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LL.B THESIS

LIQUIDATION OF PROPERTY DURING DIVORCE IN THE FEDERAL FIRST INSTANT COURTS (CASE ORIENTED)



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ID.No. ELD/0607/97

ADDIS ABABA, ETHIOPIA

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(Case Oriented)**

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I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

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INTRODUCTION

Family law includes divorce, the division of all of your assets and property and parenting issues. It also includes adoptions and prenuptial agreements. Feeling comfortable with your family lawyer is very important since you will be going through many emotional and demanding issues that need to be resolved. Divorce involves substantial rights and responsibilities, many legal technicalities, and your well being (as well as child's) for many years to come. Divorce includes unique issues such as dividing the parenting and companionship of the children. This can be one of the most stressful events you might ever face.¹

Starting from July 2000 the Revised Family Law (RFC) has become applicable in the Federal Courts. The need to revise the 1960s Civil Code Family Law provision arose so as to make it compatible with the Ethiopian Federal Democratic Republic Constitution (FDRE). Family is the natural basis for the society; so it is protectable by the society and the state. One of the means to protect this institution is through laws that regulate and govern family relations.²

The purpose of this thesis is not about the whole family law, but those parts of the law that regulate the effects of divorce upon their property; i.e. the law and the practice, one of the significant changes taken by the RFC is with regard to the law that governs **liquidation of property during divorce**. The thesis tries to discuss the practice in the Federal First Instance Courts here in Addis Ababa in handling divorce cases. Divorce is one of the causes for dissolution of marriage.³

The family, as one of the primordial, social organization reflects the complexity and dynamism inherent in development of all sorts; be that is the social, economic or political structure, and institutions seen from these parts, it would be logical for the writer first to deal with the family, as a historical category and or social construct.

The first chapter is therefore devoted to showing out the development of family in history. It also deals with the development of the law of family; i.e. marriage, the annulment of marriage and the effects of marriage.

¹ www.annbarberlaw.com/practice.area.asp (Visited on 2/4/2009)

² Preamble of RFC

³ RFC Art. 75

The second chapter focuses on the definition, divorce under the revised family code and effects of divorce. In Ethiopia, divorce of marriage signifies all possible device of terminating the legal as well as the factual marital relationship.

The third chapter brings down the issue the ground by concentrating on the effects of Liquidation of Property in Divorce in the Federal First Instant Courts. It also deals about liquidation of pecuniary relation, liquidation based on agreement, based on the law and its effect on third party.

The fourth chapter focuses on practice of liquidation. That is cases oriented. Finally recapitulation is made by way of conclusion.

Springing from the conclusion, the writer of this issue has forwarded what may be considered as reasonable recommendation.

CHAPTER ONE

1. CONCEPT OF FAMILY

1.1 DEFINITION

"In the old days family meant people in a house together. But that was in a language so far back that all its words are gone, a language we can only imagine."⁴

Family is a basic social group united through bonds, of kinship or marriage; present in all societies and, ideally it provides its members with protection, companionship, security, and socialization.⁵

A family is a group of people who are important to each other and offer each other love and support, especially in times of crises. In order to be sensitive to the wide variety of life styles, living arrangements, and cultural variations that exist today, the family... can no longer be limited to just parent-child relationships... Family involvement must reach out to include: mothers, fathers, sisters, brothers, grandparents, neighbors, and other persons who have important roles in the lives of people with disabilities.

1.2 THE FAMILY IN HISTORY

Family is a product of history. That is, meteorological and geological history. As of every event family was occurred gradually. So it has four stages. That is: The consanguine family, the punaluan family, the pairing family, and monogamous family.⁶

⁴ <http://www.marxists.org/archive/marx/works/1984/origin-family/cho2> (Visited on 2/4/2009)

⁵ Cf. Microsoft Encarta Encyclopedia, 2004

⁶ Journal for the Study of the Old Testament, Vol. 30, No. 1, 3-28 (2005)

The Consanguine Family

Consanguine Family is the initial stage of development in the history of primitive man. In this stage the marriage groups are separated according to generations.

The Punaluan Family

Punaluan means intimate companion or partner. Punaluan family is comparatively better than the first one in that it was a step in the direction of the formation of classical form of family.

The Pairing Family

Pairing Family developed at the higher stage of the Barbarian Epoch and is characterized by extensively excluding sexual intercourse between remote relatives.

The Monogamous Family

This one is the 4th stage and its structure in any society is considered to be one of the vital signs of development. It is considered to be a sign of civilization as it ensures undisputed paternity as well as undeniable entitlement of father's property. It thus ensures an ordered means of transfer of wealth from out-going generation to the newly coming.

1.3 THE FORMATION AND DISSOLUTION OF MARRIAGE

1.3.1 FORMATION OF MARRIAGE

Marriage is a socially sanctioned union, typically of one man and one woman, in this connection called husband and wife. Typically they form a family, socially,

through forming a household, which is often subsequently extended biologically, through children.⁷ It is found in all societies, but in widely varying forms.

Ethiopian marriage formed or recognized under Civil Code and the Revised Family Law through civil, religious and customary. Both laws provide the same rights and duties shall ensure from either forms of marriage. It is also provided by both laws of all types of marriage should meet certain basic conditions. The conditions relate to the minimum age, consent of spouses and the number of spouses. (Emphasis mine added).

Article 581 of the Civil Code of Ethiopia provides that, the minimum age for marriage is 15 and 18 for the wife and the husband respectively. On the other hand, Minimum age of marriage for both spouses to be 18 in revised family law and can 16 for exceptional cases. (Art. 7 of RFC)

Consent is the second condition governing the three types of marriages. Both the revised family law and civil code of Ethiopia require the full and free consent of the intended spouses.⁸

Monogamy is one obligatory condition for marriage. That means prohibition of bigamy. The civil code and the revised family law of Ethiopia under articles 585 and 11 respectively provide that a person already bound by a marriage cannot enter in to another. This is further strengthened by the provision of the penal law, article 611, which penalizes bigamy.

1.3.2 DISSOLUTION OF MARRIAGE

The causes and effects of dissolution of marriage are the same for the three types of marriage. Both the Civil Code and Revised Family Law of Ethiopia specify that

⁷ <http://encyclopedia.kids.net.au/page/ma/marriage> (visited on February 4, 2009)

⁸ Article 6 and 586 respectively

marriage could be terminated either by death, court order as a solution for failing to fulfill the conditions of marriage.⁹

Under the Ethiopian Civil Code, there are serious and non serious causes. Such as: adultery, desertion of material residence, imprisonment to a mental institution, judicial declaration of absence, or annulment of a religious marriage by a religious authority are serious grounds of divorce.¹⁰ But according to article 84 of Revised Family Law domestic violence is one of the grounds for seeking divorce.

1.4 EFFECT OF MARRIAGE

An effect of marriage is a legal term of art used to describe all of the rights and obligations that individuals may be subject and entitled to. Thus, even if the marriage is held to be void there may still be rights and obligations that continue and are recognized by court order.

Marriage has powerful and beneficial effects on human beings. Scientifically, marriage makes human beings richer, makes him live longer, healthier than unmarried one. The current conventional view in the epidemiological journals is that marriage works through some kind of protective effect on mental wellbeing. It lowers stress and worry – presumably because sharing worries halves them, just as tradition says. Partly, too, married people smoke less and eat in a healthier way. Marriage also moulds mental health and happiness. Here the effect is large.¹¹

In addition to these, Marriage has Personal and Pecuniary effects. When we see personal effects of marriage it is a relationship of two individuals affecting their position for a presumably longer period of time. Once they commit themselves to live together, it is not only their material interest that may change its previous

⁹ 663,75 respectively

¹⁰ Article 692, 693 and 694

¹¹ <http://repositories.cdlib.org/ccpr/olwp/CCPR-004-02/> (visited on 4/4/2009)

existence but also there are some crucial impacts on their personal situations. Some of these may even go to the extent of limiting the respective privacy right of the couples. For instance, they must cohabit or live together, which is a basic impairment on the privacy rights of each. If a spouse decides by him/herself along and went to reside in another locality without sufficient reason, is entitled to a divorce on account of the other's desertion. When we come to pecuniary effects of marriage there are two ways of looking in the various legislation. Such as: Personal and Matrimonial property. Personal property can be defined as personal belongings of the spouses, which are not included in the community property. In both codes, property not acquired by onerous title can be a personal property. And it includes the **property which the spouses on the day of their marriage, or which they acquire after their marriage by succession or donation.**¹² Regard to pecuniary effects, it refers to the rights, interests and duties of the married couple. Concerning the matrimonial property, it can be broadly defined as the property both parties acquire during marriage. These also include the property owned by one party before the marriage, but to which there has been substantial improvements made by the other party or by joint effort during marriage. Matrimonial property therefore, can generally be classified as personal and common property. Our Civil Code and the Revised Family Code have classified it as such.

1.5 PATRIMONIAL PROPERTY EFFECTS

The concept of patrimonial/marital property incorporated under the 1960 Civil Code well as the RFC. In line with that, the first category of property is common property. One important thing which needs to be considered in relation to community property is the legal presumption provided by our law. Article 63 of the RFC basically provides a presumption in favor of community property. Meaning, all property in the marriage will be considered as the common property, unless the other spouse proves otherwise. The first one is the income of the spouses. The

¹² Art. 647 of the 1960 Civil Code, and Art. 57 of the Revised Family Code

degree a restraint on the right of co-owners, for one has to take into consideration the right of stakeholders in the thing owned jointly.¹⁶

Close relationship can, therefore, be observed between matrimonial property and property under co-ownership.¹⁷ The law of matrimonial property is at once the most original and the most complex of regime of laws falling in the civil law system. As a result, earlier codifiers had faced a lot of diversity of forms of matrimonial property yet, they have tried to regulate the increasingly becoming variety by situating:-

- a. several forms of patrimonial relation, from amongst which future spouses were left free to elect;
- b. those left for statutory determination; and
- c. granting future spouse a certain power of determining the disposition of the recognized regime of property.

Springing from these postulates, the French Civil Code had provided for four types of regime of matrimonial property. These were:

- a. the regime of the community of movables and acquists,¹⁸
- b. the dotal regime,¹⁹
- c. the regime of separation of property; and
- d. the regime without community

Hence, there were properties determined by law as community property, property owned separately and properties falling outside of all these consideration. Yet, a lot of room left for arrangements to be made by contract entered into between the intending spouses prior to the marriage contract.²⁰

¹⁶ It generally refers to properties acquired during the life of the marriage by onerous title (French approach).

¹⁷ Ryan W.K., *An Introduction to the Civil Law* (The law Book Co. of Australia Pty Lt, Australia, 1962)

¹⁸ The total property is administered by the husband, although owned by the wife, he enjoys its fruits, and the immovable total is in principle inalienable even with the consent of the two spouses.

¹⁹ A dower is commonly and legally taken as any thin offered as a gift prior to or after the conclusion of the marriage by the husband or would be husband and/or his relatives

²⁰ Some countries, which follow the Roman Law, are categorized as *pays de droit écrit* (countries with written laws). It was in these countries that the above particular development took place.

It has been already pointed out that in early German law, the wife passed, both in her person and possession, in the hands of the husband. Yet, even in those times, wives obtained rights over certain classes of properties. The first was the price paid and that rested in the hands of her family, which was ultimately passed unto her, as bride-price. The second consists of what was then known as gift of the morning presents given by the bridegroom to the bride the day after the marriage; as a formality of ratification. These two forms of gift, subsequently, merged and formed what is known as dower.²¹

As distinct from dowry, the third category consists of the *dos* and the *maritagium*, and which had been contributed by the wife herself or by her relatives. Hence, before the right of wife to certain property had been recognized, these were the regimes of property excluded from the community property; and which, in *stricto sensu*, owned by the wife.²²

Another interesting development had been that which drew distinction between paraphernalia and total property.²³ Both were owned separately by the wife, but the former consisted of properties owned, enjoyed and administered by her, as if she had not been married. Whereas the latter, although owned by her, the administration and the usufruct was in the hands of her husband. Yet total immovables were neither to be alienated, nor hypothecated by the husband's sole discretion.

All in all, three main forms of community property developed in Germany Family Law. "First, there was the general community, in which the community extended to all property of the spouses brought into the marriage or subsequently acquired. Secondly there were the community of acquests, which comprised property acquired for value by the spouses during marriage by their labour or by juristic act.

²¹ It generally refers to properties acquired during the life of the marriage by onerous title (French approach)

²² Supra note Ryan

²³ The dotal property is administered by the husband, although owned by the wife, he enjoys its fruits, and the immovable dotal is in principle inalienable even with the consent of the two spouses

Thirdly, there was the community of movable and acquests, which comprised in addition to the acquests all the movables which the spouses owned of the time of the marriage and those they subsequently acquired either for value or gratuitously." ²⁴

The third category was what was considered as the most predominant form in French system. So, the law aimed at satisfying the following objective. That is:

- 1) financial needs of the household should be met by the appropriation of certain property to satisfy them, in particular those acquired by the work of the spouses;
- 2) this property should be administered by the husband on behalf of the household
- 3) upon dissolution of the community, the property should be equally divided between the spouses or their representatives.

Two interesting points emerge from the French approach, which are worthy of underscoring at this point.

- i) Moveable owned by the spouses at the time of the marriage and those acquired by gratuitous title during the marriage used to constitute community of property, as shown above, as the third category; whilst, immovable properties found in the same or similar circumstances were not.
- ii) To the private patrimonies belong the immovable owned at the time of marriage or those acquired by gratuitous title during the life time of the marriage.
- iii) In keeping with the principle of real subrogation of rights in rem; and with a view to uphold the principle of the integrity of private patrimony, if an item of private property is alienated; and other property is acquired in its stead by the proceed of same, this property itself becomes part of the

²⁴ A dower is commonly and legally taken as any thing offered as a gift prior to or after the conclusion of the marriage by the husband or would-be-husband and/or his relatives.

private property of the spouse, whom the title of the sold property pertains to.²⁵

In France, where equality between spouses had not been stringently imposed, we find a system in which the natural idea of community is appropriately realized, without compromising the right of the individual spouse to cultivate ones own personal property, which had come to him or her alone, otherwise than by acquisition by onerous title during the life time of the marriage.

In-contra-distinction to this, the *German approach* presents, an interesting feature. Though, of which the most glaring and relevant to the issue raised by this paper are the following points:-

- a. no community fund in principle has been established either during marriage or after its dissolution, which means that each spouse retains the ownership and administration of his own property. This does not mean, however, that there has not been community of property. There was and is – and in which regard – joint administration has been made available.
- b. the general principle has been that the gain made by each of the spouses during the life time of their marriage would be equalized; where the community of gains had been terminated. Gains, here, refers to the factual situation, where a spouses' final estate (property value – that is in cash, in kind or in credit) exceeds ones initial estate. The initial estate is the net estate, which belongs to a spouse when one enters into the matrimonial relation; and the final estate is that which belongs to a spouse upon the termination of the matrimonial relation for whatever reasons.

²⁵ As quoted by Ryan, *supra* F. Note No. 1, p.264.

CHAPTER TWO

2. DIVORCE AS A GROUND FOR DISSOLUTION OF MARRIAGE

According to Article 75(1) of Revised Family Code Divorce is one cause for dissolution of marriage.

When disagreement occurs between spouses, they decided to discontinue the marriage. It can be by mutual agreement of both or only one of them may decide. In such case divorce said to have been caused by divorce.²⁶

Like formation of marriage dissolution of marriage also required some procedures. At a time of determining spouses to dissolve their marriage mutually, they should submit their agreement in writing to the court for approval.²⁷

2.1 DEFINITION OF DIVORCE

Neither the Civil Code nor the Revised Family Code provides a definition for divorce. The legal separation of husband and wife, effected by the judgments or decree of a court, and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of the property.²⁸ In

²⁶ Article 76 of RFC

²⁷ Ibid Art. 77

²⁸ Harry D. Krause: Family Law Black Letter series West Publishing Co. (1988) p.305

addition to this, divorce is rupture of a valid marriage during the life of the two spouses.²⁹

2.2 DIVORCE UNDER THE REVISED FAMILY CODE (RFC)

Divorce is by its nature seems to be paradoxical. It is evil, because it breaks down the marital union and disintegrates the family. The disintegration of the family in turn has a negative impact on the society at large.

Divorce has also a noble nature, as it avoids the risk involved in trying to preserve a bad and unhappy marital life of spouses. The risk can extend to the loss of life of one or more members of the Family. Therefore, when the facts show that the marriage has practically failed to subsist, divorce is proper and called upon before unwanted results materialize. When the union is a serious misunderstanding and conflict, divorce brings such conflicts to an end.

In its actual nature, divorce is an effect but not a cause for the breakdown of marriage and is sometimes granted after a marriage has practically ceased to carry out its functions long ago due to certain causes like adultery or cruelty. Spouses sometimes fear to go to court to obtain divorce due to their fear towards the publicity of their domestic affairs and scandals. As a result, the divorce to be granted by courts comes much later than the point in time at which the marriage was broken. Hence, divorce in most cases, comes after the martial relationship has already been served.

The Revised Family Law has taken a different stance compared to that of the Civil Code. Unlike the Civil Code the Revised Family Law takes no fault to the basis of divorce by stating, 'here the only requirement for divorce is to show irreconcilable difference between the two spouses.' This criterion recognizes that, whatever the reason for martial failure, they are best left out of the proceedings; so much so.

²⁹ Planial, m.; Treaties on the Civil Law, 12th Edition, Vol. 1, Part 1, 1995) 630

Since the reasons are irrelevant to an equitable settlement of divorce. The position taken with regards to divorce procedure is highly unrelated to that of the Civil Code. Here divorce by marital consent is explicitly allowed and the court is given the discretion to assess evaluated and decide on divorce claim; according to Revised Family Code article 78, 83 and 117.

This approach eliminates the adverse process of divorce since the divorce proceeding in the case of faulty basis makes the union of the partners more miserable; specially, more so, over financial matters, settlement as a result of divorce is based on equality rather than reward and punishment for innocence and quality of partnership. In addition to this approach, for the purpose of ascertaining equality of the sexes and in matters of divorce on faulty basis, which itself creates hierarchal status between the sexes, is not desirable.

2.3 EFFECTS OF DIVORCE

The legal process for divorce may also involves issues of spousal support, child custody, child support, distribution of property and division of debt, though these matters are usually only consequential to the dissolution of the marriage.

It is hard to imagine a more difficult transition for a child than to be a party to his or her parents' divorce. I have watched this closely the last few months as some very good friends of ours have been separated and preparing for divorce. And even though attempts at reconciliation through family counseling, the children have suffered.

There have been many empirical studies focusing on the effects of divorce on children. Some of the common findings among all of these studies are detailed as follows.

2.3.1 Why Children are Impacted by Divorce?

Some fathers and mothers see divorce as 'their' issue. 'We just can't get along anymore' or 'she has been unfaithful.' In fact, the marital relationship has far reaching ramifications for children, extended families, friends and others. The following are some perspectives on the view of children in a divorcing family.

- Fear of change. The children in a divorcing family know that nothing will ever be the same again, and their previously secure world is in a state of change. Many things will change, not just that mother or father will not be around. They may lost contact with extended family on one side or the other. Their bedtime, mealtime and after school routines may change. It is a state of upheaval.³⁰
- Fear of Being Abandoned. When mom and dad are at odds and are either separated or considering separation, children have a realistic fear that if they lose one parent, they may lose the other. The concept of being alone in the world is a very frightening thing for a child.
- Losing Attachment. Children who have a natural attachment for their parents also fear losing other secure relationship-friends, pets, siblings, neighbors, and so on. Sometimes children are simply attached to their surroundings, and moving into new surroundings can cause an understandable negative reaction.
- Coping with Parental Tension. Even though many divorces follow years of tension between husband and wife, the tension level typically increases during and shortly after a divorce. And parents who try to turn their children against the other spouse create an absolutely impossible situation for that child.

When we take Ethiopian child, the above mentioned problem is common.

³⁰ <http://WWW/californiafamilylawblog.com/> (Visited on 10/June/09)

2.3.2 Child Custody

Ethiopian family law on the issue of child custody, the Civil Code under article 681 requires the court to determine issues of child custody having regard solely to the interest of the children. The best interest of the child principle had acceptance even under the Civil Code. Hence, the courts have to investigate what would be best for the child at the time of deciding as to where the child will be placed after the dissolution of the marriage. The “tender years” principle is also reflected under the same article. Children under five years of age will be placed with their mother unless there is a reason for not doing so. It seems that the law gives priority for the mother because children under five years require the care and protection of their mother than their father.³¹ Coming to the RFC, as it is incorporated under Article 113(1), the court, after pronouncing the dissolution of the marriage, has to deal with three important matters: child custody, maintenance allowance for the child and visitation right of the child and the non custodian parent. As per Article 113(2) of the RFC, since the court has to take into consideration the income, age, health, and condition of living of the spouses as well as the age and interests of the children, it is felt unnecessary to retain the provision of the 1960 Civil Code (Art. 618(2)), when entrusts children below the age of five to their mother. The aim of Article 113(2) of the RFC is to avoid material preference to child custody without a justified reason. Therefore, RFC regarding child custody is designed in such a way as to deal with such issues from different angles since it demands great care while the court is to decide on the fate of the children who are the future generations of the country.³²

However, there are some implementation problems. To begin with, the final judgment of the courts as to whom the child belongs to, does not contain satisfactory reasons. There are situations whereby the judgment of the court is made arbitrarily when it chooses the father or the mother to be better custodian of the child. Courts, most of the time, do not equally consider all the factors that are

³¹ Dr. Kifle, 122

³² “”Ác” ÁUc?& %4}hhK“< %4u?}cw QÓ %4;}Ñvu’ .Óa” u}SKÿ} %4k[u Ø” © êOô& lde 22 k’ 1998 .U. Ñê 43

listed down under Article 113(2) of the RFC. The court has to clearly identify whether the child's preference was some how influenced by parental pressure or not and whether there are other factors that have strong effect directly or indirectly on the preference of the child.³³

In spite of this, if there is any reason in which the mother should not be granted custody, the children may be placed with their father even if they are not five years of age. This can be seen from the first sentence of sub article 2 which qualifies the application of the "tender years" doctrine on some grounds. Causes for such disqualification of the mother could be, if the mother suffers from a disease as a result of she cannot take care of the child.³⁴

2.3.3 Maintenance of Children

"Maintenance is sustenance; support; assistance; and the furnishing by one person to another, for his or her support of the means of living, or food, clothing, shelter, etc, particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child or husband and wife, the applying of the necessity of life. While the term similarly means food, clothing and shelter, it has also been held to include such items as reasonable and necessary transportation or automobile expenses, medical and drug expenses, and household expenses..."³⁵

Maintenance of children is one among the issues that the court shall see after deciding the dissolution of marriage or divorce. (Art. 113 RFC) Once the marriage bond is dissolved by divorce of the spouses, the obligation to supply maintenance to the wife ceases and the execution proceedings taken after the divorce judgment would consequently have to be for maintenance of the children only. According to Article 202 of the RFC, the spouse against whom the court passes its decision to maintain the children may fulfill the obligation to supply maintenance in kind or in cash. But this should fundamentally be based on both

³³ Ibid

³⁴ Dr Kifle, 122

³⁵ Black's Law Dictionary (6th ed, 1993 p.953

the needs of the person claiming it and the means of the person liable to pay maintenance.

As indicated in the RFC at the power of the court, it expected to give an order as to which spouses shall have custody of the children, care of their education, health, maintenance and the rights of the parents and the children to visit each other (Art. 113(1)). This is a problem, which is practically observed while the court is entraining child custody issues.

2.3.4 Effects of Divorce on Marital/matrimonial Property

For marital property to exist, a man and a woman must have a relationship, which the law recognizes as marriage.

Matrimonial pecuniary relationships are, therefore, those relations that have to do with patrimonial property or property right. A property in marriage takes two forms; that is separate and community property. Therefore, the crucial first-step in determining the spouses' legal relationship with respect to property is characterization of property as separate or community, since it is this issue that usually arises after divorce is declared.

Separate/personal property is the property of one of the spouses' own property; in his/her individual right. Revised Family Code is drafted so as to show to spouses their constitutional rights of equality of the sexes and their right to their respective property.³⁶ Under Revised Family Code, matrimonial personal property consists of;

Unless otherwise agreed in their Marriage Contract, all property of the spouses that is acquired by them before or on the day of their marriage by way of donation or succession is personal property according to the Revised Family Code, Article 57. This includes property given to them individually through inheritance or gift to be personal property of such spouse.

³⁶ F.D.R.E Constitution, Article 34 and 40 respectively

The other form of property categorization is the one that categorizes personal property as those things obtained through exchange or sale. Separate property acquired by onerous title for consideration, during the marriage, by exchange for property owned personally. According to RFC article 58, property acquired with money or one derived from the sale of property owned personally is individual property. But, if this property is acquired during marriage a declaration is necessary by the Court. If this is so we could conclude that, if a presently owned asset has its own source in previously owned asset that was personal, the present asset is considered to be personal.³⁷ Once the property is categorized as separate, such a spouse has exclusive right over the property without the need to ask for recognition from the other spouse.

In General, divorce has an effect on the society because marriage is one source of society to built family. Family being the natural basis of society, shall be protected by the society and the state, and that one of the means of protection is effected by regulating and governing family relation by law.³⁸ In one or another round marriage come to an end by divorce affect society at large. (My emphasis added on it)

³⁷ Supra Note 20, PP 235

³⁸ Preamble of RFC

CHAPTER THREE

3. LIQUIDATION OF PROPERTY DURING DIVORCE

3.1 LIQUIDATION OF PECUNIARY RELATION

After the dissolution of marriage or divorce pecuniary relation of the spouses will liquidate. Before the declaration of divorce, the issue of liquidating the spouses' property can not be raised.

The matrimonial property is indivisible for the time being the marriage stayed intact. One of the issues which need to be addressed by the court at the time of pronouncing divorce is the partition of the matrimonial property. The law has given discretion for the spouses to agree upon the management of their property. This discretion is also extended in respect of the partition of property. If the parties have addressed the issue of property in their contract of marriage as per article 83/3 of RFC, then the contract will be effected by the court.

However, if there is no contract of marriage or if the contract of marriage concluded is not valid, then the court has to decide on the right of the parties in respect to the properties. There is a presumption that all property in marriage is common property of the spouses. The spouse who claims to be the personal owner of the particular property in question has to prove the fact. Once the property is determined to be the personal property, the owner of that property may retake it in kind.³⁹ If the personal property has been mixed with the common property, the spouse will be given an equivalent sum of money or a thing of value corresponding to such price from the common property.⁴⁰

³⁹ Article 86 RFC

⁴⁰ Ibid

The next thing would be the payment of debts. Debts incurred in the interest of the household are considered to be common debts and hence need to be recovered from the common property. In this respect, article 89 of the RFC requires the payment of common debts prior to the partition of common property between the spouses.

Partition of common property

Once what constitutes common property has been ascertained, the next thing to do is to decide on the manner of partitioning this common property between the spouses. The rule in partition, as is reflected under article 90 RFC is that common property shall be divided equally between spouses. This is a reflection of the Constitutional provision which gives both spouses equal right in respect of property at the time of entering, during and at the end of marriage.

As far as the manner of partitioning is concerned, the rule is that partition will be made in kind in such a way that each spouse receives some property from the common property; any inequality will be set off by the payment of sums of money.⁴¹ If the property is difficult or impossible to divide, or alternatively if the spouses do not agree as to who should have the property, it will be sold and the proceeds will be divided between them.

3.2 LIQUIDATION BASED ON AGREEMENT

After the pronouncement of divorce, the court will give a chance to the spouses so that they can agree on property division by themselves.⁴² By doing this, the court encourages spouses to conduct the liquidation with out the intervention of family arbitrators or court. If spouses have contract of marriage they may apply or inter into a new agreement.

⁴¹ Article 91(2) RFC

⁴² Article 83(1) RFC

There is a distinction between contract of marriage and agreement signed after divorce on property division. A contract of marriage is signed before or on the date of marriage. Its main objective is to regulate financial or personal relation of the spouses during the marriage. On the other hand, the objective of the agreement after divorce is to regulate the effects of divorce such as settlement of their economic relation.

The other form of liquidation by spouses' agreement is liquidation by family arbitrators. Under article 83(1) of the Revised Family code "where the marriage is dissolved by divorce under this section, the court shall request the spouses to agree on the conditions of divorce."

The spouses have two options as regards agreement on the conditions of divorce is concerned. These are, to agree to liquidate their common property by themselves or by family arbitrators. How to liquidate by them selves already discussed. Here liquidation by law will be discussed.

3.3 LIQUIDATION BASED ON THE LAW

In the absence of any such a legal agreement or contract, pecuniary relations of the spouses shall be liquidated according to the law provided under the RFC. Articles 86 up to 90, in the sense of article 85/2. This means that the Court only resorts to the provisions of the code if the spouses do not have any agreement or contract of marriage regarding their pecuniary relations.

In order to liquidate the pecuniary relations of spouses, there are procedures to be followed by a court. Thus, the first procedure to be followed is that each spouse has the right to retake his/her personal property, whether in kind or in money, from the properties of the spouses, presumed common, if she/he proves that the specific property is her/his; according to RFC Article 86.

So, the spouses have the burden to prove, not only the existence, but also their ownership right of the items in question; unless and otherwise, neither of them should be allowed to claim for it. That is, if one of the spouses fails to prove, the existence and his/her ownership right of his/her personal property, he/she can not claim for the property to be his/her personal from that of the common property. On the other hand, if one of the spouses proves that his/her personal property separated and the price there of has fallen in the common property, he/she has the right to withdraw, before hand, in money or kind, corresponding to the price. In addition, both spouses may have personal property in their common property; if that is the case, then they take their common property in proportion to their contributions.

Where one of the spouses, who has been vested with the power to administer the common property or personal property of the other spouse, has performed acts which adversely affect such spouse or didn't have mandate to perform or the acts constitute had administration performed in fraud, the court may award compensation at the request of the affected spouse.

However, the injured spouse may not claim indemnity when the acts performed were five years before dissolution of marriage; according to RFC Article 87(2). In other words, it means that one of the spouses may administer the common and/or personal property of other spouse. However if a spouse, who administers the property, caused damage on it he/she is bound to indemnity to the aggrieved spouse. But the claim for indemnity could be made only if it is brought before a court, five years before the dissolution of marriage. In the absence of agreement, the court may award indemnity to the spouse who proves that the personal property of the other spouse or to the common property has been enriched to the prejudice of his/her own personal property.⁴³ This tells us that the spouse, whose personal property has been enriched by personal property of the other spouse or by common property, is bound to indemnity to the other, by the order of the court.

⁴³ Article 88 of RFC

However, the court only awards indemnity, if the spouses do not have any agreement about it. But if the spouses have an agreement, the court may not award indemnity to the other; meaning, to the spouse who has proved the existence of enrichment.

If there is a debt incurred by either or both of the spouses conjointly, such a debt shall be paid before partition of property. However, such debt is to be paid only if it is confirmed by judicial decision or acknowledged by the spouses.⁴⁴ This means that one of the spouses or both of them may incur a debt for the purpose of their household or personal affairs. As a result, a debt shall be paid before the partition of property begins, if it is confirmed by judicial decision or by the consent of the spouses.

3.4 EFFECTS ON THIRD PARTY

It is obvious that certain transactions such as advance payments accepted or debts taken are of special importance to the household's life and require the consent of both spouses for their conclusion. These kinds of debts are debts incurred for the benefit of the marriage.

According to Article 71 of the Revised Family Code, debts in the interest of household include:-

- debts incurred to fulfill the livelihood of the spouses and their children; Article 71(a) of the RFC.,
- debts incurred in order to fulfill an obligation of maintenance to which both the spouses or one of them is bound; as stated in article 71(b)

⁴⁴ Article 89 of RFC

Other debts, which are acknowledge being such by the court on the request of either of the spouses and the creditors; (Article 71 of the RFC). Such debts are considered as debt in the interest of the household and as to the payment of it Article 70(2) of the RFC states, they are payable from the common property.

Since the destructive nature of divorce extends to third party, who is a creditor of common debt, the law should protect it. Protection is accorded to the creditor who has an interest to claim from either spouses or from both spouses conjointly. When the debt incurred by a spouse is confirmed by the decision of the court or acknowledge by the concerned spouse, such debt shall be paid before partition of the property is made.

Usually, the third party who has claim on property intervenes in the proceeding; Article 89 of the Revised Family Code supports this action of a creditor, as it helps protect the creditor. This action raises a question:- can creditors claim debts before its due date? It goes from Article 1772 of the Civil Code that the creditor can not claim performance of the debt before its due date. But if marriage of the indebted spouse is dissolved before the due date, it will create inconvenience to the creditor. To avoid such an inconvenience, the court allows such a third party to intervene in the partition of common property between the spouses.

As I have heard from Ato Adere Ayele (Judge of First Instance Court In the Arada Civil Bench); Though the RFC precisely put that having more than one wife is illegal⁴⁵, him "most of the cases that I have seen are related with having more than one wife (third parties) that may appear during division of property." second wife said, the law gave a right by saying (presumes) that as long as there is marriage, both spouses have equal rights for their property. So I have a right to share the property equally. Not only this, particularly one of the party buy shares, have real state without the consent of the other, such thing only happen or expressed during divorce or division of property. These are the main difficult issues in the court in regard to time and cost.

⁴⁵ RFC Art. 11

In the above mentioned cases to prove the reality and to get evidences it takes time and need financial capacity. In most cases when we take the majority Ethiopian women/wives, they have no a well build knowledge of law. Even they have no any idea about their right which have given by the law and express them selves and the case as well. What they know is that simply they do their works to get wealth for their children and their future life. In this case most husbands have relations with third parties for their business with out the knowledge of their wives. At the time of liquidation/division of property when divorce happen, that third party's claim comes to practice. These are controversial to approve truth. As he said, it takes time and it needs money and knowledge of professionals.⁴⁶

3.5 LIQUIDATION PROCESS AND RESPONSIBLE BODY

Liquidation of pecuniary relation can be conducted by the spouses themselves, family arbitrators and the court.⁴⁷ These entities can liquidate the property according to the law or contract of marriage. In addition to this, spouses or family arbitrators can divide the property in any other equitable way. However all the decisions of the spouses or family arbitrators are subjected to the court's approval.⁴⁸

In relation to Liquidation according to a contract of marriage in Ethiopian is not a well known practice. But the Revised Family Code gives attention to it and puts different restrictions on contract of marriage. These restrictions can serve as an instrument to ensure the "fairness" of contracts of marriage.⁴⁹ According to Art. 44 of the RFC assign two protectors from each contracting party who can balance the benefits of contract of marriage.⁵⁰ In addition to this, any modification on the contract is useless unless it is required by the interest of the family and approved by the court. Another restriction is a simple reference to local custom, religion or

⁴⁶ An interview with Ato Adere Ayele; on June 18, 2009 in his office

⁴⁷ RFC Art. 83(1)(2)

⁴⁸ Ibid sub 3

⁴⁹ Supra note 41

⁵⁰ Ibid

law of a country on contract of marriage is invalid.⁵¹ At the end, the spouses are required to deposit their contract of marriage in the court or with the office of civil status.⁵² These restrictions indicates family arbitrators, spouses or the court are not free to apply every agreement stated in a contract. They should check whether or not the contract of marriage complies with the requirements stated under article 42-47 of the Revised Family Code.

Liquidation by the Spouses Agreement

After the pronouncement of divorce, the court will give a chance to the spouses so that they can agree on property division by themselves.⁵³ By during this, the court encourages spouses to conduct the liquidation with out the intervention of family arbitrators or court.

Liquidation by Family Arbitrators

Liquidation by family arbitrators in falls under article 83(1) of the Revised Family Code. Arbitrators are persons who are known by the parties. They could be the parties' relatives, neighbors, friends or any other person. Though, in the civil code, a family arbitrator could be a person who is not known by the parties. This can happen when the parties fail to appoint arbitrators with in the period prescribed to them by the law or, if an arbitrator does not accept this functions or can not for whatever reason carry out his duties with out delay.⁵⁴ In these instances the court will assign an arbitrator who is not familiar with the spouses. This is because, resorting to family arbitrators is compulsory under the Civil Code.⁵⁵ So when the spouses fail to appoint arbitrators then, the court will have to assign arbitrators for them.

⁵¹ Art. 46(2) of RFC

⁵² Art. 47(3) and 45(1) of RFC

⁵³ RFC, Art. 83(1)

⁵⁴ Art. 187 of Ethiopian Civil Code, Proc. No. 165, 1960

⁵⁵ Hillina Tadesse, Ethiopian Family Law and Practice: A women's rights perspective, protected identification code; 100L-LRI (unpublished) pp. 28

Liquidation by the Court

The court can undertake liquidation when the opposition of the spouses to liquidation by themselves or family arbitrators occurred. Most judges agree that liquidation by the courts order should be a last resort.⁵⁶

According to Art. 83(2) of the Revised Family code the court shall request the spouses to control the liquidation process by themselves or family arbitrators. Where the spouses are not willing to agree or have failed to agree, then the court will take the liquidation process. Liquidation by the court does not necessary imply a liquidation conducted by the judge who takes the case. Liquidation by judicial liquidators, experts or other body, appointed by the court also considered as liquidation by the court. The court has a wide discretion on the appointment of a liquidator. It can assign any body whom it thinks fit.⁵⁷

3.6 PROBLEMS ON LIQUIDATION PROCESS AND PRACTICE

Our country's practice shows inconsistency in classifying certain property. Such as, Pension right, Damage paid for injury, properties attached to the personality of the spouse, etc. Categorization of these properties as personal and common property needs some discussions.

I have made an interview with 'Ato' Adere Ayele (Judge First Instance Court) on June 15,2009 in the 'Arada' Civil Bench, told me for the question "What Crucial problems arise in the case of division/liquidation of property during divorce?"

He gave the following listed answers.

- The major problematic and needs more time is that the liquidation of property of spouses who have a very large wealth and their property connected with real state, share company, have a big "Ekub" and so on.

⁵⁶ Supra note 41

⁵⁷ Ibid

When we take share company and real state, one of the party with out knowledge and consent of the other party buy a share, inter in to real state, have big "Ekub". This situation expressed in the time of liquidation. Because of third party come to claim debt and division of share, and so on. So, it is expensive in matters of time, expertise, finance of the court as well the spouse who has a burden of proof.

As he said, most of the time in Ethiopia, wives are active in household activities not have knowledge and capacity divisible common property.

- When there is mixed property, it can be difficult of approve whose property it is. Would this be considered a personal or common property? For instance: If house whose construction was finalized after the conclusion of marriage, but the land on which to construct the house was obtained prior to marriage by one of the spouses.
- Some can raise question of legality. They raised the issue of "legality" or "possessor's right" the house is not ours, since we can't divide such property that we didn't acquire is legally "u?~ ¼Ú[n u?f "< 1Á©'f ¼K'<U:: 1Ò©'f uK?K'< "w[f LÃ 1Ò© ¼j' jôôM K=S× >Ã·MU:: uTKf >"Ç"Ê‡ ¼Sÿ^ÿ]Á 'Øw Á'dK< "
- Hiding and selling common property before same days of the declaration date of divorce. If one of the other parties left the house because of dispute, the other person may hide or sold property which belongs to both.
- Most of the time before the declaration of divorce one of the parties (husband/wife) left the house because of dispute the other person may sale the property as if it was sold for their mutual interest by making the sale contract not recent.

CHAPTER FOUR

4.1 CASES

I have in my hand two related cases with my topic. That is on liquidation of property during divorce. Therefore I will try to see the correctness of these cases with regard to the law.

The first one is W/ro Yesewzer Yibeltal v/s Nigusse G/Selassie

Facts in issue

- After **dissolution of marriage** the **question liquidation of immovable property** which is residence (main) house.
- The claim started in First Instance Court and gave decision on the date 23/12/1997 E.C.
- First Instant Court decided that the parties to divide the house equally.
- The petitioner was dissatisfied with the decision passed; he uses his appeal right and provide his appeal to the Higher court.

As the Lower Court has correctly stated, the State is the owner of the land. But, since, possession right is held by individuals, and since it is known that this by itself can be considered as property, it is unlawful that the Lower Court decided that the Respondent be entitled to the land. This is equivalent to say that she is entitled to something she didn't acquire even during her matrimonial-life. The Court decided that she got her share of the house as possessors' right on the land.

So, the decision given by the lower Court was revised and the Petitioner should pay to the Respondent half of her share in terms of money as the value of the house and that of the service rooms will be estimated by experts.

The Respondent, on her own, filed her appeal against the above mentioned decision of the Higher Court.

The Court passed (its) decision stating that ever since the Proclamation No. 47/1975 that made urban land and extra houses State property was issued, urban land is not a property owned by individuals. The owner of the land is the state. Therefore, individuals have the right to make use of the land. What we can understand from this is that the land cannot be said to be individual property of that or the other person.

Of course, one can say that the house belongs to either the husband or the wife. On the other hand, as the house is built on the land, it is impossible to conceive a house aside from the land on which it is built. So, one can presume that they have the right to make use of that space.

The Petitioner and the Respondent have been hiving together, by building their mutual dwelling house on a piece of land which belongs to the State.

Accordingly, if the house is said to belong to both, being their common property, it is impossible undermine their respective and equal rights of utilizing that piece of land on which the house rests.

As *the* house is inconceivable aside from the land (it is built on) it is wrong as well as meaningless to concludes that the Respondent has the right only on the house - excluding the land on which it is built on.

In other words, it can not be claimed that the Respondent has been given equal right on the house according to this conclusion. It can not be said that the house be sold and according to its market value, each get its equal share. This is because there is no urban house that is conceivable aside from the land it's built on; and since no wall, roof can be marketed, as being a house.

The Petitioner is therefore, equally the owner of the house; and there is no legal

ground or reason the Respondent leave, accepting the estimated half of her share, without her consent as he pleases. Thus, the decision passed by the Higher Court is over ruled. This Supreme Court has decided that she has the right to get her equal share as it had been decided by the First Instance Court.

The second one is W/ro Almaz Telisa V/s Ato Molla Yemer

Facts in issue:

- After **dissolution of marriage** the **question liquidation of immovable property** which is residence (main) house located in Wereda 17, Keble 21, H. No. 1155 and the service house of 5 rooms attached to the main house.
- The claim started in First Instance Court and gave decision on the date 29/3/98 E.C.

The parties admitted that the main house is personal property of respondents because it is built before the marriage. The court examined that the service house mentioned was built by petitioner respondent jointly, during the time of marriage and decided that five rooms of the service house are common property.

The respondent didn't agree with the decision passed, and forwarded complaint to the High Court. The court after hearing of both sides and passed its decision on rooms of the service house, which were build on the land of the main house, she can calculate all the costs she claims to have incurred as of the date of their marriage but can not be equally owner; owners are the complaint. She forwarded her complaint to the Federal Supreme Court. The court, listening both parties and passed its decision by saying , the service-rooms were build after marriage and, thus, are common property, the decision passed by the Higher Court is wrong.

In considering the decision passed by the Federal Supreme Court we can consider with the following laws.

As regard to right of ownership on urban land with property right of the civil code of Ethiopia, the paper concerned which have relationship with the case at hand.

In Article 1026 of the Civil Code, huge-both, movable as well as immovable properties have been considered as part of property law under Article 1204. In the section of property law dealing with the interpretation of ownership, it is indicated that it is something a person, honestly and in truth holds grip of as his/her won property; and that ownership is the widest right that may be handed on property.

According to Article 1148 and 1149 of the Civil Code, the possess of a property has all the right to defend and retain his property from any both that tries to deprave him of his ownership he can also defend his property against loss or damages through instigation of violence.

The person deprived of his ownership or one on whose property turmoil was instigated can claim what was taken from him be given back to him or the turmoil be stopped; as well as be paid for the loss/damage incurred to him. From it is possible to understand that the right to ownership also extends to immovable properties.

Article 1195 of the Civil Code, is one given by administrative body. It is one of legal entitlement on the basis of which, the owner of an immovable property shall be determined.

These, prominent, modern provisions of property law of this country, are the ones that give legal recognition to immovable properties in urban and rural lands/plots: and ensure legal protection of possession and ownership rights.

The decision passed by the court to the dispute cited above, is made on the fundamental ground that it is impossible to conceive ownership of any house situated in an urban plot, separate to the ground it stated on. In order to make the

interpretation of this law complete, it should be asked whether proclamation No. 47/1967 has liquidated ownership on immovable properties? Since it is vital to find an answer to this question, we will consider proclamation No. 47/1975. As the preamble of this proclamation shows the aim of the was to improve the conditions by which residential as well as office building land plots become available to the urban dweller.

It became necessary that urban land and extra-house be in the ownership of the State. Ever since the proclamation came in to effect, Article 3 of the proclamation stipulates that urban land is the property of the State and that no family, individual or organization can own urban land plot as proprietor. It ensured possession right outlined and effected a free system of utilization as well as established security to possession right of urban plots. From the point of view of the system and principle of property law, it is crucial to see that proprietorship and possession right are rights that should be seen differently and separately. The interpretation of the Federal Court's decision is examined in relation to that of proclamation No. 47/1975, it seems that it mixes up land possession rights of individuals, families, without making any distinction and acknowledging its limits. This is evident if we not that the dispute presented to the court is one concerning urban land possession, while the decision it passed is based on urban land plat ownership which seems to make one assume that there is no such right as possession right.

When we come to our constitution, which is the law of the land, Article 13 should be strictly stipulated that the interpretation of property right be in line wit those International Conventions, Agreements and Principles of Human Right. In the same article it is also proclaimed that Federal as well as Regional laws, proclaimed at any state-level of administration, have the authority and obligation to abide and make others abide Basic Rights and Freedoms. And on this basic principle should interpretation of international Human Rights and Freedoms made practical; meaning; within the limits of the National Law. Article 13(2) of the constitution is indicative to the fact that judicial interpretations always should be

made in view of International Laws, Ethiopia has ratified; as they should be parts and parcels of the laws of the Nation, This is all exception to which 9(4) which makes international law, below the constitution. Possession right has economic value.

According to Article 57 of the Proclamation No. 213 of the Revised Family Law it is clearly and strictly proclaimed that private property of the husband as well as that of the wife, which was acquired prior to marriage, remains to be their personal property. Likewise, any property each of which inherits or receives as gift remains to be his/her personal property.

As to any property acquired after marriage, legal consideration is made as to consider it to be common property to both (Art. 57 of RFC); as long as they have not decided among themselves to make it personal to one or the other party, by law.

As it has been stated in the above proclamations urban land possession right is a basic constitutional as well as property right.

Whenever there is divorce, the question of separating property arises between husband and wife. But, prior to resorting to the process of that duty, it is vital that their private and common property rights are identified. The Revised Family code did not include provision that attribute on this. The private property of one of the family head should not be wrongly attributed to be that of the other. Neither should it be handed-over to the other, without the agreement of the latter. Thus, it is necessary that coherent interpretation exists between this and the other laws and the constitution.

4.2 CONCLUSION

Liquidation of pecuniary relations of marriage is a process which comes after the dissolution of marriage. These days, the liquidation process is an important issue. Hence, as we seeing the reality that dissolution of marriage as a result of divorce increased from time to time.

The important part of the liquidation process is to categorize property realized during the marriage into personal and common property. The law states the origins of personal and common property so that it will be easy to categorize the assets. In spite of the attempt of the law, there could be an overlap between personal and common property.

Division of common property comes after making a clear demarcation between personal and common property. It can be divided in accordance with equal or equitable division rule. Our country follows the rule of equal division of common property. This rule is the simplest one. Plus, it gives the liquidator body a limited discretionary power. But the term equal is subjective.

After the pronouncement of dissolution of marriage spouses could take the responsibility of liquidating their pecuniary relations. In the 1960's Civil Code, it is compulsory to go to family arbitrators so that they could decide on divorce matter and govern the liquidation process. However, under the Revised Family code, their powers are limited concerning pronouncement of divorce. The power fully rest under the jurisdiction of the court. Spouses are free to choose family arbitrators or the court. Concerning liquidation of pecuniary relation the revised family code show the change than Civil Code on making the decision of the family arbitrators and spouses on the liquidation matter, to be subjected to the approval of the court.

Court is the last option to liquidate pecuniary relations. It can appoint judicial arbitrators or other professionals, so that they conduct the liquidation process. The court has unlimited power on the appointment of judicial arbitrator and on the allocation of the amount of their remuneration.

After the implementation of the Revised Family Code and the case of family take apart from other cases had its bench (starting from 1997/98 as I got from interview of Judge Adere Ayele) the speed of liquidation process has increased. It is important to child custody, maintenance, minimizing cost, minimizing the time of liquidation the court, etc.

The court in family case is now giving speedy trial than the future (Civil Code) because government attention to family cases and separated its bench.

4.3 RECOMENDATION

As a result, much is said about liquidation of property during divorce in RFC and some implementation problems. I want to recommend some points.

As regards to common property division, the legislature has left some area unclear and untouched. These situations call for unlimited judicial discretion. So, the legislator has a lot to do in these respects. As for instance, regarding immovable property, be it rural or urban – that is use right be it lease, usufruct, rent, etc. should be divisible between the spouses in divorce. Also the definition of common property should be clear. For instance the legal presumption of RFC includes pension allowance and damages for injury as a common or not it is controversial.

There are some areas in RFC which seem to be ambiguous. To avoid these, the most important mechanisms and the most important bodies are the legislature; by showing the rights and duties of the couples, by enactment of laws; by the judiciary, by interpreting such duties and rights thus narrowing down and bringing the gap between the law and the practice, respectively.

Concerning judge jurisdictions, they should have at least similar, coherent ways of interpreting the same provisions.

Lastly, there should be mechanisms to increase the knowledge of the law on the area of division of property. There are spouses who lose their personal property acquired by onerous title because they do not know that the law requires them to approve this property and must give attention to preserve evidence which would help them to prove common property.

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Annex

1. File No. 42879

Yesewzer Yebeltal V/s Nigussie G/Silasie

2. File No. 23312,

Alimaz Telila V/s Mola Yemer

3. 37350

Ato Asefa Degeffie V/s W/ro Almaz Menaye

APPENDIS