

## QUIZZES IN ETHIOPIAN FAMILY LAW

by George Krzeczunowicz \*

Readers of the *Journal of Ethiopian Law* are invited to test their knowledge of the law and their skill in formulating answers to legal quizzes by submitting to the *Journal* written answers to the following problems selected from the author's 24 *Problems in Ethiopian Family Law*, which was published in mimeographed form during the 1970-1971 academic year. The best written answers to each quiz submitted to the *Journal* in either Amharic or English will be printed in volume 9-1 of the *Journal*, scheduled to appear in December, 1972. Answers should be submitted before September 11, 1972. Each participant whose answer is selected for publication will receive a free copy of the *Journal* issue in which his answer appears plus five off-prints of his answer. The participant who submits the most satisfactory answer to all four quizzes will receive a year's subscription to the *Journal* without charge in addition to a free copy of volume 9-1 and the author's off-prints for any answer which is published. Participants are not obliged to answer all quizzes.

### Problem 1

As shown by Professor René David,<sup>1</sup> the expert draftsman of the Civil Code, the draft rule providing for cessation of *affinity* upon marriage-dissolution was (for reasons unknown) reversed by Parliament to the effect that the affinity bond subsists notwithstanding such dissolution: see Article 555 of the Civil Code.<sup>2</sup>

What are the effects of this parliamentary reversal in the fields of:

1. impediments to marriage?
2. maintenance duties?

### Problem 2

"Article 852 of the Civil Code, which was added to the Code by the Codification Commission, makes the (earlier drafted) Article 713 redundant."<sup>3</sup>

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1. See R. David, *Le droit de la famille dans le code civil éthiopien* (Milano, Giuffrè, 1967), p. 15, fn. 1.

2. Article 555 states:

Art. 555.—*Cessation of Affinity.*

A bond of Affinity shall subsist in the direct and collateral line notwithstanding that the marriage by which it was created is dissolved.

(Note that the old title of this Article, contradicting the present content, was inadvertently retained.)

3. The texts of these Articles are as follows:

Art. 713.—*No rights of succession.*

An irregular union shall not create any right of succession between the man and the woman engaged in such union.

Art. 852.—*Devolution upon the State.*

In default of relatives, the inheritance of the deceased shall devolve upon the State.

1. Is this allegation of redundancy right or wrong and why?
2. Suppose that a legacy to a concubine is judicially annulled as "contrary to law" (Art 866(1)),<sup>4</sup> the law deemed infringed being that of Article 713. Is such decision right or wrong and why?

**Problem 3**

The Codification Commission made a number of amendments and additions to the draft provisions submitted by Professor David. How can we reconcile commission-added Article 626 of the Civil Code<sup>5</sup> with:

1. commission-added Article 591,<sup>6</sup> providing in sub-article (c) that error concerning the other spouse's "inability"<sup>7</sup> to consummate the marriage is an error of substance (which justifies marriage-dissolution under Article 618)?<sup>8</sup>
2. commission-drafted Article 696(3)<sup>9</sup> to the effect that the consequences of judicial marriage-dissolution depend, among other things, on marriage-consummation?

**Problem 4**

As shown by Professor David,<sup>10</sup> a draft provision submitted to the Codification Commission gave *bigamous* marriages the legal status of concubinate (irregular union). The Commission rejected this provision. No reasons are recorded. The rejection can mean either:

4. The text of Article 866(1) is as follows:
  - (1) A provision contained in a will shall be of no effect where its object is contrary to the law or morality.
5. See David, cited above at note 1, p. 58, fn. 40. The text of Article 626 states:
 

Art. 626.—*Consummation of marriage.*  
The effects of marriage shall in no way depend on the real or presumed consummation of the marriage.
6. *Id.*, p. 55, fn. 22. The text of Article 591 states:
 

Art. 591.—2. *Restrictive enumeration.*  
The following errors only shall be considered as errors of substance: . . . .  
(c) error on the state of health or the bodily conformation of the spouse, who is affected by leprosy or who does not have the requisite organs for the consummation of the marriage.
7. See Amharic version.
8. The text of Article 618 reads:
 

Art. 618.—*Error.*  
(1) Whosoever has contracted a marriage under the influence of an error of substance may apply to the court to order the dissolution thereof.  
(2) Such application may not be made six months after the discovery of such error, and, in any case, two years after the celebration of the marriage.
9. See David, cited above at note 1, p. 62, fn. 69 *in fine*. The text of Article 696(3) states:
 

(3) It shall in particular have regard to the good or bad faith of the spouses, the fact that the marriage has been consummated or not, the interest of the children, if any, born of the dissolved union and the interest of third parties in good faith.
10. See David, cited above at note 1, p. 57, fn. 37.

1. that, notwithstanding Article 585 *cum* 3347(1) of the Civil Code<sup>11</sup> and Article 616 of the Penal Code,<sup>12</sup> marriages of most bigamists (the moslems) continue to be *legal marriages* in view of the 1944 Proclamation on Kadis and Naibas councils;<sup>13</sup> *or*

2. that bigamous "marriages", far from being legal marriages, must be denied *even* the legal effects of irregular union (*i.e.*, those of Articles 714, 715, 717);<sup>14</sup> *or*

3. that the rejected provision was *superfluous*, since, for the purpose of such effects most bigamous unions fully satisfy the "state of fact" definition of irregular union in Articles 708-709(1);<sup>15</sup>

11. The texts of these provisions are as follows:

Art. 585.—*Bigamy.*

A person may not contract marriage so long as he is bound by the bonds of a preceding marriage.

Art. 3347.—*Repeals.*

(1) Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.

12. Article 616 of the Penal Code states:

Art. 616.—*Bigamy.*

(1) Whosoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled, is punishable with simple imprisonment, or, in grave cases, and especially where the offender has misled his partner in the second union as to this true state, with rigorous imprisonment not exceeding five years.

(2) Any unmarried person who marries another he knows to be tied by the bond of an existing marriage, is punishable with simple imprisonment.

(3) Limitation of criminal proceedings is suspended until such time as one of the two marriages shall have been dissolved or annulled.

13. Kadis and Naibas Councils Proclamation, 1944, Proc. No. 62, *Neg. Gaz.*, year 3, no. 9.

14. The texts of these Articles are as follows:

Art. 714.—*Surety for debts of woman.*

A man engaged in an irregular union shall stand joint and several surety of the woman, by virtue of the law, in all contracts which are concluded by the woman and which are necessary for the maintenance of the man or of the woman or of the children born of the irregular union.

Art. 715.—*Filiation of children.*

The filiation of the children born of an irregular union shall be established in accordance with the Chapter of this Title relating to "Filiation".

Art. 717.—2. *By the man.*

(1) A man engaged in an irregular union may at any time put an end to such union.

(2) In such a case, if equity so requires, he may be condemned by the court to pay an indemnity to the woman corresponding to the expense of the maintenance of the woman for not more than six months.

15. The texts of these provisions are as follows:

Art. 708.—*Definition.*

An irregular union is the state of fact which is created when a man and a woman live together as husband and wife without having contracted marriage.

Art. 709.—*Explanation.*

(1) It is necessary and sufficient in order to have an irregular union that the behaviour of the man and of the woman be analogous to that of married people.

4. that the rejected provision was superfluous, since apart from final validation possibilities (Art. 613),<sup>16</sup> bigamous marriages are always valid until the occurrence of a sanctioning dissolution, if any (Art. 612 *cum* Art. 696 (1), (2)).<sup>17</sup>

Choose and argue *one* of the above propositions. With respect to the second and third propositions, note that the Commission also rejected a provision allowing the husband, wife consenting, to keep an irregular union and replaced it with the mandatory Article 643(2).<sup>18</sup> But note also that irregular unions are recognized and regulated by law (Arts. 708-720).<sup>19</sup>

16. The text of Article 613 states:

Art. 613.—3. *Validation.*

The marriage contracted by the bigamous spouse shall become valid on the day when the former spouse dies.

17. The texts of these provisions are as follows:

Art. 612.—2. *Dissolution of marriage.*

(1) In the case mentioned in Art. 611 the dissolution of the marriage shall be ordered on the application of either of the spouses of the bigamous spouse or on the request of the public prosecutor.

(2) The court shall not order dissolution unless it is established, in an indisputable manner, that the former spouse of the bigamous spouse was alive at the time when the marriage was celebrated.

Art. 696.—*Rule to be followed.*

(1) Where the court orders the dissolution of a marriage as a sanction of the conditions of marriage, it shall regulate according to equity the consequences of such dissolution.

(2) It shall be guided by the rules regarding the liquidation of the relations between spouses in cases of divorce (Art. 690-695).

This fourth alternative has been suggested by Professor O'Donovan in her Article on void and voidable marriages in Ethiopia which is to appear in the next issue of the *Journal*.

18. See David, cited above at note 1, p. 58, fn. 44. Article 643(2) reads:

(2) The husband owes fidelity to his wife.

19. These articles comprise Chapter 8 (*Irregular Union*) of Book II, Title IV of the Civil Code