



ST.MARY'S UNIVERSITY COLLEGE

FACULTY OF LAW

LL.B THESIS

DIVORCE UNDER THE REVISED FAMILY
CODE OF FEDEERAL GOVERNMENT: -
IT'S IMPACT ON WOMEN

BY: - MERON SAMUEL

A.A, ETHIOPIA
JULY 2008

DIVORCE UNDER THE REVISED FAMILY
CODE OF FEDERAL GOVERNMENT: - IT'S
IMPACT ON WOMEN

BY: - MERON SAMUEL

ADVISOR: - ABERA DEGEFA

Submitted in partial fulfillment of the requirements for
the Bachelors Degree of Law (LL.B) at the
Faculty of Law, St. Mary's University College.

A.A, ETHIOPIA
JULY 2008

TABLE CONTENT

TITLE	PAGE
Acknowledgement	
Introduction	
Chapter One	
1. Definition and a conceptual framework	
1.1 Marriage	1
1.2 Different forms of Marriage in Ethiopia.....	4
1.3 Family.....	5
1.4 Divorce.....	6
1.5 Alternatives to Divorce.....	7
1.5.1 Different Types of Divorce.....	11
Chapter Two	
2. Grounds of Divorce under Ethiopian Law.....	13
2.1 Serious Causes of Divorce.....	13
2.2 Fault Based Serious Ground.....	13
2.3 No-Fault Based Serious Ground.....	14
2.4 Grounds of Dissolution of Marriage	
under the Revised Family Code	16
2.4.1 Grounds of Divorce	16
2.4.2 Conditions of Decision for Divorce.....	17

2.4.3 Effects of divorce.....	18
2.4.4 Liquidation of pecuniary relations	
Between spouses.....	21
Chapter Three	
3. Consequences of No-Fault Divorce	
Under the Revised Family Code	24
3.1 Consequences of No-Fault Divorce	24
3.1.1 On Women	24
3.1.2 On the Children	28
4. Assessment of problems in the Revised Family Code	29
4.1 Damage	29
4.2 Cooling period	32
4.3 Family Arbitration.....	36
4.4 Division of property on Divorce.....	42
4.5 Pension allowance.....	45
Conclusion.....	50
Recommendation	56
Bibliography	
Annex	

ACKNOWLEDGEMENT

My sincere thanks to God and also extended to my family for their unreserved moral and material support.

Secondly, I would like to give my deepest gratitude to my advisor Ato Abera Degefa for his appreciation to work on this reading drafts and giving suggestions without invaluable aid.

Thirdly, I don't find words to put on records my sincere thanks to Ato Arka Abota and W/ro Manyehelishal Madebo for giving all possible support in this research paper.

I really give my thanks to W/rt Almaz Aboye for typing this thesis and unreserved support.

I also highly thanks to Ato W/Micheal Lemma for providing the necessary materials in doing this research paper.

Last but not least my gratitude goes to my friends Bizunesh Demes and Meseret Megerssa.

THANK YOU ALL

MERON SAMUEL

JULY 2008

INTRODUCTION

Starting from July 2000 the Revised Family Code has become applicable in the Federal courts of Addis Ababa, the need to revise the 1960's Civil Code family law provision arise to make it compatible with the Federal Democratic Republic of Ethiopian constitution. Family is natural bases for the society. So it is protected by the society and the state. One of the means to protect this institution is through laws that regulate and govern family relationship.

As it is stated under Federal Democratic Republic of Ethiopia constitution article 25 all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Otherwise the Federal Revised Family Code of Ethiopia article 90 common properties shall be divided equally between the spouses.

Marriage is contracted in Ethiopia different ways among the various ethnic groups of the country. Thus, it becomes a necessity to arrange marriage in a certain contractual manner in order to give it social respect and legal protection to make it sustainable.

The process of marriage is peaceful and filled with love. Divorce in a similar way can not be peaceful and accompanied. It is filled with hatred and something with employment of force. One of the fundamental purposes of law is to maintain peace and order in society. In order to avoid conflict that can arise during divorce, thus, law takes the responsibility of resolving the problem.

This paper is structured in three chapters. The first chapter deals with definition, forms of marriage in Ethiopian legal system and different types of divorce. Chapter two deals with grounds of divorce in Ethiopian Civil Code, grounds of divorce under the Revised Family Code and liquidation of pecuniary relation between spouses. Chapter three deals with consequences of no-fault divorce under the Revised Family

Code. Other than this problem of damage, cooling period and property division will be discussed. Additionally, other problems related natures would be discussed. Finally, there is an attempt to forward certain conclusion and recommendation will be given to the findings of the study.

CHAPTER ONE

1. DEFINITION AND A CONCEPTUAL FRAMEWORK

1.1 MARRIAGE

Marriage is union of couples commit to one another with the expectation of stable and lasting intimate relationships, and, this is socially recognized and approved. A marital relationship usually involves some kind of contract, either written or specified by tradition, which defines the partners rights and obligations to each other, their children, and relatives.

The word marriage has several different meanings. It is used to refer the act of becoming married or to the ceremony in which one becomes married and to the legal contract that makes a man and a woman husband and wife.¹ Or it may be defined as the status or relation of a man and a woman who have been legally united as husband and wife.² It is natural that human society reproduces through marriage. Marriage is unavoidable as far there is society. Society can continue existing when there is reproduction and marriage is natural as well as societal. As natural it is unavoidable and as social it has to be regulated by certain rule of conduct. Thus, it becomes a necessity to arrange marriage in a

certain contractual manner in order to give it social respect and legal protection to make it sustainable.

Marriage may more particularly be defined as the voluntary union for life of one man and one woman as husband and wife to the exclusion of all others, for the discharge to each other and to the community of the duties legally incumbent on married persons.

Some statutes define marriage as personal relation arising out of a civil contract to which the consent of the parties is essential. What we understand from the above definitions is that, marriage is concluded between a man and a woman. It is also recognized by the Ethiopian Revised Family Code under Articles 2, 3, and 4 in which marriage takes place between a man and a woman, which can be a civil marriage, religious marriage or customary marriage. It is not possible to celebrate a given marriage if, for example, there are two women and one man or one woman and two men at a given time.

Marriage is favored by public policy and the law ³ and it has been said that marriage is an institution which is the foundation of the family and of society as whole. Marriage is of vital interest to a society and state. A valid marriage has to fulfill certain requirements. Just to mention a few, consent, and age.

Consent means both the man and the woman who are married to each other must agree to the marriage. The marrying spouses must give their consent voluntarily. If the consent is extorted by force or compulsion, such consent is a defective one, a defective consent results in a defective marriage. The minimum age requirement for both of the marrying spouses is 18 years. That is, if the marrying spouses are below the age 18 years, they can not conclude a valid marriage. All forms of marriage

must respect the age requirement has to be observed like the requirement of consent.

Both requirements are applicable to other contracts. As such, it is possible to say that marriage is a contractual relationship which creates rights and duties between the spouses. But there are some important features which distinguish marriage contract from other forms of contracts. Marriage contract does not only create rights and duties as other contracts, but it also creates a status which is unique in the eyes of the law.⁴ Marriage contract is not revocable at the will of the parties, as in the case of other contracts but only by the judgment of a competent court.⁵ These two are the essential distinguishing factors. But there is argument as to whether marriage is a contract or not; Some courts argue that, marriage is not a contract but a status created by the mutual understanding of one man and one women, and that the rights and duties of spouses are not contractual but are fixed, changed or dissolved by law.⁶

A contract, according to the form prescribed by law, by which a man and a woman capable of entering into such contract, mutually engage with each other to live their whole lives (or until divorced) together in the state of union which ought to exist as husband and wife. The word also signifies the act, ceremony, or formal proceeding by which persons take each other for husband & wife. Marriage which follows all the statutory requirements of blood tests, licenses, waiting person, and which has been solemnized before an official (religious or civil) capable of presiding at the marriage.⁷

To sum up, marriage has its own peculiar qualities that differ it from other ordinary relationship initiated by agreement one of which is marital relationship is intends to last “forever” while other contractual relationship last until the obligation is discharged.⁸ Marriage is a contractual relation ship creates duties and obligations as between the spouses , i.e. the contracting parties. These duties and obligations will exist at the conclusion duration as well at dissolution stage.

DIFFERENT FORMS OF MARRIAGE **IN ETHIOPIA**

Marriage is celebrated in various forms. Marriages celebrated in different formalities, are all equally recognized by the law. There are three forms of marriage. These are: - civil marriage, religious marriage and customary marriage.

Civil marriage is celebrated before the offices of civil status. The cause requires that the man and the woman must physically appear before the officer of civil status. The officer of civil status is an officer who registers births, deaths and marriages of people. The status of births, deaths and marriage are generally called the civil status. Religious marriage is a marriage that will be celebrated in accordance to the rites of their religion or the religion of both of them. Customary marriage in accordance with the custom of the community in which, they live or by the custom of the community to which they belong or the custom of the community to which they belong to. In addition to the above forms of marriage,

marriages celebrated out side Ethiopia are accepted as valid marriage if they conform to the Ethiopian laws and public moral.

FAMILY

The basic sources of family are marriage, fillation and adoption. These three elements are also enshrined in the definition given by sociologists which reads as follows. “In broader sense the family is the group of persons who are united by marriage by fillation, or even, but very exceptionally, by adoption.”⁹ This word denotes also, in a more restricted sense, the members of a family living together under the same roof, under the direction and with the resources of the lead of the house.

The word family is a concept which does not have accurate definition According to the Black’s Law Dictionary ¹⁰ defines family as follows, these are:-

- In a broader sense, it is a collective body of any two persons living together one house as their common home for the time.
- A collective body of persons living together in one home in permanent and domestic character under one lead or management.¹¹
- A collective body of persons who form one house hold under one lead and domestic government and who have reciprocal natural and moral duties to support and care for one another.

Marcell Planiol also tries to indicate the social importance of family in his treaties on the Civil Law which reads of follows:-

“The family group is the most essential element of all those which compose the great agglomerations of men which are called nations. The family is the irreducible nucleus when it is impaired or dissolved all the test crumbles.¹² For the existence of a given nation or state, these should be family group, which is the basic unit of life. It is from family which gives birth to a nation”.¹³

Family created based on the societal demand, which differ according to the society needs. In general, family has a reproduction, socialization & production functions. The basic functions strengthen or weaken due to the changes on means of production and society organizations.

1.4. DIVORCE

Historically divorce legislations passed through different challenges. Divorce existed in antiquity dating at least back to ancient Mesopotamia, as well as the ancient Athenians liberally allowed divorce, but the person requesting divorce had to submit the request to a magistrate, & then the magistrate could determine that the reason given were sufficient.¹⁴ Although liberally granted in ancient Athens, divorce was rare in early Roman culture.¹⁵ Hence, ancient Rome laws were extremely liberal. At this period no divorce from Roman through the middle ages & since then. The marital behavior of the spouses regulated through social pressure rather the divorce law.

As the Roman Empire grew in power and authority; however Roman Civil Law embraced the marriages ought to be free, and either husband or wife could renounce the marriage at will.¹⁶ The Jewish Law permitted a husband to divorce his wife as his wish but the extramarital sexual behavior was subjected to sanctions. More over marriage could be dissolved by the mutual agreement of the spouses at the will of either party. ¹⁷ The spouses were not duty to bound to give the grounds to terminate their marriage. The Roman laws, the be exception of restriction on incestuous marriage at no time did the law attempt to exercise jurisdiction over the marital termination.¹⁸

Moreover, in southern Nigeria the grounds for divorce were not considered as a rule unlike other countries.¹⁹ But there were some divorce grounds generally accepted as sufficient justification for divorce. Those grounds such as, cruelty on the party of either spouses, adultery act of spouses, special wife, indolence by either spouse, incest by either spouse, criminal act of spouses, ²⁰ were considered as sufficient ground for dissolution of marriage.

To conclude, it should not be assumed that all countries have taken uniform divorce laws, as we have seen the above points, some permitted divorce for grounds clearly stated in their statutory. On the other side, others allowed divorce based on customary laws.

While in some countries like in Germany ²¹ dissolution of marriage includes divorce as one way or ground of terminating marital status.

Other ways of marriage termination grounds include,

- Spouses death

- Judicial declaration of death of the spouse. Which is assimilated to absence declaration by the court
- Annulment of marriage /invalidation/.
A divorced woman can get post divorce maintenance from her husband.

Divorce as defined by Bishop: - is the dissolution or partial suspension of marriage by law, the dissolution being termed as divorce from the bond of matrimony, or a vincule matrimonii, the suspension, divorce from bed and board, a mensal at there, the former divorce puts an end to the marriage, the leaves marriage bond in full force. ²²

Planoil, on his part defines divorce as “a rapture of a valid marriage during the life of the two spouses. The word “divertum” means each party goes its own way. The rapture can take place only by judicial authority and for causes determined by law”. ²³

This shows that divorce presupposes:-

1. A valid marriage that is one which has no defeat before its being contracted. As it is the validity of marriage differentiates divorce from annulment. “The validity of a marriage is a matter which is necessarily intrinsic in a divorce decree, a judgment of divorce necessarily adjudicates that plaintiff was married to defendant, and the granting of a divorce implies that the court has force that the petitioner has satisfied.... Statutory requirement,”²⁴
2. Divorce sets each spouse free each other as concerns any relation between the two prospectively. Each can remarry, manage its own prosperity, or interacts independently...etc.

“A decree of final and absolute divorce completely dissolves the material relation; it creates a new relationship between the parties, making them strangers in law with no legal obligation to each other except those preserved by law and contract.”²⁵

3. Divorce is granted for spouses that are alive not dead. Even if one is alive and the other is dead, no divorce granted.

4. Divorce as a rapture takes place by law not by the will of each party. It takes place only for causes accepted by law; any arbitrary unilateral repudiation of one by the other is prohibited.

Divorce is the end result of the exhaustion of all hopes and emotion of the couple to live together for life or for an indefinite period of time. It indicates a reverse of all statements, love and attachments the spouse had at the beginning. It comes as a result of the desire each has to avoid the other, due to the others failure to fulfill the duties expected of him or her. It is sought as a solution or relief to end an unhappy and unworthy union, whose negative side out weighs the positive one and which has no remedy in sight.

When we come to our family law, in almost all regional as well as federal, the kind of dissolution embodied is more or less the same.

There are:-

- The decree of invalidation of a defective marriage due to the violation of one of the essential conditions of marriage by the court.
- Decree due to the death of one of the spouses.
- Decree of absence of one the spouses.
- A valid decree of divorce.

Divorce, also known as “dissolution of marriage,” occurs when a marriage is legally terminated. Divorce law governs the sometimes complicated process of divorce, helping to determine how property and assets are divided as well as who will have custody of any children the couple may have. Couples going through a divorce may want to consider hiring a qualified divorce lawyer to help determine the most equitable decisions.²⁶

1.5 ALTERNATIVES TO DIVORCE

The two most common alternatives to divorce are annulment and separation. Rather than ending a marriage, an annulment treats the marriage as though it never existed in the first place.²⁷ Some couples choose annulment for religious reasons or because they do not want to be divorced. Annulments are most common among couples that have not been married very long. This is because annulments are primarily concerned with absolving marriages built on deception or misrepresentation. For example, if one spouse lies about his or her age or fails to disclose a known inability to have children, an annulment may be granted.²⁸

Separation occurs when a couple chooses to live apart without getting divorced. There are several types of separation:-

- Trial separation- when a couple is unsure as to whether or not they want to permanently separate, they may choose to undergo a trial separation. During this time, they live apart, but their assets and debts are still considered mutual.
- Permanent Separation- in a permanent separation, the couple has already made a decision not to get back together.

- Legal separation (divorce) when a couple decided to separate permanently, they may choose to become legally separated. This means that a court decides how property and position are divided and make decisions about child custody, child support, and alimony.

Couples who are unsure whether they should seek an annulment, separation, or divorce may want to consider consulting an experienced divorce attorney.

1.5.1 DIFFERENT TYPES OF DIVORCE

They are two types of divorce: fault based and no fault based. In the past, the spouse for divorce had to show evidence of wrongdoing on the part of his her partner, ²⁹ Today most states no longer require it there may still be divorce cases, however, when showing that one partner is at fault may be worthies. The following is a description of each type of divorce. ³⁰

A. FAULT BASED

In some cases, one partner can be shown to be at fault in a divorce. This is most common when abuse in an issue, one partner can be shown to be at fault in a divorce. This is most common when of adultery or abandonment. In addition, a fault divorce may be given if one partner is unable to engage in sexual intercourse or if he or she is prison. In some cases, the divorcing spouse may want to file a fault divorce, because he or she may be awarded a greater share of the couple's assets, fault divorces also tend to be processed more quickly as there is no separation period like there one required for a no fault divorce.

B. NO-FAULT

A no fault divorce is much as less complicated than a fault divorce. In a no fault divorce there is no need for evidence or proof of wrongdoing. Instead, any legally recognized reason for divorce is acceptable. Generally, irreconcilable difference, or the more inability to get along, is considered a valid reason for no fault divorce. This mean that the other spouse can not prevent his or her partner from filing for divorce, By challenging the decision, he or she only lends merit to the fact that the couple does not see eye to eye.

CHAPTER TWO

DIVORCE UNDER THE ETHIOPIAN LAW

2. GROUNDS OF DIVORCE

2.1. SERIOUS CAUSES OF DIVORCE

The serious causes of divorce under the Civil Code are classified in to: - serious causes of divorce due to a spouse,¹ and serious causes of divorce not due to a spouse.² This division is, in other words, the distinction between fault and non-fault grounds of divorce.

2.1.2. FAULT BASED SERIOUS GROUND

In some cases, one partner can be shown to be at fault in a divorce. This is the most common when the abuse is an issue. One spouse may also be found at fault if it can be shown that he or she is guilty of adultery.³ Fault based divorce was framed in a moral context of guilt and innocence. An 'innocent' party who was harmed by his or her spouses violations of marriage contract will be compensated by the guilty spouse.⁴ If both parties were at fault, neither could obtain a divorce since the law should not reward those who come into it with dirty hands.⁵

A. ADULTERY

Under article 669(a) of the Civil Code of Ethiopia, adultery is a serious cause of divorce which entitles the aggrieved party to institute an action for divorce. Adultery is voluntary sexual intercourse between a married person and someone other than that person's spouse. In Ethiopia, adultery is not only a ground of divorce; but it is also a public offence subject to penalty under criminal law.⁶

B. DESERTION

Desertion is another fault based ground of divorce under article 669(b) of the Civil Code of Ethiopia. The elements of desertion include the absent party's intent not to resume cohabitation, separation of statutory period no consent to the separation by the opposing party and absence of provocation.

According to 669(b) of the Civil Code the facts to be proved are: - that the spouse has deserted the conjugal residence; and the other spouse doesn't know the whereabouts of the deserting spouse for at least two years.⁷

2.2 NO-FAULT BASED SERIOUS GROUND

A no fault divorce is much less complicated than a fault divorce. In no fault divorce there is no need for evidence or proof of wrong doing. Instead, any legally recognized reason for divorce is acceptable.

Generally, ‘irreconcilable differences’, or the mere inability to get along, is considered a valid reason for no fault divorce. This means that the other spouse can not prevent his or her partner from filing for divorce. By challenging the decision, he or she only lends merit to the fact that the couple does not see eye to eye.⁸

No-fault divorce is not necessarily a divorce without cause or it does not mean there is no fault with either of the parties rather it is a divorce with out grounds established by law.

A. INSANITY

Insanity on our law is a no-fault ground of divorce since it is not a wrong imputable to either of the spouses. Under article 670(a) of the Civil Code, “one of the spouses is confined in a lunatic asylum since not less than two years is a ground for divorce.” The provision requires the mentally ill spouse to be confined in a lunatic asylum. This requirement in turn needs the availability of medical or state institutions for the mentally ill.

To sum up, divorce based on physical cruelty usually requires or showing of ‘extreme and repeated’ cruelty is a serious ground to dissolution of marriage.

B. ABSENCE

Absence is not due to a spouse or a no fault ground of divorce and it is a serious cause for dissolution of marriage. When the absence of one of the spouses has been judicially declared the marriage shall be dissolved and the date of the judgement declaring the absence has become final.

2.2. GROUNDS OF DISSOLUTION OF MARRIAGE UNDER THE REVISED FAMILY CODE

2.3. GROUNDS OF DIVORCE

The grounds for dissolution of marriage stated under the Revised Family Code of Federal Government. Article 75 of the Code states the grounds of divorce. The causes and effects of dissolution of marriage are the same regardless of the marriage celebration. These are death of one of the spouses, declaration of absence by the court, invalidation of marriage due to the violation of essential conditions of marriage and divorce.

One of the grounds for dissolution of marriage is death of the spouses.¹⁰ Marriage, while intended to forever for the life time of the spouses and legally speaking the existence of marriage assume before-hand the existence of two parties, i.e. the husband and the wife. If one of the spouses dies so does the martial relationship and the law did recognize the status of widow and widower. This ground differs form other grounds because death is natural phenomen not the fault or act exercised by one of the spouses. Whether one of the spouses or both of them die together it does not make difference to the marriage. In both cases the marriage shall dissolve.¹⁰

The other ground of dissolution of marriage is declaration of absence by the court.¹¹ The spouses are bound to live together¹² but exceptionally the spouses may agree to live separately for a definite or indefinite period of time.¹³ If one of the spouses disappears with out notifying the other spouse, it is a ground to dissolve. But here, the spouse has to apply to the court for the declaration of absence.

Invalidation of marriage is also the other ground of dissolution of marriage.¹⁴ The marriage can be valid when it fulfills the legal requirements of the law. If a man or woman marries before he or she attains the full age of 18 years the marriage shall be invalidated by the court upon application by any interested person or the public prosecutor. Similarly, the court can order the dissolution of marriages that violate any of the essential conditions of marriage up on the application of the appropriate person at the right time.¹⁵

2.3.1 CONDITIONS OF DECISION FOR DIVORCE

The final ground for dissolution of marriage under R.F.C is divorce. According to article 76, marriage shall dissolve by divorce in one of the following two ways. These are:-

- By mutual consent
- By petition of both or one of the spouses to the court for divorce.

2.3.2. DIVORCE BY MUTUAL CONSENT OF SPOUSES

According to article 77/1/ the spouses can not end their marriage without the knowledge and approval of a court of law. Dissolution also is required to follow some procedures. Hence, the spouses, if they are determined to dissolve their marriage by their mutual consent, they should submit their agreement in writing to the court and get its

approval, the spouses are not allowed to simply dissolve their marriage on their own without getting the approval of the court. Divorce by mutual consent shall be submitted to the court either by both spouses conjointly or by one of them.

2.3.3. DIVORCE BY PETITION

Divorce by petition is somewhat different from divorce by mutual consent. Divorce by petition to the court for divorce, even though they have not made such a decision prior to the petition. Thus, in respect to making a petition to the court and mutual consent, the procedures are the same.

When spouses or one of them presents his petition for divorce they are not mandatorily required to state why they petition for divorce. If they want to state their reason, they can do so. Divorce by petition shall be submitted to the court either by both spouses conjointly or by one of them.

2.4. EFFECTS OF DIVORCE

Pecuniary and personal effects of marriage are founded on effects of marriage. The property which the spouses possess or own before the conclusion of marriage or properties which they acquire after that date by succession or donation continue to be personal properties during marriage.¹⁶

Properties acquired during marriage by exchange of such properties will also be personal properties of such spouse if the court, upon the request of the concerned spouse, decides the property to be personal. Each

spouse is entitled to administer his own separate property and receive the income that arises from the same.

Article 59 of the R.F.C. conclusion of marriage will have the effect of creating marital properties where the property relates to incomes derived by personal efforts of the spouses and incomes from their common or personal property shall be common property (Article 62 of the R.F.C.).

2.4.1 PERSONAL EFFECT

According to Article 49 of the Revised Family Code, spouse owes each other respect, support and assistance. This is the very essence of marriage. The spouses are expected to respect support and assist each other. This rule is a mandatory provision because it prohibits the spouses from making an agreement in violation of this rule.

According to Article 50 spouses will have equal rights in the management of their family. Management of the family mean, the administration of their common property, rearing their children in a proper manner, etc. However, we must also note that Article 51 rules that if one of the spouses becomes incapable to perform these activities, that is, one of them, is seriously sick, desert the marital house, or jailed, etc..., the other spouse should perform these activities alone.

According to Articles 52 if one of the spouses had a child prior to marriage, it is only the parent of the child has exclusive right to decide with regard to matters concerning the upbringing of such child. According to Article 53 spouses bound to live together under the same roof and spouses bound to have sexual relations, which is normal in married life unless it is seriously prejudicial to their health. So, any

agreement to the contrary shall be of no effect. (The spouses shall it be jointly determined by their common residence Art 54.) According to Art 55 the spouses can live separately for definite or indefinite period of time by their mutual agreement, according to art 55(2), may be revoked any time by only any of one of the spouses. Finally, the spouses have the duty of fidelity to each other (Article 56).

2.4.2 PECUNIARY EFFECTS

The common property of the spouses other than the salaries and earnings of the wife were to be administered by the husband under article 656 of the 1960 Civil Code. This has been changed to conjoint administration by the spouses in article 66 of the Revised Family Code. Moreover, the requirement of the agreement of both spouses for the performance of certain acts such as the sale of common immovable has been supplemented with a sanction in the Revised Family Code. To this effect article 69/2/ of Revised Family Code provide that if one of the spouses entered into such obligations without the agreement of the other spouse, the court may revoke the act at the request of the latter.

This is a crucial improvement in light of the fact that the previous law incorporated no clear remedy for the victimized spouse. However, the drawback of the Revised Family Code in this relation is the time limitation within which the act can be challenged. Article 69/2/ states that an application for cancellation may not be made six months after the day on which the other spouse came to know the existence of such obligation or in any case two years after such obligation is entered.

A similar provision of limitation within which an action for invalidation of a contract can be instituted is found in the law of contract. But in this case the period of limitation is fair because it is the party to the contract who can apply for the invalidation of the contract and the period starts to run from the time the ground for invalidation has disappeared. The case of one spouse applying for the invalidation of a contract the other spouse concluded with another person is different because there is an ample chance that the innocent spouse will not know of the contract for a very long time.

Under pecuniary effects of marriage, the change made as regards which property will be chargeable to the payment of the personal debt of a spouse may be recovered from the common property only if the personal property of the debtor spouse is not sufficient to cover the debt. This is unlike the Civil Code, which did not put any priority between personal and common property for the payment of the personal debt.

2.4.3. LIQUIDATION OF PECUNIARY RELATION BETWEEN SPOUSES

When marriage is dissolved by any cause /that is, as a result of death of one of the spouses, due to the court order or divorce/ the pecuniary relations between the spouses shall also be liquidated. This is to mean that, if spouses are debtors they have to pay back what they owe to their creditors, they must collect their money from their debtors, and also divide their common property between themselves.

A. LIQUIDATION BY AGREEMENT

According to Article 85/1/, where the marriage is dissolved in accordance with the provisions of the law, the pecuniary relation between the spouses shall be dissolved in line with the agreement made by the spouses or their marriage contracts. However, the spouses can not set aside any payment of indemnity as a means of compensation for an injury or damage on the common or personal property caused by fraudulent act or misadministration of one of the spouses.

B. LIQUIDATION IN ACCORDANCE WITH THE LAW

According to Article 85/2/, if the spouses have no contract of marriage in which they have agreed about the liquidation of their pecuniary relations or they did not make any subsequent agreement on this issue, the pecuniary relationship between spouses shall be liquidated in accordance with the provisions of the law.

C. RETAKING OF PERSONAL PROPERTY

According to Article 86/1, each of the spouses shall take his/ her personal property in kind. But, such spouse has to show that the property belongs to him/her. Where the personal property of one of the spouses has fallen in the common property and if such spouse has proof to this effect, such spouses can withdraw the value of his/her personal property from the common property before it is divided between the spouses.

According to Article 90/2/ common property of spouses as a rule be divided equally between the spouses. However, this may not always be true. For instance, if one of the spouses is ordered by the court to pay indemnity, and such spouse does not have sufficient personal property, the indemnity can be paid from the common property. In such a case, these will not be an equal division of a common property.

According to Article 91/2/, the inequality in the shares of the spouses shall be set off by payment of a sum of money. According to the rule of partition in kind the spouses receive their partition from the common property in the form of goods or products, not in the form of money.

- Hennery Black; Blacks Law Dictionary 5th ed, 1979
- The New Encyclopedia Britannica, 1995, Vol.9

C. INTERVIEWS

- Interview with Ato Worku Taye, attorney at law,
- Interview with Ato Gosheyea Damtew, Judge in Federal First Instance Court, Family Bench
- Interview with Ato Seleshi Kesela, attorney at law
- W/t Elene, attorney at law, Ethiopian Women Lawyers Association

D. Internet Source

- <http://en.wikipedia.org/wiki/Divorce>

Annex

Annex

The Revised Family Law of Federal Government is under execution since the problems and prospects that it has encountered is the process studying of its execution in connection with women and their problems is the fundamental objective of this research . In view of this, the following questionnaire is prepared with the intention to gather the raw data or information for the indepth analysis of the topic. In this interconnection the correct and honest responses that you will give to each question would determine the quality of my research and pave the way to arrive at correct conclusion and recommendation as the most important inputs.

I, therefore, with high respect ask the respondents of this questionnaire to give due attention to each question in the process of your response.

My thanks are great for all your cooperations and contributions.

A. Name _____

B. Position of work _____

C. Name of the institution _____

QUESTIONNAIRE

1. Please mention the observed problems in relation with the implementation of the Revised Family Law of the Federal Government?

2. In the Revised Family to which party the cooling period to be given is not clearly mentioned. So in practical court process how do you decide on it?

3. When a husband and the space in front of the court are determined decisively to divorce their marriage, does the court give cooling period or not for the parties in conflict?

4. Not giving cooling period to the conflicting party, does it have any unnecessary consequence? When does need to be given a cooling period according to your thinking?

5. Do you believe that the three months period provided in the Revised Family Law of Federal Government for cooling period is satisfactory enough for conflicting parties to revisit their positions?

6. Does the court has the power to order the divorcing parties to explain the court for the causes of divorce in order to identify who is guilty of the divorce?

7. After divorce is permitted and finished in the court, how compensation is or what type of compensation will be decided? What is the legal basis or according to what law? How is it calculated?

8. During divorce what would be the simple and suitable way for the court to share or divide the wealth that belong to the divorcing parties? What is the technique used by the court?

9. The law has stipulated that in order to divide the property the court appoints an expert. What kind of an expert does the court appoint? What are the basic criteria used for selection?

10. Do husband and spouse need to go to court and get court permission to select or establish arbitrators?

If your answer is yes; then according to the order of law should the question of divorce be acceptable under every condition always?

11. Do you believe that not studying the causes of divorce has a damage or affect women and to sustain marriage?

12. Do you believe that the Revised Family Code of the Federal Government has benefited?

13. Does the Revised Family Law increase the prevalence of divorce or not?

14. If your reply is it has increased, then please give your reasons why?
