NATIONALITY, DOMICILE AND THE PERSONAL LAW IN ETHIOPIA

by Robert Allen Sedler, Faculty of Law
Haile Sellassie I University

INTRODUCTION

In this article the writer hopes to explore the Ethiopian law of nationality and domicile and the law applicable to determine matters of personal status. In Ethiopia the foreigner has always been welcome. Many foreigners live and work here, often for many years, but do not become Ethiopian nationals. A country with a large foreign population is thus faced with questions of nationality law, questions of who is domiciled there, and questions of what law shall govern the personal status and relations of individuals. In this paper I propose to present the existing provisions of law relating to Ethiopian nationality, review such legal distinctions as exist between Ethiopians and foreigners, discuss the provisions of the Civil Code that cover the domicile of natural persons and to deal with the question of the governing personal law.

NATIONALITY

Acquisition and Loss of Ethiopian Nationality

It is provided in Article 39 of the Revised Constitution that "the law shall determine the conditions of acquisition and loss of Ethiopian nationality and of Ethiopian citizenship.[1]" The existing law on the subject is the Ethiopian Nationality Law of 1930,[2] which is still in effect. The Civil Code of 1960, it should be noted, contains no provisions with respect to the acquisition or loss of nationality, though it does contain provisions relating to domicile.

There are two basic approaches to determination of nationality and citizenship,[3] that of *jus sanguinis* (nationality by blood) and *jus soli* (nationality by birth). Under the principle of *jus sanguinis*, a child takes the nationality of his parents (where the parents are of different nationality, it is usually the nationality of the father) irrespective of where the child was born. Germany, for example, has adopted parentage as the decisive factor; children born of German parents are German whether born in Germany or abroad while

1. The same provision is contained in Article 18 of the Constitution of 1931.
2. Law of July 24, 1930. Throughout the article the Gregorian calendar will be used unless otherwise indicated. However, Ethiopian cases are cited to the Ethiopian Calendar.
3. Of these two terms, "nationality" is used more in an international context and "citizenship" in a local context. Distinctions between citizens and nationals are frequently made in countries that have colonial possessions. For example, a person born in a possession of the United States is called a national rather than a citizen. United States Code, Title 8, Section 1408. For purposes of international law, there is no distinction between citizens and nationals. See generally, Silving, Nationality in Comparative Law, 5 *American Journal of Comparative Law* 410-415 (1956). Nationals of a country having a monarchial form a government such as Ethiopia are sometimes called subjects. As used in this article, "nationality" and "citizenship" have the same meaning.

children of foreigners born in Germany are not German nationales but take the nationality of their parents.[4]

Under the principle of *jus soli*, children born in a nation, whether the parents be nationals or foreigners, become nationals; conversely, children born to its nationals residing abroad, are not nationals.[5] Argentina is classified as a nation in which the territory on which the birth occurs is the exclusive determining factor.[6]

Many nations recognize elements of both principles in their nationality law, with one or the other usually predominating.[7] The United States is primarily a *jus soli* nation. The Fourteenth Amendment to the Constitution provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States,..." This provision insured that all the newly emancipated Negroes and their children would be American citizens. This provision also proved of great value during the large wave of immigration to the United States in the late nineteenth century, as all the children born in the United States of newly arrived immigrant parents would be American citizens.[8] Children born abroad are considered citizens of the United States in certain circumstances.[9] Where both parents are American citizens, the child, though born abroad, is considered an American citizen by birth[10] so long as one parent had a residence in the United States or its possessions prior to the birth of the child. If only one parent is a citizen, that parent must have been a resident in the United States or its possessions for a continuous period of at least one year prior to the birth of the child.[11] Where one parent is a citizen who did not reside in the United States for a continuous period of one year prior to the birth of the child, but was present in the United States or its possessions or served in the military services for periods totaling 10 years, at least 5 of which were after attaining the age of 14, a child born abroad is considered a citizen. But such a child must, prior to attaining the age of 23 and after the age of 14, spend at least 5 years continuously in the United States. It is clear that these provisions are very restrictive, and that the prime basis of citizenship in the United States is birth there.

France originally followed the *jus sanguinis* principle very strictly. Under Article 10 of the French Civil Code "every child born of a Frenchman in a foreign country was French." A child born in France of a foreigner was not French, though under the provisions of Article 9 of the Code a child born in France of a foreigner could upon attaining

4. Reich and State Nationality Law of July 27, 1913, paragraph 4. Under Article 116 of the Constitution of the Federal Republic (West Germany) all persons who possessed German nationality or who were accepted as refugees of German stock as of 31 December 1937 are Germans. Persons who lost German nationality by the acts of the Nazi regime are regranted this nationality upon application. In the absence of other provisions, the Law of 1913 is the basic nationality law. Under that law the legitimate child of a German father is German, as is the illegitimate child of a German mother. See the discussion in Oppenheim, *International Law* (8th ed., Lauterpacht). Vol. 1, p. 651.
5. Oppenheim, *Ibid.* This would not, of course, include children of foreign diplomatic representatives.
6. Oppenheim, *ibid.*
7. For a listing of the different approaches toward nationality based on a 1935 study see Bishop, *International Law* 415 (2d ed. 1962). The original study will be found in 29 *American Journal of International Law* 248, 256 (1935). Although some changes no doubt have been made, the study gives a general idea as to the distribution of the different approaches.
8. In the case of *United States v. Wong Kim Ark*, 169 *U.S.* 649 (1898), the Supreme Court held that the child born in the United States of Chinese parents was a citizen of the United States, though at the time the parents were not eligible to become naturalized citizens. Under the *jus soli* approach the status or condition of the parents is irrelevant as long as they are subject to the jurisdiction of the state in which the child was born, *i.e.*, they are not diplomatic officials.
9. This is set forth in United States Code, Title 8, Section 1401.
10. Only American citizens by birth are eligible to become President. Constitution of the United States, Article II, Section 1(5).
11. See United States Code, Title 8, Section 1401 (5).

majority claim French nationality. The French approach fluctuated over the years as different nationality laws were enacted, but the French Nationality Law of 1945 extensively employed both principles in an effort to increase the number of French nationals. The provisions are interesting, as they demonstrate an effort by a nation to obtain as many nationals as possible.

Under Article 17 and 18, the legitimate child born of a French father is French irrespective of where he was born, as is the legitimate child of a French mother where the father's nationality is unknown. Unlike the United States, there are no residence requirements imposed on the parents. Where a child first establishes filiation[12] against a French parent, whether the father or mother, that child is French. So too, if one parent is French and the nationality of the parent against whom the first filiation action is brought is unknown, the child becomes French upon successfully maintaining an action of filiation against the French parent. Under Article 19, subject to an option to repudiate, the legitimate child of a French mother and foreign father is French, as is the natural child recognized by or successfully filiated against parents, one of whom is French. The above provisions are essentially based on *jus sanguinis*, as the country of birth is irrelevant.

The French law also contains many elements of *jus soli*.[13] Where a child is born in France of a father who was born in France, though not necessarily a French national, that child is French. The same is true when the parent against whom filiation was first established was born in France. The legitimate child born in France of a mother also born in France is French, subject to his right of repudiation; so is the child of a parent born in France when that parent is the one against whom filiation was established the second time. Under Article 21, the child born in France of parents whose nationality is unknown is French unless he is filiated and takes the nationality of the filiated parent.

Where the child was born in France of foreign parents, neither of whom was born in France, the child is considered French upon attaining majority if he is then residing in France and has been residing there since the age of 16.[14] He may decline French nationality in certain circumstances, and in certain circumstances the government may oppose the petition. Under the Law of 22 December 1961, military service can be substituted for the five year residence. Such a child can also claim French nationality prior to reaching majority if he has resided in France for five years. If he is under the age of 18, the claim can be made by his guardian. There are special provisions relating to children who were raised in France, though not born there; under certain circumstances they can acquire French nationality as well.[15] It is clear that France, while retaining the basic principle of *jus sanguinis*, has adopted many elements of *jus soli* in an effort to increase the number of French nationals.

Since some states use *jus soli* and others *jus sanguinis* and many a combination of both, not infrequently individuals are born with dual nationality. For example, a child born in the United States of German immigrants who had never renounced German nationality would be considered American by the United States; the same child would be considered German by Germany. Dual nationality may arise also if a woman takes her husband's nationality upon marriage under his national law, but does not lose nationality under her national law. Some states provide that a national loses nationality

12. Filiation in the broad sense is the process by which the parentage of a child is ascertained. See generally Civil Code of Ethiopia, Chapter 10. The term may also refer to an action brought by the child for a judicial declaration as to his parentage.
13. See particularly Articles 23, 24, 44 and 52 of the French Nationality Law of 1945.
14. If the principle of *jus soli* were strictly followed, the child would be French irrespective of where he was residing.
15. Law of 22 December 1961, Article 55.

by accepting foreign nationality; others permit their nationals to take on foreign nationality without losing original nationality. In the latter case, dual nationality may also result. Conflicts frequently arise; for example, during the Second World War, when children born in the United States of alien parents were visiting the home nation of their parents, they were often conscripted into military service in those countries on the ground that they were nationals because of the nationality of their parents.[16] Efforts have been made by some nations to resolve the problem of dual nationality.[17]

Another condition that may arise is statelessness. This results when a person loses the nationality of one state without acquiring nationality in another. For example, under the laws of some states a woman loses nationality by marrying a foreigner; if her husband's national law does not give her his nationality, she is stateless. In certain circumstances a person may be deprived of his nationality by his national law[18], without acquiring another nationality.[19] As we will see, Ethiopian law makes every effort to avoid both dual nationality and statelessness.

Now that we have considered comparative approaches to nationality, let us look at the Ethiopian Nationality Law of 1930. Ethiopia follows strictly the principle of *jus sanguinis*. Any person born in Ethiopia or abroad whose father or mother is an Ethiopian is an Ethiopian subject.[20] If the father is an Ethiopian subject, the child automatically acquires Ethiopian nationality, but if only the mother is an Ethiopian, the child must affirmatively elect to become an Ethiopian national by living in Ethiopia and proving that he is divested of his foreign nationality. Such a child, upon doing so, is to be considered an Ethiopian subject by birth.[21] A child born to an unmarried Ethiopian woman would, of course, be Ethiopian.

The Law contains no provisions by which a person born in Ethiopia of foreign parents is or can become an Ethiopian national except by naturalization. In other words,

16. Another conflict may arise as to claims against a government where the claimant is a *National* both of the claiming state and the state against whom the claim is made. In the *Canevaro Case*, decided by the Permanent Court of Arbitration in 1912, the Italian and Peruvian governments agreed to submit to arbitration claims arising out of the failure by the Peruvian government to honor certain checks issued by that government to a firm. The claim passed into the hands of certain persons, one of whom was Rafael Canevaro. The tribunal was given jurisdiction only to consider claims of Italian nationals against the Peruvian government; thus, if Canevaro were not an Italian national, the tribunal would have no jurisdiction to hear his claim. Peru followed *jus soli* to determine nationality while Italy followed *jus sanguinis*. Since he was born in Peru of an Italian father, both Peru and Italy would consider him their national. The court held that for purposes of his status as a claimant, Peru had the right to consider him as its national and that he was not an Italian national within the meaning of the arbitration agreement.

17. One is the Hague Convention of April 12, 1930. Another is the Protocol on Military Obligations in Certain Cases of Double Nationality. Not all countries are signatories to these agreements.

18. During the Nazi regime many persons were deprived of German nationality because of their religion or political associations. These people were thus rendered stateless. Also, certain countries provide for forfeiture of nationality by the commission of certain acts, and the person who thus forfeits his nationality may become stateless.

19. See the discussion of attempts to provide protection to stateless persons and the material cited therein in Bishop, *International Law* 414 (2d ed. 1962).

20. The term "subject" is used, since Ethiopia is a monarchy. Note that for international law purposes there is no distinction between a national, citizen or subject. The status of Ethiopians living in Eritrea is governed by Order No. 6 of 1952, Negarit Gazeta, September 11, 1952. Under Section 9 of that Order, it is provided that all inhabitants of the territory of Eritrea, except persons possessing foreign nationality, are Ethiopian nationals. All inhabitants born in Eritrea and having at least one indigenous parent or grandparent were also declared to be Ethiopian nationals. However, if such persons possessed foreign nationality, they could renounce Ethiopian nationality within six months of the date of the Order. If they did not renounce, they were declared to lose their foreign nationality. The terms of that Order are identical with the United Nations Proclamation establishing the Federation. See United Nations Proclamation No. 390 (4), December 2, 1950.

the concept of *jus soli* does not exist here. On the whole this is sound. The great majority of foreigners living here are Europeans — coming from a different culture and a different ethnic group. Children born of such parents should not automatically be considered as Ethiopian nationals and probably would not desire such automatic assimilation. Those that desire to do so can obtain Ethiopian nationality through naturalization. However, many persons from areas such as the southern Sudan, northern Kenya and Somalia have entered Ethiopia. They belong to the same ethnic groups as Ethiopians living in the border areas and upon entry, become fully assimilated. Such persons and their children are often indistinguishable from the Ethiopians residing near the border, but technically neither they nor their children are Ethiopians. Perhaps some modification should be made to provide that members of certain specified ethnic groups who live in Ethiopia with the intention to remain here permanently[22] should be considered Ethiopians and that children of such persons born in Ethiopia are Ethiopian subjects by birth. With this possible exception, the principle of *jus sanguinis* seems well-suited to Ethiopia.

The Law contains provisions with respect to the effect of marriage, legitimation and adoption upon Ethiopian nationality. A foreign woman who enters into a lawful marriage with an Ethiopian takes on Ethiopian nationality. An Ethiopian woman who marries a foreigner loses her Ethiopian nationality only if the national law of her husband confers his nationality upon her. This insures that no Ethiopian woman will become stateless by marriage and, where possible, tries to prevent married women from having dual nationality.[23]

The same principle is applicable with regard to legitimation. Note that legitimation does not exist in Ethiopia, because there is no legal concept of illegitimacy. A child is the child of parents against whom filiation is established; once established it is irrelevant whether the parent against whom the filiation was established is married to the other parent. Thus, the child filiated against an Ethiopian mother or father would be Ethiopian. But, if a child born to an unmarried Ethiopian woman would become legitimated by a foreign father under his law, problems would arise. Again, in an effort to prevent either dual nationality or statelessness, the Law provides that such a child loses his Ethiopian nationality by the legitimation only if the national law of the father confers the father's nationality upon the child with all attendant rights.

Adoption of an Ethiopian child by a foreigner does not cause the child to lose his Ethiopian nationality. Conversely, a child who is adopted by an Ethiopian does not thereby acquire Ethiopian nationality. Here, dual nationality and statelessness are possible. For example, if an Ethiopian child is adopted by a foreigner and under the national law of the adoptive parent the child takes on the nationality of his father, such a child would acquire dual nationality. By the same token, if a child adopted by an Ethiopian loses his former nationality under his national law, he would be stateless unless he acquired Ethiopian nationality by naturalization. It may be that at the time the 1930 law was enacted, the adoption of foreigners by Ethiopians was rare and the concern was to prevent an Ethiopian child from losing his Ethiopian nationality. Now that adoption is fully covered by the Civil Code,[24] adoptions between Ethiopians and foreigners may increase. Perhaps the provisions of the Nationality Law should be reconsidered. It may be that an Ethiopian child adopted by a foreigner should not lose his Ethiopian nationality, though it is difficult

21. This is important, as there are distinctions is the enjoyment of political rights between subjects by birth and others. See the discussion, *infra* at note 38 and accompanying text.
22. In other words, domiciled here. See the discussion, *infra* at notes 53-62 and accompanying text.
23. A foreign woman married to an Ethiopian might have dual nationality if her national law did not cause her to lose her nationality as a result of the marriage. Still, it is desirable from Ethiopia's standpoint that a married woman have the same nationality as her husband.
24. Civil Code of Ethiopia, Chapter 11.

to see why he should be in a different position from an Ethiopian child legitimated by a foreigner. But clearly a foreign child adopted by an Ethiopian should not be rendered stateless thereby; if he loses his former nationality, then he should obtain Ethiopian nationality by the adoption.[25]

A foreigner may become naturalized after five years of residence in Ethiopia. He must be "of full age according to the regulations of the national law," which would be 18 under Article 198 of the Civil Code. He must be "able to earn his living and to provide for himself and his family." He must "know the Amharic language perfectly, speaking and writing it fluently." [25a] Finally he "must have not previously been condemned to any punishment for crime or breach of the common law." The latter provision must be read in light of the Penal Code, which has codified the penal law and which includes petty as well as serious offenses. It is difficult to believe that a person convicted of a petty offense should be denied naturalization. Perhaps the term "crime or breach of the common law" should be interpreted to include crimes "malum in se," that is, acts that traditionally were punishable as crimes in Ethiopia or are generally recognized as wrongful. This matter would have to be determined by the Commission charged with passing on naturalition applications.

The Nationality Law provides for a special government Commission comprising the Minister of the Interior, the Minister of Foreign Affairs and another "dignitary of the Empire," presumably to be appointed by the Emperor or His designee. The Commission is to examine the application and hear the applicant in person. Its decision is final. Naturalization does *not* extend to the wife of a naturalized person; she must make her own application. The Law says nothing about children, and in the absence of express provision, it must be assumed that children would have to make their own application upon reaching the age of eighteen.

Ethiopian nationality may be lost only by the acquisition of another nationality. In the case of a woman, this would include loss by marriage with a foreigner, providing his national law conferred his nationality upon her.[26] Where a person voluntarily acquired another nationality, he would lose his Ethiopian nationality, even though the law of the state of his new nationality permitted dual nationality.[27] The Law contains no provisions dealing with loss of nationality through commission of certain acts or engaging in unlawful conduct. The laws of some other nations contain such provisions. In France, for example, a national who serves in the Armed Forces of a foreign state despite an order to quit from the French government loses his French nationality. He must quit within six months after the receipt of notice unless it is impossible for him to do so.[28] France also provides that certain acts of persons who have acquired French nationality *other than by birth* will cause them to lose their nationality.[29] These acts include the conviction for a crime against the internal or external security of France, conviction for crimes punishable

25. France formerly denied an adopted child the status of a Frenchman. But now such a child can claim French nationality if he resides in France. Law of 22 December 1961, Article 55.

25a. Under a later amendment to the Nationaity Law, 25 Maskaram, 1926 E.C., the requirements of five years of residence and fluency in Amharic may be waived by the Commission.

26. Under American law a woman does not lose her nationality by marriage. Under French law a woman keeps her French nationality upon marriage unless she repudiates it, and she cannot repudiate it unless she is able to acquire her husband's nationality under his law. Nationality Law of 1945, Article 94.

27. American law is to the same effect. United States Code, Title 8, Section 1481 (a) (1). In France, however, such a person does not lose his French nationality until fifteen years have elapsed from the time he was eligible to perform military service. He may repudiate his foreign nationality during that time, and if he does so, he will not lose his French nationality. Nationality Law of 1945, Articles 87, 88.

28. Nationality Law of 1945, Article 97.

29. Nationality Law of 1945, Article 98.

under Articles 109-131 of the French Penal Code,[30] condemnation for desertion, acting on behalf of a foreign government contrary to the interests of France or incompatible with the quality of a Frenchman, or conviction for any crime which is subject to punishment of five years of imprisonment. These acts must have occurred within ten years from the date of acquisition of French nationality.[31] The loss of nationality also extends to the wife and children of such a person providing that they were originally of foreign nationality and have retained such foreign nationality.[32]

In the United States, there are extensive provisions dealing with loss of citizenship by the commission of acts, which include taking an oath of allegiance to a foreign state, serving in the armed forces of a foreign state without permission of the United States government, accepting employment for a foreign government where an oath of allegiance is required, voting in an election in a foreign state, desertion in time of war, committing treason and departing from the United States with the intention of avoiding military service.[33] The United States Supreme Court has upheld the power of Congress to provide for loss of citizenship by voting in a foreign election,[34] but has held that it is unconstitutional to deprive a person of his citizenship for desertion[35] (he could, of course, be punished for desertion) or for leaving the United States with the intention of avoiding military service [36](again, such a person could be punished, but not by loss of citizenship). Certain provisions dealing with loss of citizenship by naturalized citizens were declared unconstitutional, since they were not applicable to citizens by birth.[37]

These are illustrative of the provisions relating to loss of nationality contained in the laws of other nations. As stated previously, no such provisions exist in Ethiopian law. It may be that such provisions would be inconsistent with the concept of Ethiopian nationality and the desire to prevent the statelessness of any Ethiopian, no matter what he has done. As the law now stands then, Ethiopian nationality can only be lost by the voluntary acquisition of another nationality or the obtaining of another nationality by marriage or legitimation.

The Nationality Law makes it very easy for an Ethiopian who has lost Ethiopian nationality to reacquire it. All that is necessary for a person who has lost Ethiopian nationality by acquiring another is for him to return to Ethiopia and to apply to the Imperial Government (presumably to the Ministry of Interior) for re-admission. There is no discretion to deny the application. So too, a woman who has lost her nationality through marriage to a foreigner may re-obtain Ethiopian nationality upon dissolution of the marriage by divorce, separation or death if she becomes domiciled in Ethiopia and applies for re-admission. As pointed out earlier, a child born of an Ethiopian mother in a lawful marriage who takes on the qationality of the foreign father may reacquire Ethiopian nationality by living in Ethiopia and divesting himself of the paternal nationality. Apparently this is *not* applicable to a child who acquires his father's nationality through

30. These sections cover the crimes against the Constitutional Charter, violations of the civil rights of others and attacks against liberty.
31. Nationality Law of 1945, Article 99.
32. Nationality Law of 1945, Article 100.
33. United States Code, Title 8, Section 1481.
34. *Perez v. Brownell*, 356 *U.S.* 44 (1958).
35. *Trop v. Dulles*, 356 *U.S.* 811 (1958).
36. *Kennedy v. Mendoza-Martinez*, 372 *U.S.* 144 (1960).
37. In *Schneider v. Rusk*, 84 *Supreme Court Reporter* 1187 (1964), it was held that Congress could not constitutionally provide that a naturalized citizen lost his citizenship by residing for three years in the country of his birth. The court emphasized that native born citizens were not subject to this restriction and held that the discrimination was so unjustifiable as to violate due process.

legitimation. Where Ethiopian nationality is reacquired, the person is considered an Ethiopian subject by birth rather than by naturalization.

In summary, Ethiopian follows the principle of *jus sanguinis* to determine nationality. With the possible exception of children born in Ethiopia whose parents, though foreigners, are of the same ethnic stock as Ethiopian groups, this approach is fully satisfactory. The Nationality Law tries to prevent dual nationality or statelessness. There are provisions relating to the naturalization of foreigners. Ethiopian nationality can only be lost by taking on another nationality or through marriage or legitimation; but once lost, Ethiopian nationality is not difficult to regain. On the whole, the Nationality Law of 1930 seems well-suited to Ethiopia's present needs.

Distinctions between Ethiopian Subjects by Birth and by Naturalization

Such legal distinctions as exist between subjects by birth and subjects by naturalization are found only in the area of political rights. Article 38 of the Revised Constitution provides that there shall be no discrimination amongst Ethiopian subjects with respect to the enjoyment of all *civil* rights. A civil right is defined under Article 389 (2) of the Civil Code as one, the exercise of which does not imply any participation in the government or administration of the country.[38] There are some limitations on the exercise of political rights by naturalized subject.

Under Article 95 of the Constitution, only Ethiopian subjects by birth may vote for candidates for the Chamber of Deputies. So too, under Article 96, Deputies must be Ethiopian subjects by birth, and under Article 103 Senators must be Ethiopian subjects by birth. There is no requirement that judges be Ethiopian subjects by birth or even that they be Ethiopian subjects.[39] Under Article 67 of the Constitution, no one may be a Minister unless his parents were Ethiopian subjects at the time of his birth; if they were not, it is immaterial that he was an Ethiopian subject by birth. There is no requirement, however, that his parents be Ethiopian subjects by birth, so that the child of naturalized parents is eligible to be a Minister as long as they were naturalized at the time of his birth. With these exceptions, there is no distinction between Ethiopian subjects by birth and by naturalization.

Distinctions between Ethiopian Subjects and Foreigners.

In every nation there are distinctions between nationals and foreigners both in terms of enjoyment of rights and performance of duties. While this is true in Ethiopia as well, the distinctions are such that it is clear that there is no attempt to impose serious disabilities upon foreigners.[40] This spirit is reflected in Article 389 of the Civil Code, which provides as follows:

(1) Foreigners shall be fully assimilated to Ethiopian subjects as regards the enjoyment and exercise of civil rights.

(2) All rights the exercise of which does not imply any participation in the government or administration of the country shall be considered to be civil rights.

(3) Nothing in this Article shall affect such special conditions as may be prescribed regarding the granting to a foreigner of a permit to work in Ethiopia.

---

38. Rights which imply such participation may conveniently be called political rights.

39. The requirements for appointment to the judiciary are set forth in Article 111 of the Revised Constitution.

40. It is interesting to note that under the Administration of Justice Proclamation of 1942, Negarit Gazeta, January 31, 1942, the courts are prohibited from giving effect to any law that makes harsh and inequitable distinctions between Ethiopians and foreigners.

Article 389, of course, must be read in light of the other provisions of the Constitution and Code that do make distinctions between Ethiopian subjects and foreigners. The main statutory restriction is that foreigners may not own immovable property here except in accordance with Imperial Order.[41] This is also applicable to rights of usage for a period exceeding fifty years or a like interest terminable on death.[42] A foreigner must dispose of such property to an Ethiopian within six months; otherwise the property will be seized and sold by the competent authority.[43] Articles 389-393 are the only articles of the Civil Code specifically dealing with foreigners.

The other distinctions between Ethiopian subjects and foreigners are contained in the Constitution. Of course, foreigners cannot vote or hold political office. Under Article 47, every Ethiopian subject has the right to engage in any occupation; this is not true of foreigners, as the provisions of Article 389 (3) of the Civil Code indicate. [44] Only Ethiopian subjects have the right of peaceable assembly [45] and the right of unrestricted movement throughout the Empire.[46] No Ethiopian subject may be banished from the Empire,[47] a right that, of course, cannot be accorded to foreigners. Finally, no Ethiopian subject may be extradited; others may be extradited only as provided by an international agreement such as an extradition treaty.[48] With these exceptions, all other rights guaranteed by the Constitution, such as equal protection of the laws, freedom of speech, due process, petition to the Emperor and all the guarantees afforded to criminal defendants, are given to foreigners as well as subjects. In this connection, it should be noted that foreigners are exempt from military service.[49] All in all, it is clear that foreigners in Ethiopia enjoy full protection of the law and most of the rights enjoyed by subjects.

At this juncture a word should be said about the other provisions of law relating to foreigners. The Foreigners Registration Proclamation[50] requires all foreigners resident in the Empire to register with the appropriate authorities within 30 days of arrival. In Addis Ababa they must register with the Director of Public Safety; elsewhere they must register with the Superintendent of Police. This is applicable to all persons above the age of sixteen. The registration must be renewed annually.

At present there is no comprehensive law relating to the deportation and expulsion of foreigners. When the Minister of Interior decides that any foreigner is an undesirable immigrant, he is to notify the Minister of Foreign Affairs, who may cancel his resident permit. Then, the Minister of Interior is to arrange for the deportation of the foreigner.[51] Under Article 154 of the Penal Code, the court may order the expulsion from the Empire either temporarily or permanently of a foreigner who has been convicted of crime and has been sentenced to a term of simple imprisonment of three years or more, or who is a habitual offender sentenced to internment, or who is an irresponsible or partially responsible offender recognized by expert opinion as a danger to public order.[52] It

41. Civil Code of Ethiopia, Article 390. Likewise, foreigners may not be members of a Farm Workers Cooperative. Farm Workers Cooperative Decree, Negarit Gazeta, October 27, 1960.
42. Civil Code of Ethiopia, Article 393.
43. Civil Code of Ethiopia, Articles 391-2.
44. For the law with respect to the issuance of work permits to foreigners see Order 26 of 1962, Chapter VI., Negarit Gazeta, September 5, 1962.
45. Revised Constitution of Ethiopia, Article 45.
46. Revised Constitution of Ethiopia, Article 46.
47. Revised Constitution of Ethiopia, Article 49.
48. Revised Constitution of Ethiopia, Article 50.
49. The duties of Ethiopian subjects and others are contained in Article 64 of the Revised Constitution.
50. Proclamation 57 of 1944, Negarit Gazeta, April 29, 1944.
51. Proclamation 36 of 1943, Negarit Gazeta, April 30, 1943. This act governs immigration.
52. In such a case the court should consult the competent public authority.

would be desirable if Parliament would enact a comprehensive law relating to deportation and providing for judicial review for persons ordered deported. Emergency situations could be excluded. In any event, at present foreigners are not advised of the circumstances in which they can be deported except as incident to punishment for crime.

Now that we have considered the provisions of the law relating to Ethiopian nationality and the status of foreigners, let us turn our attention to those persons who, while not citizens of Ethiopia, are domiciled here.

DOMICILE

The Meaning of Domicile: Domicile and Residence Defined

A person's residence is the place where he has his habitation; legally, residence means the place where a person normally resides.[53] In Ethiopia, when a person lives in a place for three months, he is deemed to have his residence there.[54] While residence may have legal significance for certain purposes, *e.g.*, local jurisdiction, it is not, on the whole, a significant legal contact.

Domicile differs from residence in two respects. First, domicile is a unitary concept; a person may have several residences,[55] but only one domicile at a given time.[56] The latter statement must be taken to mean that he may only have one domicile at a time *under the law of a particular state.* As we will see, different states have differing conceptions of domicile. Ethiopia may find that a person is domiciled in Ethiopia in accordance with the provisions of the Ethiopian Civil Code; France may find that the same person is domiciled in France under the provisions of the French Civil Code.[57] With this qualification, however, a person can have only one domicile at a given time. Secondly, domicile denotes an element of permanency; it is the place where a person resides and has established his interests with the intention of living there "permanently" — a term which also has different meanings. But we may say as a general proposition that domicile requires residence in a particular place coupled with the intention to live there "permanently".

Domicile under the Civil Code

Article 183 of the Civil Code provides that "the domicile of a person is the place where such person has established the principal seat of his business [58] and of his interest with the intention to reside there permanently." We must define the word "permanently" in this context, and it is submitted that "permanently" should mean "for an indefinite period of time." What may be called a "floating intention to return" should not be suffi-

53. Civil Code of Ethiopia, Article 174.
54. Civil Code of Ethiopia, Article 175 (2).
55. Civil Code of Ethiopia, Article 177 (1).
56. Civil Code of Ethiopia, Article 186.
57. Each state must decide where a person is domiciled in accordance with its own law. As the High Court pointed out in *Kokkinos v. Kokkinos, Civil Case No.* 477/52: "The fact that the petitioner may at Greek law be considered as domiciled in Ethiopia under article 54 of the Greek Civil Code does in no way imply that he would have to be considered as domiciled here according to Ethiopian law. As already mentioned, it is Ethiopian law alone that determines this point." See also *In re Annesley* [1926] 1 *Chancery* 692, where the Court of Appeal held that a British subject was domiciled in France under the British conception of domicile, though under French law she would not be deemed to have acquired a French domicile.
58. The term "business" should be construed to mean employment.

cient to prevent a person from acquiring a domicile here. For example, let us assume that a Greek merchant comes to Ethiopia, brings his family with him, and invests substantial amounts of capital in a business. He plans to return to Greece when he retires. He should be considered domiciled in Ethiopia, as his intention is to remain in Ethiopia indefinitely.

This interpretation of domicile is buttressed in Ethiopia by the provisions of Article 184 of the Civil Code, which provide as follows:

(1) Where a person has his normal residence in a place, he shall be deemed to have the intention of residing permanently in such place.

(2) An intention to the contrary expressed by such person shall not be taken into consideration unless it is sufficiently precise, and it is to take effect on the happening of an event which will normally happen according to the ordinary course of things.

For example, if a person came to Ethiopia to work on a five year contract, intending to leave after the expiration of the five years, he would not be domiciled in Ethiopia, though he has his residence here. The intention to leave is sufficiently precise and will take place upon the happening of a definite event *i. e.* the expiration of the five years. In the case of *Shatto v. Shatto*,[59] the Supreme Imperial Court construed Articles 183 and 184 and concluded that "permanent" meant for an indefinite period of time. The person whose domicile was in question was a "safari outfitter," carrying on his private business here, and had been resident in Ethiopia for six years. The High Court (with one member dissenting) denied his petition for homologation of divorce on the ground that he was not domiciled here, as he might some day leave the country (he was an American citizen); therefore, it concluded that he did not "intend to live in Ethiopia permanently." In reversing the decision, the Supreme Imperial Court held that "the majority was certainly wrong to foresee too much the future." Since he was residing in Ethiopia and had his business here, the presumption of Article 184 applies; in the absence of clear evidence of contrary intention, the presumption was not rebutted, and he was deemed domiciled in Ethiopia. To the same effect is the case of *Zissos v. Zissos*,[60] involving a Greek national who had lived in Ethiopia for some years and whose business was here.

The approach toward domicile under the Civil Code is vastly different from the earlier approach, at least as evidenced by the holding of the Supreme Imperial Court in the case of *Pastori v. Aslanidis*, [61] decided before the Code. The person whose domicile was in question was a Greek national who came to Ethiopia in 1910. He established a business here and was married here. He made a number of visits to Greece during that time and went there when he was seriously ill; he returned to Ethiopia after he was cured. The court concluded from his testamentary will that he intended it to be governed by Greek law, since it would be valid under Greek law, but not under Ethiopian law, and since he directed that it be executed by the Greek consul in Addis Ababa.

The court held that he was not domiciled in Ethiopia. It said that the test of whether a person acquired a domicile was whether "he intended to make the new country his permanent home in such a way as to detach himself completely from his country of origin and from its laws and customs and to subject himself permanently, as regards personal law, to the laws and customs of the new country." In following what is apparently the British approach, the court emphasized the following:

(1) length of residence, even though continuous, is not sufficient to establish a change of domicile;

59. *Civil Appeal No.* 784/56, I Journal of Ethiopian Law 190 (1964.)

60. *Civil Appeal No.* 633/56.

61. *Civil Appeal No.* 338/47.

(2) change of domicile must clearly be proved, and the burden of proof required to show a change from the domicile of origin is greater than in the case of a domicile of choice. The court concluded that there was not sufficient evidence to show that the person had acquired a domicile of choice in Ethiopia. It emphasized that he continued his "Greek way of life" here and thus did not have the intention to acquire an Ethiopian domicile.

The result would clearly be different under the Code. He has both his business and his normal residence in Ethiopia. The presumption then is that he was domiciled in Ethiopia. The intention to return to Greece was "floating" at best, and there was no fixed event, upon the happening of which he would return to Greece. In fact, he died here. Therefore, there would be no evidence to rebut the presumption that he intended to live here permanently, and today such a person would be considered domiciled in Ethiopia.

Ethiopia's policy, as evidenced by Articles 183 and 184 of the Code and the interpretations the courts have put upon them, favors a finding of domicile when a person lives and works here. This insures that foreigners residing here and having their business or employment here shall be deemed to be Ethiopian domiciliaries absent a clear and precise intention to the contrary.[62]

On the other hand, the Code does not require that a person must have spent any particular amount of time in Ethiopia in order to acquire a domicile here, as long as the necessary intent is present. Presumably the Ethiopian courts would reach the same result in a case such as *White v. Tennant* [63] as did the American state court that decided the case. The person whose domicile was in question sold his home in State A and moved to a new home in State B with his wife. Previously he had shipped some movable property to State B. He was in State B about a day when his wife became ill. He took her back to State A, where she would stay with relatives intending to immediately return to State B; the wife would return to State B when her health improved. The husband died suddenly while still in State A. It was held by the court in State A that he had acquired a domicile in State B. He has his residence there, was physically present there, and had the intention of living there permanently. There was a concurrence of residence and the intention to live there permanently. Since there is no requirement under the Code that a person have his residence in Ethiopia for any period of time, the same result should be reached in Ethiopia.

Moreover, there is no requirement under the Code that the person have a fixed place of abode in Ethiopia. Under Article 177 of the Code, a person may have several residences. The term "normal residence in a place," as used in Article 184, should refer to residence in Ethiopia rather than residence in a particular part of Ethiopia. So, if a person lived part of the time in Addis Ababa, part of the time in Gondar, and part of the time in Jimma, staying in hotels in each place, he should be deemed domiciled in Ethiopia, though he does not have a permanent residence in any part of the Empire.[64]

---

62. No formalities are required to obtain an Ethiopian domicile.
63. 31 West Virginia Reports 790, 8 Southeastern Reporter 596 (1888).
64. For cases involving this question and holding that the person acquired a domiciled in that state, see *Marks v. Marks, 75 Federal Reporter (U.S. Circuit Court, Tennessee)* 321 (1896); and *Winans v. Winans*, 205 *Massachusetts Reports* 388, 91 *Northeastern Reporter* 394 (1910).

    Article 185 of the Code provides that where a person performs the work of his calling in a place and passes his family or social life in another place, he shall in case of doubt be deemed to have his domicile in the latter place. Such a situation confronted two American state courts, where the person whose domicile was in question had his business in State A and lived with his family in State B. The court in State A held that he was domiciled there, *In re Dorrance's Estate*, 115 *New Jersey Equity Reports* 268, 170 *Atlantic Reporter* 601 (1934); the court in State B held that he was domiciled in State B, *In re Dorrance's Estate*, 309 *Pennsylvania Reports* 151, 163 *Atlantic Reporter* 303 (1932). The question is clearly resolved in Ethiopia by the provisions of Article 185.

The intention under Articles 183 and 184 must be the intention of living in Ethiopia rather than the intention of acquiring a domicile. These sections would prevent a person from acquiring a domicile in Ethiopia simply by renting a room here while actually living elsewhere. Consider the situation presented in a case such as *Kirby v. Town of Charleston.*[65] For legal purposes the party wanted to acquire a domicile in State A. He rented a hotel room there, but never used it and continued to live in his house in State B. It was held that his domicile remained in State B, as he never had the intention to *live* in State A. The same result would be reached under Article 183 of the Code, since in such a situation there was no intention to live here permanently.

Article 187 deals with the problem that arises when a person has left his former domicile with the intention not to return, but has not yet acquired a new domicile. Let us say that a Greek national who has been domiciled in Ethiopia decides to return to Greece and live there permanently. He leaves Ethiopia, but dies before he reaches Greece. The question is where he was domiciled at the time of death. He has abandoned his Ethiopian domicile, but has not yet acquired a Greek domicile, since he was not physically present there — the intention and physical presence have not coincided. In such a situation English courts have held that the person reacquires his domicile of origin, that is, his domicile at the time of his birth.[66] This may be a relic from colonial days when many Englishmen were domiciled in the colonies and were returning home in their old age. When such a person died, if he were found domiciled in England, English law rather than colonial law would determine the distribution of his estate. The American courts, on the other hand, have held that the person retains his former domicile until he acquires a new one.[67] Ethiopia follows the latter approach; under Article 187 of the Civil Code, a person retains his domicile in the locality where it was established until he establishes his domicile in another place.

A married woman has the domicile of her husband as long as the marriage lasts unless he is affected by judicial or legal interdiction;[68] it is not possible for her to acquire a separate domicile,[69] though she may acquire a separate residence.[70] An unemancipated minor shall have the domicile of his guardian,[71] though he too may acquire a separate residence.[72] An interdicted person retains his domicile at the time of his interdiction[73], though he also may acquire a residence of his own.[74]

In summary, the law is very clear with respect to the acquisition of Ethiopian domicile. Persons having their normal residence here are presumed to be domiciled here unless this presumption is rebutted by clear evidence of contrary intent, and their leaving Ethiopia is to take place upon the happening of an event that is likely to occur. This means that persons living and working here for an indefinite time will be held by the Ethiopian courts to be domiciled here. The fact that the law is clear has great significance in the

65. 99 Atlantic Reporter 835 (New Hampshire Supreme Court 1916).

66. *Udny v. Udny,* [1869] *Law Reports,* 1 *Sc. & Div.* 441.

67. *In re Jones,* 192 *Iowa Reports* 78, 182 *Northwestern Reporter* 227 (1921).

68. Civil Code of Ethiopia, Article 189.

69. The recent trend in the United States and in some other countries has been to permit the wife to acquire a separate domicile even during the continuance of the marriage. Ethiopia's approach to domicile is the same as her approach to nationality.

70. Civil Code of Ethiopia, Article 178.

71. Civil Code of Ethiopia, Article 190.

72. Civil Code of Ethiopia, Article 178.

73. Civil Code of Ethiopia, Article 190.

74. Civil Code of Ethiopia, Article 178.

determination of the question of the governing personal law, to which we now turn our attention.

THE PERSONAL LAW

The Nature of the Problem

In all legal systems certain questions are determined by the *personal law*. By personal law we mean the law of a state with which an individual has some connection. The court must decide which law determines matters of a person's status — does he have the capacity to marry, what are the rights of his children and the like. The law that determines such questions is called his personal law. In many states personal law determines all questions of succession to movable property. The questions that are determined by personal law are found in each state's rules of private international law, or conflict of laws, as it is sometimes called.[75] It is that law which decides what state's law is looked to for the personal law, *e.g.*, the law of the state of which the person is a national or the law of the state where the person is domiciled.

The problem is complicated in Ethiopia by the fact that at present the private international law has not been codified. The provisions of the draft Civil Code dealing with private international law were not included in the final enactment.[76] Until such time as this codification takes place, the question will have to be determined by case law. Before considering the Ethiopian cases on the subject, let us look at the approaches other nations have taken to this question.

Approaches toward the Governing Personal Law

Three distinct approaches have been taken toward the question of governing personal law, which, for purposes of convenience, may be called the civil law approach, the common law approach and the Latin-American approach.

Civil law countries have by and large adopted nationality as the governing personal law, though some are turning toward domicile. For example, Article 3 of the French Civil Code provides that "the laws relating to the condition and privileges of persons govern Frenchmen, although residing in a foreign country;" and the French rules of private international law hold that the personal law of foreigners residing in France is the law of their nationality.[77] Article 17 of the Italian Civil Code provides that "the status and capacity of persons and family relationships are governed by the law of the State to which the persons belong."[78] To the same effect is Greek law[79], Hungarian law[80], Bulgarian law[81], and the law of many other European countries and countries that employ the civil law.[82]

75. It has been held in Ethiopia, as we will see *infra* that personal law governs questions of status and succession to movables.

76. David, A Civil Code for Ethiopia, 37 *Tulane Law Review* 187 (1963).

77. See the discussion in Planiol, *Treatise on the Civil Law* 181 (English Trans. 1959).

78. See the discussion in McCusker, The Italian Rules of the Conflict of Laws, 25 *Tulane Law Review* 70, 75 (1950).

79. See the discussion in Nicoletopoulos, Private International Law in the New Greek Civil Code, 23 *Tulane Law Review* 452, 455 (1949).

80. See the discussion in Drobing, Conflict of Laws in Recent East European Treaties, 5 *American Journal of Comparative Law* 487, 489 (1956).

81. *Ibid.*

82. See I Rabel, *The Conflict of Laws: A Comparative Study* 113-115 (2d ed. 1958). See also McCusker *supra*, note 78.

In examining the reasons for using nationality, we find that such reasons may be historical, may follow from the theoretical nature of the system, or may be quite practical. In commenting on Italian law, one writer observed[83] that the retention of the nationality principle in Italy under the 1942 Civil Code was due to two reasons, one historical, the other political. He points out that the nationality principle was most fully developed by an Italian, Mancini, during the time of Italy's unification. Mancini's thesis was that law is personal and not territorial, that it is made for a given people and not for a given territory[84]. In other words, a person carries his national law with him irrespective of where he resides.[85] Thus in personal matters, national law rather than the law of domicile governs. The political reason, according to the author, lies in the "intensely nationalistic doctrines of more than twenty years under Mussolini." He summarized these doctrines as follows:

> "It would be an abdication of sovereignty if a State renounced its right to govern its national who has emigrated; conversely, it would be a violation of the sovereignty of the emigré's nation if the receiving nation should apply to the emigré laws not made for him; finally, legal ties of the emigré with his fatherland contribute to his fidelity to national institutions."

In other words, it was strongly in the interest of Italy to bind Italians living abroad by Italian laws; reciprocity demanded that the same treatment be accorded to foreigners — far fewer in number — who happened to reside in Italy.

Another author, commenting on Greek law,[86] points out that Greece has a large number of nationals who emigrate to various parts of the world (there is a substantial number in Ethiopia) and that, therefore, "no reason could be strong enough to lead to the abandonment of the nationality system, the continuation of which was considered as a measure of self-preservation." This desire to control the personal status of nationals residing abroad even takes precedence over consistent adherence to political ideology. For example, treaties between socialist states such as Hungary and Bulgaria retain nationality as the basis of personal law. One writer, commenting on this treaty,[87] says that the reaffirmation of the nationality principle is "astounding" and inconsistent with socialist theory. He asks "is not the application of this or that form of socialist law to a comrade of this or that socialist state rather irrelevant." While the result could be explained on the basis of the "inviolable sovereignty of each socialist state," nonetheless, it seems that the desire to control nationals residing abroad is great, even if they are residing in other socialist states.

Finally, nations with a large number of nationals residing abroad may fear that the personal status of these persons will be governed by an alien legal system, with alien ideas, particularly as to marriage and the family. One writer, in pointing out why Belgium, The Netherlands and Luxembourg have followed the nationality system,[88] observes that "many Eastern countries have quite different conceptions of marriage and parent-child relationships." He says that western states should not accept bigmay or the like as legal for its citizens domiciled in those nations; consequently, it must hold that the personal law should be that of nationality rather than domicile.

83. McCusker, *supra* note 78, at p. 72.

84. See the discussion of Mancini's theory in Stumberg, *Cases on Conflicts* 5 (1956).

85. The only exception would be when the public policy (ordre public) of the state where a person resided demanded that its law be applied. Thus, Article 3 of the French Civil Code provides that "the laws of police and public security bind all the inhabitants of the territory."

86. Nicoletopoulous, *supra* note 80, at p. 455.

87. Drobing, *supra* note 80, at p. 496.

88. Meijers, The Benelux Convention on Private International Law, 2 *American Journal of Comparative Law* 1-2 (1953).

It is for reasons such as these that many nations have adopted nationality as the basis of personal law.

The same type of considerations have led England and the United States to adopt domicile as the basis of personal law. Anglo-American conflicts law followed the territoriality theory, first developed by Huber, but given its greatest impetus in later times by the writings of Joseph Story, an American jurist.[89] The essence of the territoriality theory was that the laws of each nation had force within the boundaries of that nation, but not without. Persons did not carry their national law with them; rather they were subject to the laws of the state where they lived. Consequently, the governing personal law was that of a person's domicile — the place where he was with the intention to remain — rather than his nationality.

Moreover, there were comparatively few Englishmen residing outside of England except for the colonies. And England controlled the legal system in the colonies; thus, she could insure the application of English law to British nationals where she deemed this desirable. Likewise, by using domicile as the governing personal law, the American states exercised control over the large number of foreign immigrants: few Americans are domiciled abroad, even today.

A number of Latin-American states follow a mixed system. Local law is applied to foreigners domiciled there — to this extent they follow the common law approach. However, national law is used to govern the personal relations of their nationals domiciled in other countries. With variations, this approach is taken in Chile, Colombia, Ecuador. Costa Rica, El Salvador, Peru, Venezuela and Mexico.[90] This accomplishes the goal of civil law countries, namely, control of nationals domiciled abroad.

The proposed French Draft on Private International Law, which has not yet been adopted, would modify the traditional approach by providing that foreigners domiciled in France for more than five years would have their status and capacity governed by French law. Frenchmen domiciled elsewhere would continue to be subject to French personal law.[91]

Such an approach is suitable, perhaps, for a country having a large number of its citizens domiciled abroad, and a large number of foreigners domiciled there. Still, it cannot help but cause ill-will among nations; if a nation believes that personal law should be that of nationality for its nationality domiciled abroad, then it should not deny to other nationality the same control over their citizens that it purports to exercise over its own.

The Governing Personal Law in Ethiopia

As stated previously, there are no statutory provisions dealing with personal law in Ethiopia. In the past, judicial decisions have gone both ways on the question, some holding nationality and others holding domicile to be the basis of personal law. Of the cases dealing with the question that are known to the author two High Court decisions held that nationality was the governing personal law. *In Verginella v. Antoniani,*[92] the petitioner, an Italian subject admittedly domiciled in Ethiopia, sought a decree of judicial separation from his wife. The institution of judicial separation, according to the court, was not known in Ethiopian law. The court held that Italian law should apply and ordered the judicial separation. Its reasons for applying Italian law were as follows:

89. See the discussion in Stumberg, *supra* note 84, at p. 3.

90. Nadelman, The Question of Revision of the Bustmante Code, 57 *American Journal of International Law* 384 (1963).

91. Article 27.

92. Civil Case No. 905/50.

(1) the petitioner was an Italian subject;
(2) the respondent was also an Italian subject;
(3) the marriage was celebrated in accordance with Italian law;
(4) there was no provision in Ethiopian law dealing with judicial separation; and
(5) it was the practice of the Ethiopian courts to apply principles of foreign law in matters between foreigners where Ethiopian law makes no provision for the matter.

This reasoning ignores the fact that the petitioner was domiciled in Ethiopia; moreover, the result of this decision is that the petitioner receives a remedy in Ethiopia that is not available to Ethiopian subjects.

Another case to the same effect is *Katsoulis v. Katsoulis*,[93] where the parties were Greek nationals domiciled in Ethiopia. The petitioner sought a divorce on grounds of desertion. The court held that the case should be decided according to the national law of the parties and ordered a divorce based on the Greek Civil Code. In the cases of *Andriampanana v. Andriampanana*[94], and *Zervos v. Zervos*, [95] the court did not reach the question, since there was no conflict between Ethiopian law (the parties were domiciled here) and the law of their nationality; the petitioner was entitled to a divorce under the law of either state. It should be noted that all these cases were decided prior to the effective date of the Civil Code; as we will see, under the Code the courts will not usually take jurisdiction to decree a divorce.

Two Supreme Imperial Court cases, on the other hand, have held that domicile should be the basis of personal law. In *Yohannes Prata v. W/T Tsegainesh Makonnen*,[96] the court was confronted with a situation of an Italian national who died domiciled in Ethiopia. He was married to a woman in Italy and left children by her. He lived with an Ethiopian woman and also left children by her, who would be considered illegitimate under Italian law. Under Italian law illegitimate children cannot inherit from the father. Under Ethiopian law the concept of illegitimacy is unknown. All children inherit equally from the father, as long as paternity is established, and here paternity was admitted. If Italian law—the law of nationality—were applied, the Italian children alone would inherit. If Ethiopian law — the law of domicile — were applied, all children, Italian and Ethiopian, would share equally. The Supreme Imperial Court held that domicile was the basis of personal law and applied Ethiopian law. The English version of the judgment states the following:

> "Now the personal law may be either the law of nationality of the deceased or the law of his domicile at the time of his death. There is no enacted law in Ethiopia to lay down which of these two laws is to be followed and decided cases have not been consistent in following one law or the other. The recent trend of jurisprudence, however, has been in favour of the law of domicile. In our opinion the law of domicile is more adequate to govern the juridical situations and relationships given rise to by a person who has established his domicile in a particular country without giving up his original nationality; we consider, therefore, that the law of domicile should be the law governing all matters of personal status."

This case was followed and applied in *Alfredo Pastori v. Mrs. Aslanidis and George Aslanidis*,[97] which held that the question of proprietary rights between husband and

93. Civil Case No. 250/51.
94. Civil Case No. 441/52.
95. Civil Case No. 154/52.
96. Civil Appeal No. 638/49.
97. Civil Appeal No. 338/47.

wife was governed by the law of the matrimonial domicile rather than the law of nationality.[98]

The result in the *Prata* case, particularly, demonstrates the soundness of employing domicile as the basis of personal law in Ethiopia. There is a large number of foreigners domiciled in Ethiopia; Ethiopia is very hospitable to foreigners and many have chosen to spend their lives here, where the opportunities open to them are often greater than in the country of their nationality. As we saw earlier, the legal distinctions between Ethiopians and foreigners are few. There are far fewer Ethiopians domiciled in other countries. The foreigners domiciled here live their lives here, engage in business here, marry and produce children here. Ethiopia has a strong interest in regulating the status of these persons and the succession to their movable property. A prime reason for continental nations employing nationality as the basis of personal law is that they have many more nationals residing abroad than they do foreigners domiciled there and want to control the status of their nationals. In other words, the rule as to governing law is in no small part fashioned on the basis of the interest of the country applying the rule. Ethiopia should protect its own interests and thus use domicile as the basis of personal law. As pointed out earlier, domicile is easily determined under the provisions of the Civil Code; therefore, nationality should not be chosen on the ground that it is easier to determine than domicile. In summary, it is submitted that the courts of Ethiopia should hold that the personal law should be the law of the place where a person is domiciled rather than the law of the state of which he is a national.

There is a collateral question, which relates to the circumstances under which the courts of Ethiopia will take jurisdiction to determine matters of family status such as divorce. The courts have held that they will not take jursidiction unless one of the parties is domiciled here. In *Hallock v. Hallock*, [99] the party seeking a divorce was an American employed by Ethiopian Airlines. He was here on a term contract and was domiciled in the State of Alabama in the United States. He contended that under the law of Alabama residence in the state for at least one year was sufficient to confer jurisdiction on the courts to issue decrees of divorce. The Supreme Imperial Court quite correctly held that what the Alabama courts would do was irrelevant in Ethiopia. The court held that in the absence of legislation by Parliament establishing residence as a basis of jurisdiction to divorce, the court would require that at least one of the parties be domiciled in Ethiopia. Consequently, the petition was dismissed. The same result was reached in *Kokkinos v. Kokkinos*,[100] where the court found that the petitioner was not domiciled in Ethiopia. In a number of other cases, the court, in taking jurisdiction, emphasized that at least one of the parties was domiciled here.[101] It should be pointed out that now the husband must be domiciled in Ethiopia, since under the Code the wife's domicile follows that of the husband as long as the marriage subsists.[102] Since the courts will take jurisdiction only on the basis of domicile and since it appars that domicile will be the basis of personal law, it follows that in divorce actions only Ethiopian law will apply.

There is also a procedural reason why this should be so. Under the provisions of the Civil Code cases of divorce must be heard initially by the family arbitrators rather than the courts. Difficulties arising out of marriage must first be submitted to the family

98. Note that in that case the court found that the parties were not domiciled in Ethiopia. See the discussion, *supra* note 61 and accompanying text. Under the provisions of the Civil Code they would now be found domiciled here.

99. Civil Appeal No. 249/50.

100. Civil Case No. 477/52.

101. Verginella v. Antoniani, *supra* note 92; Katsoulis v. Katsoulis, *supra* note 93; Andriampanana v Andriampanana, *supra* note 94; Zervos v. Zervos, *supra* note 95.

102. Civil Code of Ethiopia, Article 189.

arbitrators,[103] and the role of the court is to decide whether or not a divorce has been pronounced.[104] As the Supreme Imperial Court pointed out in the case of *W/O Jamanesh Amare v. Ato Teferra Wolde Amanuel*:[105]

> "As regards the question of divorce, the Civil Code has established certain rules which must be complied with. In the first place, the Civil Code has established a body of persons called the family arbitrators to whom all difficulties arising between the spouses during marital life must be submitted.... Petitions for divorce must be submitted to the family arbitrators; and until such time when the petition for divorce has been submitted to the family arbitrators and when the latter have pronounced their decision, the Court has no jurisdiction to deal with divorce; the Court can, however, decide whether or not a divorce has been pronounced by the arbitrators."

The Code makes no provision for special treatment for persons not domiciled here, and the court should not read an exception for them into it. It would be unsound for the court to appoint family arbitrators or to proceed to hear the case in the absence of family arbitrators;[106] as the court pointed out in the case of *Kokkinos v. Kokkinos*,[107] it is more reasonable for such persons to petition the courts of their domicile for the divorce.

In summary, the courts will not hear a petition for divorce unless the husband is domiciled in Ethiopia; note that if the husband is domiciled here, the wife is also. Divorce in Ethiopia must be handled by the family arbitrators rather than the court. Of course, Ethiopian substantive law must be applied by the family arbitrators. If the courts used nationality as the basis of personal law in divorce actions between foreigners domiciled here, it would have to by-pass the family arbitrators. It is difficult to see why the courts should do so; for the reasons indicated previously, foreigners domiciled here should be subject to Ethiopian law rather than to the law of their nationality. If this approach is followed, there will be no question of applying foreign law in a divorce action. Jurisdiction to divorce then exists only on the basis of domicile, and under the Code divorce must be pronounced by the family arbitrators rather than the courts.

CONCLUSION

In this paper an attempt has been made to discuss the Ethiopian law relating to nationality, domicile and the governing personal law. The Nationality Law of 1930 sets forth the conditions for the acquisition and loss of Ethiopian nationality. The Civil Code clearly defines domicile and demonstrates legislative intention that foreigners residing here and having their business or employment here shall be deemed Ethiopian domiciliaries absent a clear intention to leave Ethiopia at a definite time in the future. The recent trend of decisions would indicate that domicile is to be the basis of personal law, which is very sound in view of the large number of foreigners domiciled here. At such time as private international law is codified, a provision to the effect that domicile is the basis of personal law should be included in the codification.

103. Civil Code of Ethiopia, Articles 725-728.

104. Civil Code of Ethiopia, Article 729.

105. Civil Appeal No. 101/56.

106. However, in some circumstances, where the appointment of family arbitrators is impractical, the court may decree the divorce. *Forti v. Forti*, Civil Case No. 174/55. In that case the whereabouts of one of the parties was unknown.

See also *Zevi v. Zevi*, Civil Appeal No. 1109/56, where the Supreme Imperial Court held that the majority of the arbitrators had erred in denying the divorce. Therefore, it confirmed instead the report of the minority of the arbitrators granting the divorce.

107. *Supra* note 100.