When the testator gives his/her whole estate to two or more persons, the whole estate given to these persons is a universal legacy and such persons are universal legatees.
- ➢ When the testator gives a portion of his/her estate to one person, such a portion of the hereditary estate is a universal legacy and the beneficiary of the portion of the hereditary estate is a universal legatee.
- ➢ When the testator gives a portion of his/her estate to two or more persons, such portion of the hereditary estate is a universal legacy and the persons appointed to receive such a portion are said to be universal legatees.

- ✓ A universal legatee is the one who is called to the succession to receive a certain portion of the hereditary estate, not a particular thing from the succession. Therefore, a universal legatee does not know what thing he/she is going to receive from the succession.

❖ **Legacies by singular title**

- ✓ According to Art 912(2), any other disposition (that is, outside the ones discussed above) is a singular legacy.
- ✓ The general tendency of the law toward singular legacies is that, singular legacies are minor testamentary dispositions usually given to non–relatives. When a single item, such as a bicycle, a television, an overcoat, a watch, a radio, etc., is given to someone, the property is a singular legacy and the one who is in a position to receive such a property in kind is a singular legatee.
- ✓ A legacy may be given to the legatee in full ownership or only the bare ownership right may be given to the legatee. In the latter case, the legatee shall be entitled to use or derive the fruit from the legacy without having the right to alienate (sell or donate) it to third persons.

❖ **Legacies and rules of partition**

Testator could give an exclusive right to one of his/her heirs, on a certain property, in addition to what such an heir shares with other co–heirs. However, if this is the intention of the testator, he/she should express it clearly.

❖ **Effects of universal legacies**

- ✓ When a person is in a position to receive a universal legacy, he/she becomes a universal legatee. The appointment of a universal legatee does not follow any special formality. No special will with special formalities is required to appoint a universal legatee (Art. 914).
- ✓ When someone is appointed as a universal legatee, he/she is assimilated to an heir–at–law, it means that a universal legatee who is a non–heir (such as a friend, a servant, a spiritual father, a spouse, etc.) shall be treated in all respects in relation to the succession in the same manner as the legal heirs of the testator. The rights and responsibilities of such universal legatees will be similar to that of the legal heir to the testator.

❖ **Conditional Legacies**

- ✓ The testator may make his succession to depend on certain conditions. The conditions are of two types.

1. **Suspensive condition** (condition precedent): the legatee shall wait until a certain time lapses or until a certain circumstance occurs.
2. **Resolutive condition** (condition subsequent): is a situation where the legatee brings back what he received from the succession when a certain condition is fulfilled. That is, in the case of resolutive condition, the legatee is automatically entitled to receive the bequest, unlike the case of suspensive condition.

Charges (***Articles 920 — 923)***

- ✓ Charge is the order of a testator against his/her heirs and/or legatees in which he/she binds them to take some responsibility or take care of one or more persons. However, the testator cannot bind the heirs and/or legatees to give or to do something to specified persons more than the value of the legacy.

Substitutio vulgaris

- ✓ *Substitutio vulgaris* was very common in Roman wills. An alternative heir was appointed in the event that the person instituted as the primary heir failed to become the heir (e.g. because he/she died before the testator or refused the inheritance).
- ✓ According to the Ethiopian Civil Code, Substitutio vulgaris is the situation where the testator orders another person to take the legacy in cases where the appointed universal or singular legatee fails to appear and receive what the testator allocates to him/her. The causes for the disappearance of the appointed legatee could vary from case to case. (Article 928).

Entails

- ✓ The concept similar to entail existed in Roman law. It was also common in many parts of Europe. It is a restriction of inheritance to a limited class of descendants for at least several generations. It is mainly linked with real estate. The object of entail is to preserve large estates in land from the disintegration that is caused by equal inheritance by all the heirs and by the ordinary right of free alienation (disposal) of property interests. Many changes have been developed regarding entails in the law of successions. In some countries, (E.g. England) the law permits the holder of entailed property (either real or personal) to dispose of it by deed; otherwise the entail persists. In the United States for the most part entails are either altogether prohibited or limited to a single generation.
- ✓ In Ethiopia, the testator has the power to order that his/her heir and/or his/her legatee shall hand over the legacy to one or more persons after such heir and/or legatee has benefited with the legacy. The testator may order the heir and/or legatee to transfer the legacy (or even portion of it) to the specified person(s) upon the following conditions:
    - On the expiry of a certain period, for example, after 5 years from the opening of the succession;
    - Upon the death of the heir or the legatee; and,
    - On the accomplishment of a certain condition, for instance, when the testator's little daughter gets married.
- ✓ Once the legacy is transferred into the hands of the holder entail, the holder entail needs to expect to have only a usufruct right on the legacy. Since he/she is not a true successor, the law does not vest him with powers of an owner of the property. Therefore, the holder entail cannot alienate (sell or donate) the property to third parties. Moreover, the holder should not have any attachment with such property for his/her debts (Art. 931 (1)).
- ✓ Courts are generally empowered to order the alienation or transfer of a property or its attachment, if such order is justifiable. However, in no case can the court authorize the alienation or attachment of the property in the hands of the holder entail. Because, the holder entail is obliged to utilize the property by taking all the necessary care not to cause a serious damage to the property and finally hand it over to the true successor upon the opening of the substitution (Art 932).
- ✓ The testator has the right to regulate only until the property is transferred to the person who is called to succeed. Once the property is transferred to the person who is called to succeed the testator loses the right to pass any order concerning the property (Art 934).
- ✓ In the case where the holder entail refuses to take the legacy or if he/she loses capacity to succeed, for instance, by being unworthy, the person called to succeed shall be called to take the legacy. However, the testator may vary such by an otherwise order (Art 935).

Disherison

- ✓ In the Ethiopian law of successions, the testator has wider rights to disinherit one or more of his/her heirs by the will he/she makes. His/her rights may even go to the extent of disinheriting all of his/her children.
- ✓ Disherison is an order passed by the testator to exclude his/her heirs from the succession. It usually serves as a means of punishment for the misbehavior of his/her heirs. Some people argue that giving powers to the testator to the extent of disinheriting his/her heirs is not proper. In Ethiopia, the law allows the testator to disinherit one or more of his/her heirs. It seems that the law considered that the testator's only power as far as punishing disobedient children is disinheriting such children.
- ✓ The testator may disinherit his/her heir either expressly or tacitly.
- ✓ Express disherison is a kind of disherison in which the testator excludes his/her heir from the succession in an explicit manner by stating clearly that he/she has disinherited the heir. The testator may disinherit all of his/her heirs (descendants and other heirs) expressly and appoint a universal legatee.
- ✓ Descendants can only be disinherited expressly. That is, no descendant may be disinherited tacitly. Moreover, the testator shall clearly state a justifiable reason why he/she has decided to disinherit his/her descendants. The law makes such imposition on the testator with the view to protect the interest of the descendants in succeeding their ascendants.
- ✓ A justifiable reason is a subjective standard. It is believed that it should impress a reasonable person. It should be a reason that is sufficient to move the testator to the decision of disinheriting his/her descendant. The testator is expected to attribute some acts of the heir that have dissatisfied him/her. If the acts done by the heir were not illegal and/or not immoral, it would be difficult to the testator to give justifiable reasons.
- ✓ The court has a power to examine and decide whether the reason given by the testator is justifiable or not. Although the court has the power to ascertain whether the reason given is justifiable or not, it cannot ascertain whether the given reason is true or false. Any statement that the testator gives is a true statement. Therefore, the heir cannot claim that the statement of the testator is untrue.
- ✓ When the testator does not make someone beneficiary in his/her will, we say that he/she has tacitly disinherited such a person. It works only against the heirs of second, third and fourth relationship. This is a mechanism of protection given by the law to the descendant heirs (Art 939 (1) & (2)).If the testator appoints someone as a universal legatee to receive the whole property, that does not imply the disherison of the children of the testator. In such a case, the universal legatee is called to succeed the testator as if he/she is one of his children (Art 939 (3)).
- ✓ Disinheriting heirs is a legally recognized power of the testator. However, if the law considers that the provisions of the will are defective with respect to any matter, and if the heirs impugn the defective provision, then the provision that disinherits the heirs shall be of no effect. For instance, assume that one of the provisions of a will contains an illicit provision. If this same will contains a provision that disinherits one or more of the heirs of the testator, only by challenging the illicit provisions, the disinherited heirs can get the invalidation of the disherison.

CHAPTER TWO: LIQUIDATION OF SUCCESSION AND DETERMINATION OF RIGHTFUL SUCCESSORS

The Essence of "Liquidation"

- ✓ "Liquidation" is the technical term we use in the law of successions to refer to that winding up process.
- ✓ In the event of multiplicity of heirs, co-heirs start to privately exercise actual right over the inheritance only after partition is made. "Partition", which is usually effected through division, is in rough terms the process of practically delivering to each heir his proper share of the property and rights remaining after liquidation. Obviously, partition is made only where there are more than one rightful heirs. So, partition does not take place unless and until the succession has been fully liquidated
- ✓ According to Blacks law "Liquidation is the settlement of accounts or the winding up of the business. [It is] the act or process of making of clear, fixed and determined that which was before uncertain or unascertained. Payment, satisfaction, collection, or realization of assets and discharges of liabilities; winding up or settling with creditors and debtors. The settling of the financial affairs of the individual usually by liquidating/turning into cash/ all assets for the distribution to creditors, heirs, etc…"
- ✓ Article 944 of the Civil Code provides that liquidation means the process of determination of the rightful recipients and constituents of the succession; the recovery of debts due to and the payment of debts due to it; the payment of the legacies by singular title and the taking of such other steps as are required to carry into effect the provisions made by the deceased.
- ✓ First thing the liquidator is required to do immediately after assuming office is making a search to find out whether the deceased has left a will. He should then go on to receive, preserve, and administer the properties left by the deceased. The liquidator should also perform such other important functions as establishing the identity of the persons that are eligible to receive the inheritance, determining what property makes up the estate, recovering debts for which the deceased was a creditor, and paying debts owed by the succession, etc.

The Guiding Principles of Liquidation

- ✓ Art. 942 of the Civil Code set forth a very important principle. It states that "So long as a succession has not been liquidated, it shall constitute a distinct estate."
- ✓ Literally, a distinct estate means some property set aside for a special purpose. Art. 942 obliges that the succession will constitute a distinct estate pending liquidation. And one of the most important purposes of the device of liquidation is the satisfaction of debts claimed from the succession in favor of persons with rightful claims.
- ✓ So long as it has not been fully liquidated, heirs, legatees, and creditors (both creditors of the succession and the personal creditors of the heirs) will have an undivided interest over the succession.
- ✓ Article 943 provides for a specific instance of the practical application of the principle set forth under Article 942. It states that the creditors of the succession shall have the property of the inheritance as their exclusive security. Since the creditors have right to satisfy their claims from the property of the inheritance, the implication is that the law prescribes the setting aside of the succession as a distinct estate for their protection. The creditors may require the attachment of the property of the inheritance in order to satisfy their claims. To protect this right of the creditors, the property forming part of the inheritance may not merge with the personal properties of the heirs pending liquidation. Personal creditors of the heirs shall have no right on the properties of the inheritance while the liquidation is still going on.

The Liquidator of a Succession

Who is the "Liquidator"?

- ✓ Article 946 of the Civil Code establishes that executing institution designated with the task of carrying out the liquidation of a succession. The Article in question reads:"A succession, whether intestate or testate, shall be liquidated by one or more persons…referred to as 'the liquidators'".
- ✓ The liquidator is nothing but the institution designated with the task of carrying out the liquidation of a given succession. From the spirit of the statement of Article 946 and its environs, it can be inferred that the term "person" is employed to refer exclusively to natural or physical persons.
- ✓ The institution of the liquidator takes a different name in other jurisdictions. This is the case particularly in countries that subscribe to the common law legal system. In those jurisdictions, the terms "executor" and "administrator" are used in reference to a similar institution which the Ethiopian Law of Successions calls "liquidator". An "executor" is a person who is appointed by a will to carry into effect the provisions of the will and to administer the estate of the testator. His authority to act is derived from the will. In contrast, an "administrator" is appointed by the court to administer the estate of the deceased.
- ✓ The functions of the liquidator are numerous and painstaking, and may even entail personal liability.
- ✓ As a matter of principle, the liquidator must be a diligent person capable of administering the property of the deceased as a bonus paterfamilias. He should also be a person of integrity and thick patience.
- ✓ The Ethiopian Law of Successions provides for various mechanisms through which a person may assume the office of the liquidator.

❖ **Mechanisms of Appointment of a Liquidator**

1. Designation by Law

- ✓ The law designates the capacity of liquidator to the heirs-at-law of the deceased.
- ✓ Where a person dies wholly intestate; or where the deceased dies without leaving a will at all; or where he dies leaving a will, but the will is either subsequently declared invalid by a competent court of law or fails to appoint a liquidator, the function of liquidator will devolve to his heirs-at-law.

- ✓ Article 947 of the Civil Code states that "on the day of death, the capacity of liquidator shall pertain 'ipso facto' to the heirs-at-law".

2. Appointment by Will

- ✓ A person has a right to specify, by a legally valid will, the manner in which his estate should be disposed of after his death. He has also the power to name a person or persons whom he wants to oversee the disposition. That in other words means, he can appoint the liquidator of his succession by his will.
- ✓ The testator has a right to bestow the capacity of liquidator to any person he thinks fit. He may choose one or more of his heirs-at-law to be the liquidator of his succession. He may even appoint an outsider who has no relation whatsoever with him. Although appointing a liquidator is not a common practice in Ethiopia, most testators who do appoint one designate their closest relatives or friends as liquidators.
- ✓ It is presumed that the testator appoints the person whom he trusts most as liquidator. So long as the appointment is made in compliance with the pertinent legal provisions, the law respects the testator's wish. It even gives priority to testamentary appointment over others.
- ✓ Where the deceased has left a valid will, and where he has validly named a person as a liquidator, the person so named shall be the sole liquidator of the succession. No other person may take the position – not even those designated by law. Testamentary appointment prevails over all other modes of appointment so long as the appointment is made with the compliance of the legal provision.
- ✓ Failing any express disposition by the testator, the law assigns legatees by universal title to the office of the liquidator. It seems, the law took this position presuming the fact that the testator would have preferred those persons whom he has appointed legatees by universal title also to be the liquidators of his succession.
- ✓ As a matter of rule, a legatee by universal title acquires any right over the succession because of the fact that the deceased has included him in his will. His appointment as a liquidator follows from this fact. Therefore, a legatee by universal title becomes a liquidator ***ipso facto***, not ***ipso jure***.
- ✓ Article 948(3) of the Civil Code provides that where a legatee by universal title happens to hold the office of liquidator by the operation of Article 948(2) of the Civil Code, the heirs-at-law shall also act as joint liquidators. But there appears to be a discrepancy between the Amharic and the English versions of Article 948(3). The English version makes it clear that heirs-at-law that have been disinherited by the deceased my not act as liquidators.

3. Incapable Liquidator

- ✓ An heir-at-law has the right to claim the office of the liquidator by the operation of Articles 947 and 948(3). A legatee by universal title is also eligible to the same office according Article 948(2).But such a person may happen to be incapable in terms of the language of the law. He may, for example, be a minor or an interdicted person.
- ✓ As a matter of fact, a minor or an interdicted person lacks the capacity to act as a liquidator. The law assigns the tutor of the incapable person to represent the latter for the performance of the functions of liquidator.

4. Appointment by Court

- ✓ It may happen that a succession remains without a liquidator even after the application of Articles 947, 948, and 949 of the Civil Code. Such a scenario could happen where all the heirs-at-law and legatees by universal title decline inheritance.
- ✓ In such an event, the court intervenes. It appoints a liquidator upon the application of any interested person. In the present context, a legatee by singular title or the public prosecutor could be regarded as interested person. In particular, the court appoints a liquidator in either of the following to cases:
  - When the succession is a vacant one. That is, when no person appears claiming that he is an heir, or when all of the heirs renounce the succession, or when all of the heirs do not want to liquidate the succession.
  - When the succession goes to the state. That is, where there is no person legally entitled to receive the succession.

5. Other Cases of Judicial Appointment

- ✓ The court may replace a liquidator already appointed in terms of Articles 947, 948, 949, or 950 of the Civil Code. There are a number of various grounds for the court to make such replacement. The following are some of the grounds:
  - ➢ Where, in the case of a testamentary liquidator, the validity of the appointment is impugned;
  - ➢ Where there are several liquidators and they unable to agree on the manner of the liquidation of the succession;
  - ➢ When one or more of the heirs is incapable or is not, for any other reason, in a position to look after his interests;
  - ➢ When the liquidator is no active or diligent, or is a squanderer or dishonest.
- ✓ The court replaces a liquidator only when an interested person applies to that effect. Here, an heir-at-law, a legatee by universal or singular title, or the public prosecutor could be regarded as an interested person.

Nature of the Functions of the Liquidator

- ✓ The function of liquidator is voluntary. No person is bound to take the office of the liquidator without his consent. In other words, no one is compelled to become a liquidator, even if he has been appointed in terms of the provisions of the pertinent Articles.
- ✓ The liquidator may resign after starting his functions. According to Article 954(1), the liquidator may resign at any time. This is saving where he has expressly committed himself to perform his functions up to the conclusion of the liquidation process or for a definite period of time.
- ✓ An untimely resignation may entail personal liability. The liquidator may not resign at a time "which is not convenient". (Article 954(2) cum.

Article 961).

- ✓ The liquidator may not necessarily be paid for his functions. Article 959 provides that the liquidator shall be entitled to remuneration only where this is justified by the work he has performed. And the remuneration, where any, is paid under the conditions determined by the deceased, or by agreement between the heirs, or by the court.
- ✓ When any interested person applies, the court may require the liquidator to furnish security or some other guarantee for the proper performance of his functions (atr.952). An heir-at-law, a legatee by universal or singular title, or the public prosecutor could be considered an interested person for this purpose. The applicant may invoke a host of various reasons for his move.
- ✓ The functions of a liquidator will terminate where he is replaced by a new liquidator. A liquidator may be validly replaced in conformity with the law, the will, or a decision of the court. They may also terminate where the liquidator has fully accomplished his functions and rendered an account of his management.

Powers and Duties of the Liquidator

- ✓ The most important of his functions can be generalized as follows by reading Article 944 of the Civil Code in conjunction with Article 956 of the same Code.

  - **Search for a will of the deceased:** This is a very important step in determining whether the succession is testate or intestate.
  - **Determination of persons who are called to the succession:** If a valid and uncontested will is discovered, there will be no problem - the persons named in the will shall alone be called to the succession. If there is no will, or if the court invalidates it, the recipients shall be determined according to the rules of intestate succession.
  - **Determination of the property that constitutes the succession**: This is probably the most difficult part of the functions of the liquidator. It involves the discovery and collection of the properties of the deceased, the recovery of debts due to and the payment of debts due by the succession which is exigible.
  - **Administration of the succession:** This involves the day-to-day tending of the succession by the liquidator.
  - **Payment of debts of the succession**: A number of creditors may lodge claim against the succession for the payment of the debts due to them. These debts should be paid in accordance with the order and the manner prescribed by the law.
- ✓ The deceased or the court may limit the powers of the liquidator or give him instructions regarding the manner how he should perform his functions.
- ✓ The liquidator is duty bound to render the accounts of his management when he has accomplished his functions to their conclusions. He may also be required to render such accounts before that date at the time agreed upon with the heirs or fixed by the court. Failure to do so has the liability of the liquidator as its sanction.
- ✓ The liquidator shall be liable for any damage he causes through his fault or negligence. He shall be deemed to be at fault where he acts contrary to the provisions of the law, to the provisions of the will or to the instructions given to him by the deceased or by the court. Nevertheless, the court may relieve him in whole or in part of such liability in his relation with the heirs or legatees where it appears that he has acted in good faith with the intention of performing his functions.

Identifying Legitimate Successors

- ✓ The rightful recipients of a succession – be it testate or intestate – must be identified with the utmost care. This is important for a number of obvious reasons. For e.g. if the recipients of a succession are not correctly identified, then there will be a risk of violating the intent of the deceased and the law by denying the persons who are lawfully entitled and by entitling those that are not entitled.
- ✓ The first and the foremost task of the liquidator is to make a search for a will. The cumulative reading of Articles 962(1) and 956(a) of the Civil Code provides that: “The liquidator shall make a search to find out whether the deceased has left a will, and establish who is to receive the property of the succession”. Such a liquidator is a liquidator designated by law. That is because with the exception of heirs-at-law, who are designated by law, no other liquidator can be legitimately appointed before the presence or absence of a will is conclusively determined.
- ✓ The liquidator must make in all places that seem appropriate and the ways that are reasonable a search to find out whether the deceased has left a will. For this purpose, the places that seem appropriate include the papers of the deceased, and the notaries and the registries of the courts of the places where the deceased had lived.
- ✓ Apart from the liquidator, any person who has knowledge of a will in a witness capacity is duty bound to contribute toward the search. Article 963 (1) of the Civil Code provides that whosoever has in his possession, finds or knows, in his capacity as a witness, of a will made by the deceased shall make a declaration regarding such will to the liquidator as soon as he comes to know of the death of the deceased.
- ✓ The search may bear fruit and produce a will. It may also happen that more than one wills are discovered. But Article 970 declares that the irrespective of the number of wills, the following legal requirements need to be complied with.

  - Where the will found is public or holograph, it must be deposited without delay with a notary or in the registry of the court where it is discovered or conserved. The liquidator or any interested person applies to that effect. The idea here is to protect the will and/or its terms from destruction and conversion.
  - Where the will discovered is oral, the witnesses who have attested it must see to it that the will is reduced to writing and deposited with a notary or court registry. And they must do this without delay (art.965(2). The justification for this seems to be the fear that witnesses, being fallible human persons,

may intentionally or for any other reason twist the dying wishes of the deceased, or change their places, or forget the contents of the will, or may die.

- ✓ Once a will has been discovered, it shall be opened. Opening means to formally publicize the will and its contents. According to Article 965 of the Civil Code, the liquidator opens the will. Article 965 prescribes also that the liquidator is expected to open the will forty days after the death of the deceased. There is nothing special with the fortieth day. It is simply the reflection of the religious or customary practice of "***tezkar***" or ***"arba"***, i.e., commemorating the dead on the fortieth day of his death.
- ✓ Article 967 of the Code stipulates the place where the liquidator should open the will. Sub-Article (1) of this Article specifies that the will shall be opened at the notary or in the registry of the court where it has been deposited during the deceased's lifetime or after his death. Sub-Article (2) of the same Article purports to fill the gap that may be created in the event where the will is not deposited for any reason. This Sub-Article states that in default of such deposit, the will shall be opened at the place where the deceased had his principal residence at the time of his death.
- ✓ Besides the liquidator and potential successors, the law authorizes the presence of arbitrators at the opening of the will. Arbitrators are appointed to settle any dispute arising out of the succession. However, a close reading of the relevant provisions of the law reveals that neither the appointment nor the presence of arbitrators is mandatory.
- ✓ At the time of the opening of the will, the liquidator and all other persons present shall in the first place verify the validity or the form of the will. Then, the contents of the will shall be read out. Furthermore, the necessary provisions shall be made to ensure the conservation of the will.
- ✓ During the opening meeting, the liquidator shall oversee the reading out of the will. He shall make known who the heirs or legatees of the deceased are and to what portion of the succession they are entitled. He shall also establish an order of partition, that is, the manner in which he considers that the succession should devolve and reveal same to interested persons. For this purpose, "interested persons" include the persons who are called to receive the property of the deceased, and persons who would have been called to receive it had there been no will.
- ✓ All potential successors should, for their own sake, make themselves available at the opening meeting. Minors and interdicted persons should be represented by their tutors. Potential successors or their representatives should carefully listen to the terms of the will and the order of partition proposed by the liquidator.
- ✓ Article 973 (1) provides that any interested person present or represented at the opening of the will may within fifteen days from the opening of the will declare his intention to apply for the nullity of the will or of a provision contained therein, or to impugn the order of partition. But any such declaration will be effective only where it is made in writing and notified to the liquidator, the court or the arbitrators, where any, within fifteen days from the opening of the will.
- ✓ The cumulative reading of Articles 969 (3) and 973 (1) suggests that such a person should, before going to court, bring his case to the attention of arbitrators, where arbitrators have been appointed to settle disputes that may arise out of the succession. But arbitrators might have not been appointed or may fail to resolve the dispute. In such an event, the aggrieved person may initiate a court action.
- ✓ The liquidator of an intestate succession must establish an order of partition at the time it appears certain that the deceased has not left a will. He must also inform interested persons of his proposed order of partition without delay. The liquidator must give such information as soon as it appears certain that there is no will and, at the latest, forty days after the death of the deceased.

❖ ***Option of Heirs and Universal Legatees***

- ✓ From the perspective of the beneficiary, succession is obviously an individual right. Thus, just like most individual rights, the doctrine of option or election is applicable to succession. Accordingly, any person who has right to succeed a deceased person is at liberty to make an election as to whether he will accept the succession.
- ✓ The Ethiopian Law of Successions is no different. It follows the "no necessary heirs" rule. Pursuant to this rule, "no heir is bound to accept the succession to which he is called" Art 976. The rule gives a person called to a succession two options - to accept the succession or to renounce it. Acceptance is an act by which a person takes his title to a succession. In the contrary, renunciation is an act by which a person opts to give up his title.
- ✓ The "no necessary heirs" rule applies not only to heirs-at-law, but also to both legatees by universal and singular titles. That is because the law, via Article 915 (1) of the Civil Code, assimilates legatees by universal title to heirs-at-law. And as for legatees by singular title, Article 1038 of the same Code provides that the provisions relating to the option of heirs-at-law and legatees by universal title shall apply also to legatees by singular title, save for a handful of differences. The right to opt to accept or to renounce the succession is strictly personal to the heir. No other person may make the option on behalf of the heir as long as he is alive and capable. Likewise, where several heirs are called to the succession, it is up to each individual heir to make the choice.
- ✓ Article 987 of the Civil Code provides that where the heir who is called to the succession dies without making a decision, the right to accept or renounce the succession will devolve on his heirs. Each heir of such an heir is at liberty to opt to accept or to renounce the succession. An heir who has renounced the succession is deemed to have renounced the succession of the deceased.
- ✓ Article 988 demands that election must be pure and simple. Acceptance or renunciation of a succession may not be made with a time limit or under a condition. Heir who accepts or renounces a succession with a time limit or under a condition shall be deemed not to have elected at all.
- ✓ Acceptance or renunciation may not be partial. An heir may not, for instance, accept to take the benefits of a succession and decline its debts. A valid election is said to be made only where the

heir accepts or renounces the succession in total.

- ✓ The fundamental idea behind the "no partial election" rule is simple: A person cannot be permitted to claim inconsistent rights with respect to the same subject matter. Accordingly, an heir who accepts the succession of the deceased cannot enjoy its rights and avoid its burdens.
- ✓ Some jurisdictions uphold the principle of simple and unconditional acceptance. According to this principle, if a person opts to take the benefits of a succession by accepting it, then he must also assume any burden attached thereto even though the burdens turn out to be greater than the benefits. So, in such jurisdictions, it is wise to ascertain that the succession is solvent before committing oneself to acceptance.
- ✓ Under the Ethiopian Law of Successions, the liability of an heir to the debts of the inheritance does not in any case exceed the value of the benefit he gains by accepting the succession. If all the property of the inheritance is disposed of during the process of liquidation, creditors of the inheritance will not have any legal recourse against the heir as nothing has gone to the heir from the succession. If, on the other hand, some property remains after the liquidation process is wound up and the heir takes the property so remaining, he will be liable only to the extent of the value of the property he has taken.
- ✓ The Ethiopian Law promotes acceptance more than renunciation of succession. That is because the law prescribes stricter time limit and formality requirements for valid renunciation than acceptance.
- ✓ An heir will be legally considered to have renounced a succession only where he makes the renunciation in strict compliance with the following requirements; otherwise he is deemed to have accepted the succession. The renunciation will be valid only where the heir makes it:
    1. Within one month from the day on which the liquidator has informed him that he is called to the succession; or
    2. Where the court, upon his application, grants extension, within three months from the day on which the liquidator has informed him that he is called to the succession; and
    3. In writing; or
    4. If he has to make it orally, in the presence of four witnesses; and
    5. Known to the liquidator before the expiry of the period stated under (I) or (II) above as the case may be.
- ✓ An heir may simply renounce a succession or, if he likes, renounce it in favor of other persons. If an heir makes the renunciation in favor of one or more specified persons, then he is deemed not to have renounced the succession, but rather to have accepted it. And such renunciation is legally considered as an assignment of rights. If, on the other hand, an heir renounces the succession in favor of all his co-heirs indistinctly without receiving any pecuniary compensation in return, he is deemed to have renounced the succession.
- ✓ Once it has been validly made, renunciation produces serious legal effects. The renouncing heir will be deemed never to have been an heir for all purposes of the succession. And the portion which he has renounced will go to his co-heirs who have accepted the succession, and where appropriate, to the heirs who come next. However, those co-heirs may themselves renounce such portion within one month from the day on which the renunciation of their co-heir has been brought to their knowledge.
- ✓ An heir who has validly renounced a succession is not free to change his mind any time he wants and decide to accept the succession. Renunciation may be revoked only under certain circumstances(art.991)
    - Defective consent may render the renunciation revocable.
    - A renunciation extorted by violence may be revoked.
    - A renunciation obtained through fraud perpetrated by another person called to the succession, or by a descendant, ascendant, brother, sister, or spouse of the renouncing person may be revoked.
- ✓ An heir who intends to revoke his renunciation must bring an action before the court within two years from the cessation of the violence or the discovery of the fraud because of which he claims to have decided to renounce the succession. However, renunciation may in no case be revoked ten years after it has been made even though the alleged violence did not cease or the fraud was not discovered within this period (992(2)· If the plaintiff proves the existence of the violence or the fraud, the court to which the action for revocation has been brought may annul the renunciation or in some other way it thinks fit specify the effects of the revocation.

❖ ***Certificate of Heir***

- ✓ An heir does not start to exercise his inheritance right as soon as he is informed that he is called to the succession. He must wait until the property of the inheritance merges with his personal property in accordance with the pertinent provision of the law. However, he can before that apply to the court and obtain a "certificate of heir".
- ✓ Blacks Law Dictionary defines the term "certificate" as " is a written assurance or official representation that some act has or has not been done; some event occasioned; or some legal formalities have been complied with. A written assurance made or issued by some court designed as a notice of things done therein".
- ✓ Article 996 (1) of the Civil Code, states "An heir may apply to the court to be given a certificate of heir of the deceased and the share of the succession which he is called to take".
- ✓ The holder of the certificate is considered to actually have a rightful heir status and to be entitled to the amount of share of the succession as specified therein.
- ✓ An heir with a certificate of heir can enter into valid juridical acts in the capacity he derives from the certificate. The acts performed by the heir in such capacity may not be impugned, unless it is proved that the person who avails himself of such acts knew for certain, at the time when such acts were performed, that the heir had no right.
- ✓ The practice in Ethiopia is that be it in a testate or intestate succession, any person who claims to be an heir or a legatee of a deceased person may apply for a certificate of heir at any time after the death of the deceased. Upon receipt of such application, the court will require the production of

a will where the succession is testate and, where it is intestate, evidences showing actionable relationship with the deceased. Then, the court usually orders the publication of the application in a widely circulating newspaper. The idea is to notify interested persons to appear and contest the application. If no contestant appears on the day specified in the published notice, the court will automatically grant the application.

❖ **Petitio Haereditatis**

✓ The danger of issuing a certificate of heir before the liquidation process is wound up and rightful recipients of the succession are correctly identified is that someone without a valid title or with a lesser title may obtain one. The person without a valid title or with a lesser title will, once he has a certificate of heir in his hand, have the status which the certificate attributes to him. That happens regardless of the defectiveness of his title so long as his certificate has not been annulled. He might enter into juridical acts in the capacity he derives from the certificate. He might even manage to take possession of all or a portion of the property forming part of the inheritance.

✓ A lawful heir may sue the person who has obtained a certificate of heir without a valid title with a view to redeeming his right. The suit such an heir institutes is technically called the action of ***"petitio haereditatis"***. Article 999 of the Civil Code, which sets forth the principle of ***"petitio haereditatis"***, states that: "Where a person without a valid title has taken possession of the succession or a portion thereof, the true heir may institute an action of ***"petitio haereditatis"*** against such person to have his status of heir be acknowledged and obtain the restitution of the property of the inheritance".

✓ However, with the exception of suits relating to family immovables, the right to make use of the action of ***"petitio haereditatis"*** does not hold forever. It stays put only for a limited period of time. An heir who intends to avail himself of such action must institute it within the period specified under Article 1000 of the Civil Code. Otherwise, his right will be barred by limitation. Sub-Article (1) of this Article provides that "an action of ***"petitio haereditatis"*** shall be barred after three years from the plaintiff became aware of his right and of the taking possession of the property of the inheritance by the defendant".

✓ An heir might not be able to institute a ***"petitio haereditatis"*** action within the three years period specified under Article 1000 (1) for one reason or another. If the reason is legally acceptable, the heir may institute the action within fifteen years from the death of the deceased or the day when the plaintiff can enforce his right over the succession. An action of ***"petitio haereditatis"*** may in no case be instituted after such period, save for those suits that relate to family immovables.

✓ The heir who is the plaintiff in a ***"petitio haereditatis"*** action may, in his statement of claim, request the court to:

- Annul the status and certificate of heir of the defendant Art998 (1);
- Order the defendant to return his certificate of heir (sub 2) ; and where he alleges that he has lost the certificate or that he cannot return it for any other reason, order the defendant to give all appropriate securities to ensure that he will not make use of the certificate in the future (sub 3);
- Acknowledge his own status of heir (Art 999); and
- Order the defendant to return to him all the property of the inheritance which he had come to possess.

✓ If the plaintiff wins the suit, the court will grant his requests. Consequently, the defendant will return to the plaintiff all the property of the inheritance that has remained in his possession Art 1001

Administration of the Succession

✓ Article 1003 of the Civil Code provides that: "The liquidator shall administer the estate of the deceased from the day when he is appointed until the persons having a right to the succession have received the shares or the property to which they are entitled".

✓ In the ordinary course of events, persons who may have right to the succession are persons who have covered the expenses of the funeral of the deceased and of the administration and liquidation of the succession from their personal pocket, where this is the case; heirs-at-law; legatees by universal title; creditors of the deceased; maintenance claimants; and legatees by singular title. That means that the liquidator must administer the estate until that time at which properly identified debts of the inheritance, i.e., expenses of the funeral of the deceased, expenses of the administration and liquidation of the succession, debts of the deceased, maintenance claims, and legacies by singular title, if any, have been paid to properly identified creditors and the net rights of the deceased have been delivered to the deceased's rightful heirs and/or legatees by universal title.

✓ The liquidator is expected to administer the properties of the succession with the prudence and zeal of a ***bonus pater familias (Art 1010(1))***. That means that the liquidator must act as honestly and diligently as a good head of a family does. Besides, either the heirs acting in agreement between them or, upon the application of any interested person, the court may give the liquidator directives concerning the administration of the estate.

✓ Immediately after the death of the deceased, any interested person, especially those having a right to the succession, may apply to the court to order the affixing of seals on the effects, or on some of the effects of the deceased (Art 1004 (1)). The person requesting the affixing of seals is bound to bear the expenses of the affixing and removal of the seals.

✓ Within forty days from the death of the deceased, the liquidator must draw up an inventory to establish what the succession is made up of (Art 1005 (1)). The inventory must show each constituent of the succession – be it an asset or a liability. The liquidator must also as necessary draw up supplementary statements for any asset or liability discovered after this period within

fifteen days from such property having been discovered.

- ✓ In drawing up the inventory, the liquidator may demand the cooperation of the heirs. As a rule, the heirs will, with the exception of those which come to an end with the deceased's death, retain all the rights and obligations they had against or in favor of the deceased in their relations with the succession (Art 1007(1)). The law obliges the heirs to give the liquidator all relevant information in regard to such rights and obligations so that he can draw up a complete and an all-inclusive inventory.
- ✓ The inventory so drawn up is open to whosoever is called to receive a share of the succession. Such a person may require that a copy of the inventory be sent to him on condition that he bears the expenses thereof (Art 1008 (1)). Even the creditors of the inheritance, either of the deceased or of the succession, may order a copy where so authorized by the court.
- ✓ The ***bonus pater familias*** standard requires the liquidator to act with the utmost honesty and diligence possible. The liquidator must, under pain of being personally liable, perform all acts necessary for the collection of the assets of the estate. In particular, he should take all reasonable steps to recover the debts due to the deceased which are exigible (Art 1012 91) cum. Art 944(c) with Art 1021 (1)), viz., debts that, in the technical sense of the term, should be paid because they have fallen due. Where necessary, the liquidator should commence legal proceedings for the recovery of such debts. He should collect the debts as soon as is practically possible. He will risk personal liability if he unnecessarily delays in demanding payment.
- ✓ According to Article 1012 (2) of the Civil Code, "the liquidator is authorized to give acquittance for such debts". In law, "acquittance" means a written statement attesting settlement or payment. Therefore, the term "acquittance" and the entire provision of Article 1012 (2) should be understood to mean that the liquidator may issue written statements attesting the settlement or payment of debts.
- ✓ Conversely, the liquidator should pay exigible debts of the succession Art 944(1) cum. Art 956 9(c). But he should not pay such debts automatically as soon as they are claimed. As a rule, he should refer any claim for the payment of debts pertaining to the succession to the court for proper screening. In other words, the liquidator ought to tell the persons who come forward claiming payment for any alleged debt of the succession to come up with the appropriate court order. He should also contest court actions that such persons may institute as well as any suit filed by any third party claiming a right over the property of the succession Art 1011 (b).
- ✓ What is more, the liquidator should perform all the acts and institute all the actions necessary for the preservation of the property of the succession. He may sell such properties of the succession as fruits and crops, and other movable chattels which are rapidly perishable or which require considerable expense or particular care for their custody and preservation. He may not, however, sell any other type of movable unless the sell is required to pay the debts of the succession. Likewise, except with the consent of all the heirs or the authorization of the court, the liquidator may not sell any immovable property pertaining to the succession.

❖ **Payment of Debts Claimed from the Succession**

- ✓ Generally, debts that may be claimed from the succession can be classified into two categories: The first category consists in debts which are imputable to the deceased, whereas the second those that are attributable to the succession.
- ✓ The debts which are imputable to the deceased include the expense of the deceased's funeral, debts he assumed during his lifetime, claims of maintenance by his rightful, and properties he bequeathed to legatees by singular title. These debts are said to be imputable to the deceased because they are linked to him in one way or another.
- ✓ The second category is composed of debts that are attributable to the succession. These debts, which generally arise after the death of the deceased, have more affinity to the succession that the deceased. These include the expenses of administration, liquidation, and partition of the succession such as those incurred for affixing of seals, drawing up of inventory, preservation of property, partition and delivery of the inheritance to the heirs, etc.

❖ ***Order to be followed***

- ✓ Not all the debts of the inheritance have equal legal importance. The law has devised a hierarchy of debts in which each type of debt is placed on a different rank depending on its perceived precedence. Some must be paid before others. Accordingly, for purposes of payment, creditors are treated differently on the basis of the priority attached to the debts they claim.

1. Funeral Expenses

- ✓ Funeral expenses are expenditures required for the disposal of the body of the deceased. In Ethiopia Funeral expenses include expenses incurred to buy a coffin, mortify and transport the body, dig the grave, and host relatives, neighbours, colleagues, and other acquaintances who show up to offer consolation to the deceased's immediate families. Most of those expenses are usually covered by the ***"Idir"*** of which the deceased or his family is a member. But that may not be always the case. The deceased or his family may not belong to any ***"Idir"*** or the ***"Idir"*** to which they subscribe may not cover all the expenses or a portion thereof.
- ✓ Funeral expenses are legally considered as one of the most important debts of the inheritance. The cumulative reading of Articles 1014 (a) and 1015 (1) of the Civil Code suggests that funeral expenses are payable before any other debt provided that they are justified. This is apparently the case even where the estate is insolvent.
- ✓ Funeral expenses will not have priority over other debts of the inheritance unless they are justified, having regard to the social position of the deceased (Art 1015 (1)). That means that the expenses incurred for the funeral should be reasonable. As to what are justified or reasonable funeral expenses depends upon the deceased's economic and social status.
- ✓ If funeral expenses are considerably exaggerated having regard to such factors, then they are not justified. Any expense incurred in excess of what could be considered reasonable will still be paid, but only after all the other debts of the inheritance have been paid.
- ✓ For purposes of indemnification, funeral expenses do not include expenses for the commemoration

of the deceased.

2. Expenses of Administration and Liquidation

- ✓ Expenses incurred for purposes of administration and liquidation should be paid next to the funeral expenses. Such expenses comprise: Art 1014
  - The expenses of the affixing of seals and of the inventory and those of the account of the liquidation;
  - The useful expenses incurred by the liquidator for the ordinary preservation, maintenance and administration of the property of the inheritance;
  - The expenses of the partition and those of the transmission of the property of the inheritance to the heirs;
  - Estate duty.

3. Debts of the Deceased

- ✓ These debts could be contractual, non-contractual, or penal by nature. Contractual debts are liabilities emanating from the deceased's contractual undertakings. Non-contractual debts originate in torts imputable to the decease. And penal debts, such as fines, arise as a result of sentence imposed on the deceased for his criminal acts.
- ✓ Creditors of the deceased do not have any right over the personal property of the heirs and legatees. They, however, have the estate of the deceased as their "exclusive security". As long as their claim is based on a legally valid and enforceable obligation of the deceased, they can enforce it against the estate.
- ✓ According to Article 1017 (1) of the Civil Code, the liquidator is required to make the appropriate search for creditors. He must take all the steps necessary to establish whether there are persons who are creditors of the deceased. He should, to this end, examine the registers and papers of the deceased and make the necessary searches in the public registers, in the places where the deceased has resided and in those where he has immovable property. Furthermore, where there is reason to believe that the deceased may have creditors whom the search has not disclosed, the liquidator must make such publicity as is appropriate to inform the creditors of the death of the deceased in the places where this seems useful. He must require the creditors to make themselves known to him within three months from the date of publicity. Failure to the search and publicity required by the law will apparently have the personal liability of the liquidator as its only sanction.
- ✓ The liquidator must in the first place use the liquid cash he finds in the succession to pay the debts of the succession. He may sell property only where the cash is not enough to satisfy all debts. And where property has to be sold, the property bequeathed in legacy by the deceased may not be sold unless the debts could not be paid by selling other property. The heirs have the right of preemption to buy any property of the inheritance sold for the purpose of serving debts. The liquidator is bound to offer such property to the heirs before selling it to another person. He is also required to sell it the heir where he offers for it the market value or a higher price.
- ✓ Creditors of the deceased may be of either of the following types:
  - **Secured creditors**; are those whose claims have been guaranteed by a personal guarantor or who possess what is known as "real security" by way of a mortgage or a pledge. Secured creditors are always with advantages in comparison with other creditors. They have the right to follow the guarantor or the property which constitutes their security for the satisfaction of their claims. In the case of a real security, secured creditors have a priority right over the property under pledge or mortgage.
  - **Creditors with special privilege under the law**; such creditors as workers claiming payment under employment contracts.
  - **Ordinary creditors**: are creditors who do not have any security or who are not conferred with a special privilege by the law. There are two classes of ordinary creditor: **Those whose debts are exigible and those that are not**. Ordinary creditors whose debts are exigible are creditors with liquidated and mature claims. These debts have priority over debts that are not exigible, i.e., debts that are not yet liquidated and mature. Creditors whose debts are not exigible and those who have conditional claims over the estate may require deposit of securities from the liquidator to ensure that he will later pay their claims when they fall due or when the conditions attached to the claims materialize.
- ✓ Secured creditors are not generally affected although the succession has no sufficient means to pay off its debts. They may pursue their security, whether personal guarantor or real security, for the satisfaction of their claims. As for the remaining two classes of creditors, where more than one contending creditors with an equal footing demand payment simultaneously, the rule of pro rata distribution, in which the estate is to be distributed between the creditors in proportion to the amount of their respective claims, is applied.

4. Debts Relating to Maintenance

- ✓ Under conditions laid down in the relevant provisions of the Law of Successions, some persons may claim to get maintenance out of the estate of the deceased. After paying off the expenses of the funeral of the deceased, the expenses of administration of the succession, and the deceased's debts, the liquidator should, before handing over legacies by singular title, pay the debts relating to maintenance claims(Art 1025).
- ✓ Debts relating to maintenance are purely legal in terms of source and substance. Any act or contract concluded during the lifetime of the deceased in connection with eventual debts of the succession for maintenance is void (Art 1036 (1)). By the same token, testamentary dispositions aiming at excluding or modifying the rules relating to maintenance debts are of no effect.
- ✓ According to Article 1026 of the Civil Code, the following three groups of persons may claim for maintenance from the succession. These are:
  - The spouse of the deceased;
  - The relatives of the deceased, namely, his descendants, ascendants, and brothers and sisters; and
  - Other persons who lived with deceased or were maintained by him at the time of his death.
- ✓ The right of those groups of persons is not unqualified. They are not entitled to claim for

maintenance against the estate unless they are in need Art 1027. That is, they must not have any own means to support themselves. They will not also have such right if they are in a position to earn their living by their work.

- ✓ The spouse of the deceased may claim regardless of the fact that the deceased has ordered a legacy in her/his favour, unless it is shown that the claimant can live on such legacy. The spouse may get the maintenance by way of a life annuity in accordance with the rules laid down in the applicable family code concerning maintenance obligations Art 1030 of CCE. However, where the maintenance is payable by way of annuity, the annuity will no longer be due in case the spouse remarries.
- ✓ The relatives of the deceased, i.e., his descendants, ascendants, and brothers and sisters may claim only where the succession is testate and the deceased has left a valid will to their prejudice.
- ✓ A descendant, ascendant, brother or sister excluded by heirs who have a better right is not entitled to claim maintenance.
- ✓ Where a descendant, ascendant, brother or sister has a right to claim maintenance, there is a limit to the amount which he may receive. Such a person may only get money or things of a value equal to that he would have received from the succession by virtue of the law, had the deceased not made testamentary dispositions to his prejudice Art 1029 (1).
- ✓ Any person legally entitled to claim for maintenance must establish his right by forwarding his claim to the liquidator within one year from the opening of the succession Art 1031 (1). The liquidator is empowered to decide on such claims. He may acknowledge or refuse a claim. However, the decision of the liquidator to refuse a claim may immediately be challenged before the competent court.
- ✓ Article 1031 (2) implies that a person may make a provisional claim for maintenance in urgent cases.
- ✓ The liquidator must pay claims for maintenance in conformity with the manner of payment prescribed by the law. As a rule, maintenance should be paid by way of a lump sum Art 1032(2). Apart from the case when the recipient is the spouse of the deceased, maintenance may be paid by way of a life annuity only where the creditor is at least sixty years old.
- ✓ If payment by way of a life annuity is allowed, the amount will be fixed definitely Art 1034(1). Such amount may be revised only if the entity of the succession has been erroneously appraised when it was established. The creditor may, where appropriate, require that security be given to him to guarantee the payment of what is due to him.
- ✓ Annuity is payable as from the death of the deceased. It, including the arrears, if any, are paid at the place of residence of the creditor. In principle, arrears may not be assigned or attached Art 1035(1). However, where there are institutions that provide for the wants of the beneficiary of the annuity, arrears may be assigned to such institutions even before they fall due. They may also be attached by persons who have given to the beneficiary what was necessary for his livelihood.

Payment of Legacies by Singular Title

- ✓ There will be a legacy by singular title only where the succession is testate. That is, the deceased must have left a valid will.
- ✓ Legatees by singular title are, as a rule, assimilated to creditors of the inheritance. As such, like the other creditors of the inheritance, viz., the creditors of the expenses of the funeral of the deceased, the expenses of the administration of the succession, and the debts of the deceased, legatees by singular title are paid during the liquidation phase Art 1014 (4).
- ✓ So long as the law is concerned, legatees by singular title are not presumed to have got their right for consideration. That is, they are not considered to have obtained their claim in return for something they have paid or performed for the benefit of the deceased or the succession. The legacy was presumably ordered in favor of them by the deceased without quid pro quo. In other words, their claim is not based on an obligation recognized by the law as valid and enforceable as against the deceased. What is more, unlike persons legally entitled to claim for maintenance against the succession, legatees by singular title might not be in need or might be in a position to earn their living by their work.
- ✓ Legatees by singular title will be paid only after all other creditors of the inheritance are paid. After paying off all the debts having precedence, the liquidator is expected to pay the legacies by singular title ordered by the deceased out of the estate Art 1037 cum1041. Once legatees by singular title have been paid, the liquidation process will end and be closed.
- ✓ the provisions relating to the option of the heirs or legatees by universal title also apply to legatees by singular title. That is, however, without prejudice to the following two rules. First, the doctrine of total acceptance or refusal is not applicable to legatees by singular title. A person to whom more than one legacy by singular title has been bequeathed may freely accept one of such legacies and refuse the other. Second, refusal of a legacy does not result in the return of the property bequeathed to the succession. If a legatee by singular title refuses the legacy, his refusal benefits either the liquidator or the heir – whoever has the charge of paying the legacy under the will.
- ✓ Instead of the liquidator, the testator may order one of the heirs to pay a legacy by singular title Art 1037. The law is silent as to whether such an heir should pay the legacy out of his share of the succession or out of his personal property. But the testator does not have any power to order an heir to pay a legacy out of his pocket. Nor is any heir obliged to pay anything unless he has accepted the succession and has received all the property of the inheritance or a portion thereof. It can, therefore, safely be said that an heir on whom payment of a legacy may be imposed is an heir who, having accepted the succession, has received some inheritance property.
- ✓ In the normal course of events, a legatee by singular title may not get his legacy at all if the entire property of the inheritance is spent early serving the debts with precedence. A legatee whose legacy has been ordered to be paid by an heir may also experience a similar fate. Where all the property of the inheritance has been disposed of in the course of the liquidation process, a legatee the payment of whose legacy has been imposed on an heir will have no right of recourse

against the heir as it is clear that nothing has gone to the heir from the succession.

The position of legatees by singular title is precarious even under normal circumstances. Where the testator has not imposed payment on an heir or has not made any disposition as to the manner of payment at all, the liquidator normally pays singular legacies out of the estate. However, such legacies may be paid only where it appears that the succession has sufficient means for paying them[1]. No means, no payment.

It is possible that some property has remained from the earlier phases of the liquidation process. It may, nevertheless, happen that the testator has ordered several singular legacies and the property remaining is not sufficient to pay all of them. In such an event, payment of is made in three alternative ways. If the testator has expressly laid down order of payment, the legacies will be paid following such order[2]. If, however, the testator has not made an express disposition to that effect, legatees whose legacies could, considering the will or any other written act of the deceased, be said to have been ordered as remuneration for the services they have rendered will be paid first[3]. The property which remains after this, where any, will be distributed among the rest of the legatees on pro rata basis. That in other words means that the legacies that have not been paid will be reduced in proportion to their respective values and be paid[4].

The liquidator is expected to hand over to the legatee the thing bequeathed along with its accessories[5]. The expenses of the delivery are charged to the succession[6]. The thing is delivered in the state in which it is found[7]. In case of any defect or nonconformity, the legatee does not have the right to require that the thing be delivered to him in a good state[8].

The disposition whereby the testator has bequeathed a thing by way of a legacy might happen to be affected by linguistic or titular defect. Linguistically, a legacy may be defective because the testator has ordered it without sufficiently defining its subject matter referring only to its genus[9]. Where this is the case, the legatee is at liberty to select whichever he wishes from among the things of that genus belonging to the testator[10]. Where, on the other hand, several legatees are called to select from things of the same genus, they will draw lots to determine the order in which they are to make their selection[11].

In regard to titular defect, the legacy could relate to a property encumbered, that is, a thing pledged or mortgaged[12]. When the thing bequeathed has been given as a pledge or has been mortgaged by the testator, the corresponding debt is paid out of the estate. Accordingly, the legatee concerned has the right to demand that security be given to him to guarantee the liberation of the thing at the time when the debt falls due[13]. But if he pays the debt required to liberate the thing at maturity, he may seek recovery from the heirs by being subrogated in the rights of the creditors whom he has paid[14].

The other instance of titular defect is where the testator has ordered a legacy in respect of a thing that does not belong to him. This occurs because, for example, the subject matter of the legacy is a thing belonging to other persons[15]. In any case, the thing bequeathed must be a thing over which the testator had no right at the time of his death.

Such titular defect does not necessarily affect the validity of the legacy. In particular, where the subject matter is a thing of a genus, the legacy will, regardless of the defect in the testator's title, still be valid and paid. The liquidator may pay the legatee concerned another thing of a similar genus with that of the bequeathed[16]. But if there is no such thing in the succession, the legatee will get the value of the thing bequeathed to him[17].

Where, on the other hand, the thing bequeathed is a determinate thing which is not a thing of a genus, the whole legacy will, in principle, be of no effect[18]. However, if the testator has ordered the legacy knowing that he had no right over the subject matter at the time of his death, the legacy will be valid[19]. In such case, the legatee may demand that the liquidator pay him the value of the thing bequeathed to him[20].

What a person bequeaths by way of a legacy may not necessarily be a property. He may also make a disposition whereby, for instance, he calls a person to collect a debt owed to him[21]. Where such a legacy has been ordered, the value of the debt will be determined by the amount due to the deceased at the time of his death[22].

Apparently, the position of a legatee in whose favor a legacy of debt has been ordered is even more precarious in comparison with other legatees by singular title. It is up to the legatee to pursue the debtor and secure payment. Even worse, the succession does not guarantee the payment of the debt[23]. The liquidator fulfils the obligation with respect to the legacy by merely delivering the instrument which makes possible the recovery of the debt to the legatee[24].

Apart from a debt, a person may bequeath an annuity owed to him[25]. Where an annuity is bequeathed, the arrears thereof will be due as from the day of the death of the testator[26]. Likewise, where the legacy relates to a determinate thing, its fruits will be due as of the death of the deceased[27]. In contrast, if what is bequeathed is a sum of money, it will bear interest at the legal rate, which runs from the day when the liquidator has been called upon to effect payment[28].

Read the following case and comment on the decision of the court

የፍ/ብሔር ይ/መ/ቁ/2241/88

ህዳር 7 ቀን 1994 ዓ.ም

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ይግባኝ ባዮች ፡- 1 ወ/ሮ አልማዝ ይግለጡ ቀርባለች።

2 አቶ ባዩ ለማ ቀርቧል።

3 አቶ ኤልያስ ለማ አልቀረበም።

መልስ ሰጭዎች ፡- 1 ወ/ሪት ታዬ ወርቅ ለማ ቀርባለች

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ውሳኔ

በሁለቱ መዛግብት ለቀረበው ይግባኝ መነሻ የሆነው ክርክር የተጀመረው በክልል 14 መስተዳደር በዞን ፍ/ቤት ነው። በዞን ፍ/ቤት ከሣሾች የነበሩት መልስ ሰጭዎች ሲሆኑ፣ ይግባኝ ባዮች ደግሞ ተከሣሾች ነበሩ። ከመዝገቡ እንደተመለከተነውም መልስ ሰጭዎች ክስ የመሠረቱት ካባታችን በውርስ ያገኘነውና የጋራ ሃብታችን የሆነውን ንብረት ተከሣሾች ከመያዛቸውም በላይ፣ እያከራዩም ገንዘብ የሚያገኙበት በመሆኑ ከንብረቱና በኪራዩ ከተገኘው ጥቅም የድርሻችንን ያካፍሉን ዘንድ ሊወሰንባቸው ይገባል በማለት ነው።=====

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CHAPTER THREE: PARTITION OF SUCCESSION

✓ After the liquidation process comes to an end, the following phase is partition of the remaining hereditary estate among the heirs and universal legatees.

Community of Hereditary Estate

✓ Partition may not necessarily follow when liquidation comes to an end. The coheirs may jointly own the property that they acquired from the succession. The joint ownership of property by the coheirs is different from the community of property of spouses.

The community of property of spouses is different from the common ownership of coheirs in that:

(a) In the case of spouses, every property in the hands of the spouses is presumed to be a common property, while only the property obtained from the succession is the common or joint property of the coheirs.

(b) The common property of the spouses remains their common property so long as their marriage exists, but the joint ownership of coheirs stays only for a limited time, unless the co-heirs agree to jointly own for longer time.

(c) The spouses have an equal right over their common property, but the coheirs may have a different proportion, especially in the case of testate succession.

✓ The joint ownership of the co-heirs shall be governed by the law of property, not by the law of family. Although the coheirs have the right to jointly own the hereditary estate, the provisions relating to liquidation shall not be affected.

✓ Article 1061 gives two rules to the coheirs. Firstly, the coheirs may not demand the sale by auction of a particular thing forming the property obtained from the succession. Secondly, the coheirs cannot demand partition of a particular property from the succession, while the hereditary estate is still held in common. Since they are either heirs or universal legatees all of them have a right over the whole hereditary estate. Unless their condition is regulated by the rule of Article 913, they cannot know which specific property is going to fall in their portion.

✓ The partition of the total hereditary estate (but not only part of it) can be required by any of the coheirs at any time once the liquidation is completed. But this is not always true. That is because Art. 1063 provides for possible exceptions to the rule laid down under Art. 1062.

Here are two of the possible exceptions that Art. 1063 prescribes to what has been provided under Art. 1062:

- The community may be maintained by the order of the court for not more than two years, if the partition is required at an appropriate time. Partition of the hereditary estate may be particularly not appropriate in some circumstances; for example, the only hereditary estate that is left from liquidation is a villa. It is impossible to physically divide the villa and move it to different places. Unless the coheirs agree to jointly own the villa, the only way of partition is selling it and dividing the proceedings of the sale. The market price of villas may fluctuate. That is, it may sometimes rise and fall at other times. It could be said that selling the villa during the seasons of price fall with the intention of partitioning the liquid cash, is selling it at an inappropriate time. In such circumstances, it is important to wait until the price of the villa rises. The court may, therefore, order the suspension of the partition for the period of not more than two years.

- Any request for partition of the hereditary estate shall be suspended when the partition depends on the condition of birth of a child who is merely conceived. According to Art. 2 of the Civil Code, a merely conceived child shall be considered as born whenever his interest so requires, provided that he is born alive and viable. The child is deemed to be viable where he lives for 48 hours after his birth. That is, if the child dies before living for 48 hours, it cannot be considered as a person succeeding his father.

✓ Furthermore, Art. 1064 (1) seems to lay down yet another exception to Art. 1062. Art. 1064 (1) denotes that the right of a coheir to apply for the partition of the hereditary estate may be excluded by the will of the deceased or by the contract concluded between the co-heirs. That is, the deceased in his will, may order that the coheirs shall jointly own the property he has left and no partition shall be made. Likewise, the coheirs may agree among themselves to jointly own the property they have acquired from the succession. But such testamentary provision or agreement among coheirs can be effective only up to five years. When a coheir does not want to jointly own the property, irrespective of the order by the deceased or the agreement among the coheirs, partition can be made after five years of joint ownership. Even if the deceased has ordered the joint ownership for more than five years, it shall be reduced to five years. The same is true for the agreement reached among the coheirs. If it goes beyond that it is believed that this would seriously affect one's property rights. The FDRE Constitution guarantees the right to property. According to this constitutionally guaranteed right, a person can use, sell, exchange, alienate his property in any way he likes. This right of an individual shall be affected if the hereditary estate is allowed to stay for a very long period against the will of the individual.

Collation by Coheirs

- ✓ Collation is the bringing back of properties that were given by donation to a descendant by the ascendant during the lifetime of the latter into the succession. Collation is devised to bring equality among the coheirs.
- ✓ According to Article 1066, the following donations or liberalities are subject to collation.
    - Any money that is given to establish the heir;
    - Money paid to settle the debts of the heir;
    - Property or money given to the heir during his marriage in the form of dowry.

- ✓ An heir who has benefited from such donations shall be obliged to pay back the values of the properties he received into the succession. However, any payment incurred for the education of the heir is not subject to collation.
- ✓ Only those descendants who accept the succession shall be obliged to collect. It is also possible that the testator can exempt his/her child from collation in his/her valid will.
- ✓ The law provides that only descendant heirs of the deceased are obliged to collate. Other heirs, who have been benefited from donation, are not obliged to collate, even if they are beneficiaries of the succession. But this is not a mandatory rule. The testator, in his/her will, can effectively impose these heirs to collate what they have received in the form of donation.
- ✓ A person who was not an heir of the deceased but later becomes an heir is also bound to collate. This could happen, for instance, if the donor adopts the donee after making the donation.
- ✓ As provided for in Art. 1074, the value to be collated shall be added to the estate left by the deceased. It is this mass that is ready to be partitioned among the heirs. But here you must note that the co-heir who is obliged to collate need not bring the value in real terms. That is, he/she is not required to bring the value of the donation in liquid cash nor is required to bring in kind. The computation shall be worked out merely theoretically.
- ✓ The purpose of collation is to ensure justice by distributing the estate left by the deceased fairly among his/her children. Therefore, any value brought into the succession by collation can only be distributed or partitioned among the coheirs. Collation is made only to the benefit of coheirs. Even latecomer creditors of the deceased have no right to claim payment from what is collated.
- ✓ An heir who is bound to collate is considered to have already received his/her portion from the succession to the extent of the value he/she is bound to collate. (Art 1074 (2) cum. 1076(1)).
- ✓ The heir who is required to collate need not pay the value of the property that he received by way of donation from the deceased. Instead, he is allowed to take less from the succession, which is ready to be partitioned. That is, he collates by way of set-off. Collation should not be considered as a physical bringing of the thing taken by donation.

The Modalities of partition

- ✓ The law prescribes that partition shall, first and foremost, be made as per the terms of the agreement to be made as between the coheirs Art 1079 (1). Where the coheirs fail to agree on how partition should be made, it shall be made in accordance with the provisions of the law. In default of an agreement, one of the coheirs may draw up a plan, which could serve as a blueprint for partition. This, however, is on condition that such plan is approved by the court. If partition were to be single-handedly made by one of the coheirs, such heir may make the partition to the prejudice of other coheirs or of the creditors of one of the coheirs. This could particularly be true when partition is made in the absence of the coheir, or in the absence of the creditor of the coheir.
- ✓ As a rule, partition must be made in kind. Instead of selling the property and dividing the liquid cash or the money, the law considers it good to divide the property as it is. However, sometimes it could be very difficult or even impossible to partition the property equally among the coheirs in accordance with the rule of partition in kind. In such a case, the inequality of the shares in kind shall be setoff by payment of sums of money Art 1086(1). The law stipulates that an heir should be given the property which is most useful to him, so long as that is possible Art 1087(1)..

The Relation between the Co-heirs after Partition

- ✓ The entire process of the devolution of a succession comes to an end with partition. With partition also ends the relation between the co-heirs in regard to the succession. Basically, there will be no binding relation, whether contractual or legal, as between the co-heirs once the succession has been fully partitioned.
- ✓ However, with a view to protecting the interests of the co-partitioners, or of one or some of them, the law has put in place provisions that extend the relation between the co-heirs even after partition with respect to two issues. The first is the issue of warranty. The co-partitioners owe to each other warranty in respect of their shares in the succession Art 1097. The other is the issue of the annulment or correction of the partition Art 1102-1109. Partition may be annulled or corrected for the benefit of all, some, or one of the co-partitioners in certain circumstances. Let us now examine these two issues in depth.
    - ***Warranty due by Co-heirs***
- ✓ "Warranty" basically means the security a person provides for the benefit of another person to ensure that something is done safely in favor of that other person. There exists a warranty obligation as between the co-heirs in the Law of Successions. This obligation is meant to serve as a sort of risk distribution mechanism among the co-heirs.
- ✓ The fundamental idea pertaining to the warranty obligation in the Law of Successions is that the co-heirs, who are the co-partitioners so to say, are bound to provide warranty to each other to ensure the safe delivery of their shares in the succession after

partition. A co-partitioner provides security to the amount of the value of his share in the succession Art 1099. He is not obliged to provide the warranty with his personal property.

- ✓ The warranty a co-partitioner may owe could be grouped into two depending on the type of the content of the share in relation to which the warranty is provided. According to Article 1097 (1) of the Civil Code, in respect of the corporeal things or movable properties placed in their shares, the co-partitioners owe to each other the warranties which a seller owes to a buyer. In contrast, pursuant to Sub-Article (2) of the same Article, they owe to each other the warranty provided for in regard to the case of an assignment of a debt by onerous title in respect of rights and debts placed in their shares.
- ✓ Basically, a seller owes two important warranties to the buyer. These are warranty against dispossession and warranty against the non-conformity of the thing sold with the contract. When we see this in the relation between the co-heirs after partition As for warranty against dispossession, someone may come forward with a claim over a movable property placed in the share of a co-partitioner after partition has been made. Such a person may produce sufficient evidence to prove that the property actually belongs to him and may even manage to dispossess the co-partitioner. As a result, the co-partitioner in question may end up getting nothing from succession. The other co-partitioners are required to warrant such co-partitioner against any total or partial dispossession which he might suffer in consequence of the third party claimant exercising the right he had at the time of the partition of the succession. In contrast, the idea behind warranty against non-conformity is that the co-partitioners have the duty to warrant each other that the thing delivered to each of them conforms to the terms of the partition and is not defective. It may happen that a co-partitioner has received a thing that differs in quantity or quality from the thing placed in his share during partition. By providing warranty, the other co-partitioners in effect share the loss with the co-partitioner who has received such a thing.
- ✓ In the normal course of events, the warranty is implemented by the other co-partitioners indemnifying the aggrieved co-partitioner. Pursuant to Article 1098, the amount of the indemnity is fixed according to the value of the thing warranted at the time of the partition. The indemnity is due by each of the co-partitioners in proportion to the value of the share of the succession which he has received. In case one of the co-partitioners is insolvent, the indemnity due by him will be divided between the co-partitioners in whose favor the warranty operates and all the other co-partitioners who are solvent, again in proportion to the value of the share of the succession which each has received.
- ✓ Warranty may not be due if the dispossession or the non-conformity complained of by a co-partitioner is imputable to his own fault Art 1101. Nor may it be due where the dispossession or the non-conformity results from a cause that arises subsequent to the partition agreement.

Annulment and Correction of Partition

- ✓ A partition agreement is expected to meet all the validity requirements of a contract as to consent, capacity, object, and form. Otherwise, it may be annulled in the same circumstances as other contracts Art 1102. A partition agreement may be annulled on the ground of defective consent or incapacity of one of the co-heirs Art 1102 cum 1808.
- ✓ Partition will not be annulled for the sole reason that a property forming part of the succession is discovered subsequent to it. Article 1103 prescribes that without affecting the partition previously made, a supplementary partition will be made in relation to such property. It may, nonetheless, happen that the newly discovered property was in the possession of one of the co-heirs who had concealed its existence from his co-heirs in bad faith with the intention of owning it exclusively. In such an event, the concealing heir will, by way of punishment, be deprived of any share in the property he concealed.
- ✓ Partition might have been made to the prejudice of one or more of the co-partitioners due to erroneous valuation or the failure of an heir to collate a donation which is subject to collation. Neither of these two factors entails the annulment of the partition all together. Instead, the partition will be corrected by indemnifying the aggrieved co-partitioner.
- ✓ Article 1105 (1) provides that a person who has received in all less than three-fourth parts of what he had a right to because of an erroneous valuation of a certain property may apply to the court to order the correction of the partition. Pursuant to Sub-Article (2) of the same Article, an application for the correction of a partition may also be filed where a donation subject to collation has not been declared by the person who was bound to collate it in favour of his co-heirs. Such application must be filed within three years after the partition has been made. The right to apply for correction will be barred after the expiry of this period.
- ✓ According to Article 1107, where the court allows an application for correction, it will fix the amount of the indemnity due to the applicant as well as the person by whom and the conditions on which such indemnity should be paid. The court is expected to fix the indemnity due in terms of money in all cases. Naturally, payment of indemnity may be required only from the co-partitioners of the applicant or from their heirs or legatees.
- ✓ If the correction is made in consequence of a donation subject to collation not having been declared in the partition as corrected, the defaulting co-heir shall be subject to punishment for his conduct. The punishment is the deprivation of such heir of the value equal to the donation which he must have collated. However, if the co-heir in question proves his good faith to its satisfaction, the court may waive the imposition of the punishment.

The Right of Creditors Coming after Partition

- ✓ Creditors of the inheritance may sometimes appear after partition has been made. Such creditors do not loss their rights simply because the succession has already been partitioned. However, they will have a lesser or, at least, no better right than the personal creditors of the co-partitioners in as much as the property of the succession is concerned.
- ✓ As a rule, a creditor coming after partition must divide and forward his claim to the co-partitioners in proportion to the value of the share received by each unless the debt due to him is indivisible or there is an agreement made in the partition whereby the whole debt or a larger part thereof is charged to one or more co-partitioners Art 1110(1) and (2).
- ✓ If his claim is indivisible, he may claim only from either of the co-partitioners. However, where a co-partitioner has paid to the creditor of the inheritance more than the share of the debt which should finally remain to his charge, he may make recourse against the other co-partitioners for the amount he has paid in excess.
- ✓ Where one of the co-partitioners becomes insolvent, the creditor can demand payment from other co-partitioners. These co-partitioners are obliged to pay the portion of the debt that should have been paid by the insolvent co-partitioner by sharing it among themselves pro rata, i.e., in proportion to the amount they have received from the succession. This does not mean that the insolvent co-partitioner is relieved from liability altogether. His liability stays put, and he may be required to pay any time he returns to the state of solvency. By availing himself of the provisions of Article 1113, a co-partitioner who has paid the portion of the debt of the succession owed by the insolvent co-partitioner may seek restitution when the later becomes solvent.

Conventions Relating to an Inheritance

- ✓ Succession is a strictly ***mortis causa*** process. Any act relating to a succession will be of no legal effect unless it occurs after the death of the person being succeeded. That, of course, is with the exception of will, which is naturally made while the person to be succeeded is alive.
- ✓ The law does not recognize any agreement made in connection with the inheritance of a person while he is still alive. Any agreement as to how the succession of the deceased shall devolve on the heirs or an agreement made between third parties and heirs, particularly before the opening of the succession shall be of no effect Art 1114. Without prejudice to this, parents and ascendants may partition their property among their children and descendants by way of donations during their lifetime Art1117-1123.

Pacts on Future Successions

- ✓ A "pact" is an agreement made between two or more people. The law does not allow people to make agreements on a succession that has not yet opened. Such agreements are believed to affect the powers of a person with respect to making, modifying, or revoking a will. The law is always interested in ensuring that the testator makes his will with his free volition.
- ✓ One of the mechanisms through which the law tries to accomplish this goal is preventing interference by others. Allowing a valid agreement to be made on a future succession is tantamount to obliging the testator to make his will as agreed. This will definitely limit the powers of the testator to make, replace, modify, or annul his will with his free volition.
- ✓ In the words of Article 1114, any contract or unilateral undertaking relating to the succession of a person alive that is not expressly authorized by law is void ***ab initio***. The provision at hand renders void a pact that may be entered into by the person whose succession is concerned. This assertion is corroborated by Article 1116, which provides that "no person may bind himself by contract to leave his succession or to bequeath a legacy to a person contracting with him or to a third person".
- ✓ Apart from that, Article 1114 prohibits a likely heir or any other person to make any kind of contract concerning the succession of a person who is still alive. Seemingly in explanation of this, Article 1115 outlaws in particular any advance acceptance, renunciation, or assignment of rights pertaining to a future succession. According to this Article, it is not lawful for a potential heir or legatee to accept or renounce a succession in advance, or to assign in advance one's eventual rights to a succession.

Partitions made by Donations

- ✓ It is a common practice in Ethiopia for parents to distribute their property among their children during their lifetime. Such distribution is technically different from succession. Nevertheless, without prejudice to their technical differences, the two processes produce somehow similar legal effects.
- ✓ The practice of parents in Ethiopia whereby they distribute their property among their children while alive is apparently recognized by the country's Law of Successions. Article 1117 of the Civil Code sets forth the following rule: "The father and the mother and the other ascendants may make a distribution and partition of their property among their children and descendants". According to this provision, not only parents, but also grandparents or other ascendants may validly distribute their properties to their descendants during their lifetime. The disposition of property by way of such type of partition is legally allowed only as between a specific group of persons.
- ✓ The law recognizes and gives effect only to unidirectional distributions. Only ascendants may, while alive, validly partition their properties, and only among their descendants. Such partition could not validly be conducted the other way round, i.e., by descendants to ascendants. Nor could it be effectuated as between persons other than ascendants and descendants. Apparently, the rationale for this restriction has got to do with right to inheritance. Descendants are the likely heirs of their ascendants anyway. Such partition should be made in compliance with the formality requirements prescribed by the law for donations ***inter vivos***.

Articles 2427 through 2470 of the Civil Code, which specifically govern donations, provide for those requirements.

- ✓ Article 1119 makes restriction to the subject matter of the distribution that may be made by an ascendant. This Article specifies that an ascendant may distribute among his descendants only the property which belongs to him at the time of the distribution. In other words, he may not distribute a property which belongs to others or one he will acquire in the future.
- ✓ Article 1120 provides that where part only of the property which the ascendant leaves on the day of his death has been included in the partition made by donation; the property that has not been included shall be distributed in conformity with the law. That means that if the deceased has left a valid will pertaining to the property that was not donated, then such property will be disposed of in accordance with the terms of his will. Otherwise, it will be distributed pursuant to the rules of the intestate succession.
- ✓ If the donor-ascendant has omitted one of his children in the partition of his property, or where a child is born to him after the day of such partition, the omitted child may impugn the partition. Such a child or his representative may apply to the court to nullify the partition made to his prejudice at the time of the death of the donor availing himself of the provisions of Article 1121. However, the right of recourse of a child omitted from partition is not absolute. Article 1122 (1) qualifies his right by providing that such child may not apply for nullification where he has been validly disinherited by the disposition the deceased has made to that effect in a valid will. Moreover, the partition may not be annulled if the donor has left sufficient property to the benefit of the omitted child. Nonetheless, the provisions of Article 1122 (1) notwithstanding, though a disinherited child has no right to apply for the annulment of the partition made by way of donations, any other claim he or his representative may have as against the inheritance will not be affected. Moreover, the child retains the right to challenge the disherison. He may apply to the court for the invalidation of the disherison on, for example, the ground that it is unjustifiable.
- ✓ A donor may or may not evenly distribute his property among his descendants. If the donations he made to his descendants are different in value, and he has expressly indicated in the partition document that he did so deliberately, then the descendant who has received a donation smaller in value than the others may not challenge the partition Art 1023. If, however, there is no such indication in the partition document, the descendant may apply for the cancellation of the partition on condition that he has suffered lesion of more than one-fourth part. There is said to be an actionable lesion where a descendant has actually received less than three-fourth of what he should have received. For the purpose of establishing whether there is a lesion, the value the property had on the day of the partition will be considered. An action for the cancellation of a partition on the ground of lesion will be barred unless it is brought within two years from the death of the donor and ten years at most from the date of the partition.

Assignment of Rights to a Succession

- ✓ An heir may validly assign his rights to a succession in whole or in part after the opening of the succession. However, an heir may assign his rights on a determinate or a specific thing pertaining to the succession only after the thing has been allotted to him as his own.
- ✓ The co-heirs of an heir who intends to assign his rights to the succession shall have the right of legal preemption, save where the assignment is made in favor of one of the co-heirs. That means, if the assignment is made in favor of a third person, the assignor's co-heirs may recourse against the assignee. The co-heirs may seek to recover the assigned rights from such assignee. Nonetheless, the assignee may demand payment of the value of the rights which have been assigned to him.