##  JOURNAL OF ETHIOPIAI LAW




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# his imperial majesty's <br> Remarks to the First Graduating Class of the EXTENSION PROGRAM at the FACULTY OF LAW HAILE SELLASSIE I UNIVERSITY <br> November 24, 1964 

We are indeed pleased to congratulate this class who have today received Certificates in law from the University - and to the teachers who have made your accomplishment possible by planning, organizing and carrying out of this pioneer project.

You may rightly take great pride in your accomplishment, just as We do.
The administration of justice, in a modern state, demands well trained qualified persons at every level. The introduction of the codes and the revised Constitution of Ethiopia, as well as other legislation continuously coming from Parliament and the Government, has dramatically changed Ethiopia's legal system. The law of the Empire is now modern, complex and scientific in the sense that it has been prepared by experts after careful study. The administration of the law of the Empire increasingly demands highly trained persons.

In a real sense the development of the nation depends upon the development of our legal institutions.

The proper administration of justice requires a research for truth, therefore, the judicial function requires highly selected men. Judges shall be chosen from among those who studied law, and who sacrifice their personal interests to their duties.

An advocate who discharges his duty honestly is a judge. So the need for persons trained in law is obvious.

Thus We are pleased to leam that others are following hard upon the footsteps of this class. We are pleased to know that soon the number of Ethiopian lawyers holding a university degree in law will be virtually doubled.

We are especially pleased to see that so many judges and other civil servants and advocates are taking time to continue their education even as they continue to perform their regular daily dutits.

Education is an ongoing task. The obligation to improve oneself does not cease simply because one has a regular job. This is certainly true for those who work in the administration of law and in legal counselling. We would urge that these persons must do all they can to improve, continuously, their professional capacities through further study.

Members of this graduating class: by sacrificing your time you have advanced yourselves and the nation.

We are confident that the qualification you have earned today will be recognized within the legal profession. We believe it should. We believe, too, that the professional attainment to be achieved by other students now studying law in other programs of the Law School must be recognized.

Ethiopia needs a modern legal profession just as she needs the modern legal system she is building. The one cannot exist without the other.

You - all of you who are taking University training in law - are helping in the task of building a profession.

I congratulate you. I congratulate this class: take pride in what you have done by serving with continuing zeal and loyalty the Law of Our Empirc.

Complete text as reported in the Ethiopian Herald, November 25, 1964, ed















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The Journal of Ethiopian Law was inaugurated by His Imperial Majesty Haile Sellassie I in the summer of 1964 ass an important step in the dewelopment of Ethiopia's legal system. Subsequently, the Board of Editors of the Journal has invited those who are interested in the continuation and cxpansion of the Law Journal's activities to express their support by becoming Patrons of the Joumal. The following persons have become Patrons of the Journal of Ethiopian Law:
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## REPORTS

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#### Abstract

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# SUPREME IMPERIAL COURT Div. 1 A 

## MAKONNEN WOLDEYES v. THE PUBLIC PROSECUTOR

Criminal Appeal No. 335/54 E.C.




#### Abstract

On : appeal from a judgrnent of the High Court convieting appellant, a bus driver, for aggravated negligent bomidide under Art 526 (2) when he owertook another wehicle without proper visibibity, causing a collision in which three persons in an oncoming automobile were killed.


Held: Conviction and sentence revised since no aggravation was charged or proved.

1. It is neeligent conduct to overtake another vehicle without proper visibility.
2. A person has a "professional duty to safeguard life" under Art. 526 (2) P.C. when his job requites special teare to saleguard persons whose physical integrity is temporarily under his care; doctors, nerses, pilots of airplanes, and drivers of public wehicles are examples of persons with such a professional duty-
3. A professional ows 4 "special" duty within the meatring of Art. 526 (2) P.C. only to those for whom he is responsible; the "special" duty owed by a driver of a public wehicle thus extends only to the phessengers in the wehicle.
4. A charge under Art. 526 (2) P.C. that does not specify that the defendant is being tharged with a郎ravation is defective.

Guenbot 6, 1952 E.C. (Ma3 13, 1960 G.C.); Justices: Afenters Taddessa Mengesha, Dr. W. Buhagiar, Ato Taddess Tekle Giorgis: - The appellant was charged before the High Court with the offence of homicide by negligence, puntshable undef Article 526 of the Penal Code; he was found guilty, convicted and sentenced to the maximum period of imprisonment of five years under the second paragraph of Article 526, under which the offence of homicide by megligence is aggravated where the homicide is caused by a person who has a special professional duty to safeguard life. This is an appeal from the judgment of the High Court.

The grounds of appeal are (a) that there was no sufficient evidence on which the High Court could convict, (b) that the High Court was wrong in law in convicting the appetlant under paragraph (2) of Article 525 when the charge referred only to Article 526 , and (c) that the seond paragraph of Article 526 is not applicable to the appellant (a driver of a bus) but is applicable only to doctors, nurses, etc. who carry out their duties in a negligent way.

The facts as found by the High Court are as follow: the appellant is a bus driver by profession; on Nehasse 11, 1953 E.C., the appeliant was driving Bus No. AA 6135 and at the 126 th km . on the road from Alaba Kulite to Addis Ababa; at about 15 minutes after midday, he came into collision with a car Yolkswagen No. 9956 coming from the opposite direction; and as a result of this collision, the three passengers in the Volkswagen were killed. Thert were no fatal accidents amongst the passengers in the bus driven
by the appellant. The appellant was driving his bus behind another motor-vehicle, which was some distance in front and which was causing lots of dust rendering visibility very poor. The appellant was trying to overtake the other motor-vehicle, and in doing so, went partly on the wong side of the road; at this time the Volkswagth, which was on the proper side of the road, collided with the bus driven by the appellant The allegation of the prosecution is that the appellant was negligent in trying to overtake the other motorvehicle when the visibility was poor as a result of the dust $t_{4}$ and that the cause of death of the three passengers in the Volkswagen is due directly to the appelfant's negligence.

In the opinion of this Court, there was sufficient and clear evidence on which the High Court could come to the conclusion it did. There is no contradiction amongst the witnesses, as the appellant submitted. There can be no question that it is very negligent for a driver to try to overtake another car when he has not a proper look-out of on coming traffic due to the dust. The High Court was, therefore, right in finding that the appellant was negligent.

The appellant submitted that the High Court was wrong in convicting the appellant under the provisions of the second paragraph of Article 526 when the charge referted generally to Article 526 . It is essential in criminal cases that the accused should know what charge be is asked to meet; in the present case the charge does not allege that the appellant was, at the time of the offence, acting in a special professional capacity. The first and second paragraphs of Article 526 deal with the same offence, that is, homicide by negligence, but the second paragraph contains an aggravating element which subjects the offender to a higher punishment. The accused should know whether the prosecution is charging him with the aggravation and when the prosecution intends to do so, mention thereof shouid be made in the charge. In this respect, the charge is defective, but for teasons that will be given later, the defective charge has not in the present case led to a miscatriage of justice.

The appellant subnitted as another ground of appeal that the second paragraph of Article 526 applies to doctors and nurses who carry out their duties in a negligent manner and does not apply to the appellant, the driver of a bus. The second paragraph of Article 526 provides for a higher punishment where the negligent homicide has been caused by a person who has a special professional duty to safeguard life. On reading this paragraph, the persons who first come to one's mind as having a special professional duty to safeguard life are coctors and nurses; but the said paragraph does not limit the responsibility to doctors and aurses; the word "professional" is used in the wide sense and applies to persons whose job requires special care to safeguard the life of persons whose physical integrity is temporarily under their care. The word "professional" applies to persons like the plots of an airplane, bus drivers, and drivers of other public vebicles.
The duty of such persons is not, however, towards any person in the world; the daty of such professional persons is specially towards those persons for whom they are responsible, such as passengers in an airplane or passengers in a bus; such professional persons do not owe a special duty towards pedestrians; the duty to pedestrians or other persons not in the public wehicle is a general duty, not a special duty. Thus in the present case the appellant owed a special professional duty to the passengers in his bus, but owed only $a$ general duty towards others outside the bus, such as the persons in the Voikswagen. For these reasons the appellant should have been found guilty of an offence under Article 526 (1) of the Penal Code, and he is thereby convicted under that provision. As to senterce, this Court considers that this is a very serious offence with serious consequences and the maximum punishment under the first paragraph of Article 526 should be inflicted and the appellant is sentenced to simple imprisonment for three years. In this sense, the appeal is allowed, and the judgment of the High Court is varied acoordingly.








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# SUPREME IMPERIAL COURT Asmara Div. 

# UNIVERSAL INSURANCE AGENTS TRADING CO. LTD. \%. GHEBRE MESKEL TEKLE 

Civil Appeal No, $90 / 56$ E. C.

Extra-comiractual liability $=$ Mhtirer $=-$ Direct liabilify to imiured persort $=$ Arts. 685, 687, and 688: Com. C.

Unjurr enrichment.
Convactral obligafian =-Subrogation = Arr. 2161 Cir. C.


#### Abstract

On appeal from a High Court judgment by default in fawour of the plaintiff in a personal enjury action brought direxty against the insurer of the person who caused the injury.


## Held: Judgrnent reversed

1. Art. 685 Com does not meath that an injured third party may claim compencation directy from the liability insurer of the person who caused the injury. In order to claim directly from the ingurer, the injured third party must, first, establisit by court procerdings or admission of the insured person that the injury resulted from the fault of the latter and second, show that the liability insurer participated in the procedings on behalf of the insured or has acsepted an amiotble settlement of the case.
2. Art. 68 r (2) Com. C. saleguatds the interests of the liability insurer by enabling him co represcat the insured and raise defences. This does not entitle the injured therd party to by-pags the insured and sue the liability insurer directly.
3. Art. 2161 Civ. C. does not entitle ar injured third party to clain compensation directly from the litability insurer, simes the later is not jointly liable with the insured person who catused ihe jnjurs.
4. Even though the insured person who chused an injury is not subject to service of process by local couts and hat done nothing to compengate the within, the latter has no "unjust enrichment" ciaim against the liability insurer; to allow such a clain without having judicially established the wictim's rieht ageingt the person who thuted the impry would annill the insurate eontrict betwern the latter and the liabiticy insurer.

Guenbot 7, 1956 E.C. (May 14, 1964 G.C.); Justices: Ato Negussie Fitawake, Dr. Gayatano Latila, Dr. Giancarlo Pollera: - The circumstances which gave rise to this appeal, briefly stated, are as follows:

At 8:30 p.m. on September 1, $1962, \mathrm{Mr}$. Richard Cooper was driving a car, Lic. No. 62309, on Ras Desta Damtew Street, when he collided with the respondent, who was riding a bicycle, thereby injuring him on the ight leg and arm. An action was brought against Mr. Cooper, and a summons was issued and sent to the Kagnew Station for service on him; it was learned, however, that he had left for the U.S.A. The complaint was then amended to substitute as defendant the present appellant, an insurance company by which Mr. Cooper was insured against accidents. Summons was issued and served upon the company, the present appellant, but the appellant failed to appear. The High Court, therefore, gave judgment by default, ordering the appellant to pay $\$ 1620$ compensation to the respondent.

The appeal was lodged against this judgment.
The grounds of appeal submitted by the appellant may be summarized as follows:

1. No legal relationship exists between the appellant and the respondent and, therefore, the appellant can have no responsiblity for the accident that has occured.
2. Appellant has no agrement or authorization to represent Richard Cooper in any litigation.
3. In spite of the advice of the letter from Kagnew Station to the advocate for the appellant that in an action arising from an accident the appellant must represent Richard Cooper, there is no law that requires the appellant to represent him in any litigation waless the respondent has first sued and obtained a judgment ageinst Richard Cooper, the person who caused the injury.

The terms of the contract of insurance are clear that appellant has the right to direct the defence of the insured against the respondent, had it considered this necessary, buit that it may not be sued directly. This shows that the prowision is to safeguard the interests of the insurance company.
4. And lastiy, respondent has referred to Articles 685,687 , and 688 of the Commercial Code. These provisions concern the rights and duties that exist between the appellant and the insured, Mr. Cooper; they do not entitle the respondent to sue the appellant directly. Respondent has also referred to Article 2161 of the Civil Code, but he fialed to show the refationship that must exist between the appellant and the respondent before this Article could apply.

The reply submitted by the advocate for the respondent may be summarized as follows:

1. In accordance with Article 687 of the Commercial Code, the appellani is a guardian of the interests of Mr. Cooper, and, therefore, to claim compensation for injury done to him by an insured person, the respondent may sue the appellant; that the insurer is liable for compensation for an injury caused by the beneficiary is known by all.
2. Since Mr. Cooper has gone back to his country, appellant must reply to the complaint brought against it as a substitute for Mr. Cooper.
3. Appellant would be exempted from paying compensation in accordance with Article 685 of the Commercial Code for injury done by an insured person only if the injured person does not claim compensation, either amicably or judicially. Respondent asked appellant amicably to pay him the compensation, bat because appellant wrould not pay, he has brought this action. This is in conformity with Article 688 of the Commercial Code.
4. The action brought by the respondent against the appellant is lawful and is in conformity with Article 2161 (1) (2) (3) of the Civil Code. This Article is intended to prevent unjust enrichment by various devices and desigus.

Before commenting on the arguments submitted by both parties, we should identify the issuct that has to be decided. The principal question is whether the respondent may claim compensation directly from the appellant, an insurer, for damages done to his body and bicycle by Mr. R. Cooper, an insured person.

Netther of the parties dedies that a contract of insurance against accidents was entered into by the appellant and Mr. Cooper.

No evidence has been produced to prove that Mr. Cooper has subrogated the respondent to his rights of suing the appellant as provided for in the contract of insurance.

Having established the above-mentioned major points, fet us proceed to examine those provisions of the Commercial Code that have been referred to by the respondent. i.e., Article 685, 687. 688

Concerning the liability of the insurer, Article 685 provides: "The insurer who insured a liability for damages shall not pay compensation until a claim is made aganst the insured person with a wiew to amicable or judicial settlement." This means that the insurer cannot be liable until these requitements are fulfilled; it does not mean that the injured third party may claim compensation directly from the insurer.

In order that an injured third party may clam compensation from an insurer, he must establish, first of all, either by court proceedings of by the admission of the insured person, that the injury resufted from a fault of the latter, and secondly, show that the insurer participated in the judicial proceedings on behalf of the insured person or, in the case of amicable settlement, that the insurer has accepted the settlement. In this case, the respondent has not sued Mr. Cooper, the insured, and established that the injury resulted from his fault. Mr. Cooper has not subrogated the insurer by assigning to hime the direction of his defenoe. Unless these requirements are fulfilied, the insurer may not be held liable to pay compensation directly to the injured party, the respondent. We can find no basis in law for the proposition that the insurer becomes liable to pay compentation by the mere fact that the respondent has asked him to pay.

Article 687 (2) of the Commercial Code applies to criminal proceedings; it does not apply to this case. We shall, therefore, proceed to cxamine Article 687 (1). Concerning the direction of a case, it provides: ${ }^{4}$ Provisions may be made to the effect that the insurer shall have the direction of any civil case originating from a clain brought by the injured party." This means that in a contract of insurance, provision may be made to enable the insurer to represent the insured person in a case instituted by the injured party. Such a provision safeguards the interests of the jusurer by providing him with a right to ratse defences, but it does not entitle the injured third party to by-pass the insured person and sue the insurer directiy. The provision of this subsection implies also that the insurer may not institute proceedings in his own name to claim ompensation for injury done to the insured by a third party; it can make a claim only in the name and on behalf of the insured person. A contract of insurance has direct effect only between the insured and the insurer.

Article 688 (1) of the Commercial Code gives priority of payment to the compensation of the injured third party by providing: "No insured person shall received compensation until the third party infured has been paid to the extent of the amount insured." This means that where the insurer has to pay on behalf of the insured person, following an amicable or judicial settlement, he must first and foremost pay the cormpensation payable to the injured third party. This provision is intended to give priority to the compensation payable to the injured third party; the insurer has to pay the cornpensation in accordance with the provisions of Article 685, as explained above.

The adwocate for the defendant has referred also to Article 2161 of the Ciwil Code. No Paragraph 3 appears in the Amharic text of that Article, and by wirtue of the Corrigenda, Paragraph 3 is deleted from the English text. Concerning subrogation, Paragraph 1 provides: "A person who has paid the whole debt although he is not bound finally to bear more than a part thereof shall be entitled to recover from those liable with him. ${ }^{\text {r* }}$ And Paragraph 2 provides: "For the purpose of such recovery he shall be subrogated
to the victim's claim." These provisipns entitle one who pays the whole debt to fecover from those hiable with him. For example, one who pays the whole of the compensation that can be claimed from the driver and the owner of a vehicle for injury caused by the driver can recover from the driver, and one who pays the whole of a debt for which several persons are liable can recover from the other debtors. They do not entitle the injured third party to claim compensation directiy from the insurer. The obligation that anises from a contract of insurance arises solely from the legal relationship that exists between the insurer and the insurci. It is the insured person himself who is responsible for the extra-contractual liability that he incurs. However, since he is insurcd against accidents, the insurer pays the compensation on behalf of the insurec; he may pay willingly, but if he does not, the insured has the tight to proceed against him in court. Eut the respondent. a third party, may not sue the insurer as if the latter were jointly liable with the insured. As a matter of fact, the insured could cause an injury under circumstances that would make it outside of the scope of the contract of insurance and exempt the insurer from liability. Hence, the obligation of the insurer towards the insured, and that of the jrsured towards the injured person, the respondent, are connected in such a way that they must be established in a particular step-by-step way. No direct legal relationship has betn created between the insurer and the injured person, the respondent. The rights of the insurer, including the right to direct the defence against the respondent, are based on subrogation to, or assigrment of, the rights of the insured. Similarly, the right of the respondent to claim compensation for the injury done to him by an insured person results from the legal relationship that exists between the respondent and the insured person. It is obvious that whether the insurer has to pay the compensation for an injury done by an insured person depends on the legar relationship that exists between the two.

Two letters in which the Legal Department of Kagnew Station and the appellant corresponded regarding the injury caused by Mr. Cooper have been produced as evidence. They merely show that the Legal Department of Kagnew Station advised the appellant that he ought to pay the compersation becaluse Mr. Cooper was insured with him; they show neither an assignnent of the rights of the insured to the injured person nor an undertaking of the insurer to pay the compensation, Hence, we find the two letters to be of no value as evidence in this case.

Although he had a contract of insurance with the appellant, Mr. Cooper himself remains the one directly responsible for the damage suffered by the respondent, However, he went home without being sued and without having arranged with the appellant to pay the compensation to the respondent. The respondent, knowing that Mr, Cooper had incurred a civil liability, should have taken the necessary steps to prevent him from going out of the country before the case was scttled, but he did nothing of the kind. When be brought his action, it was after Mr. Cooper had gone home. Realizing that the summons coutd not be served upon him, he made the claim directly upon the appellant. But he did not establish that the appellant had any legal relationship with the respondent or any obligation toward him.

Since Mr. Cooper had an insurance policy and still went away without doing anything for the respondent to compensate for the injury that he caused him, it may appear that the insurer has obtained an unjust enrichment, but to permit the respondent to sue the appellant without having judicially established his right aganst Mr. Cooper would annul the contract of insurance between the appellant and Mr. Cooper.

Considerine that Articles 685, 687, and 688 of the Commercial Code and Article 2161 of the Civil Code and the opinion expressed above give no right to the respondent to sue the appellant directly, and considering that the contract of insurance concerns orly

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the legal relationship between the appellant and Mr. Cooper, and considering that Mr. Cooper neither subrogated nor assigned to the respondent his right to claim from the appellant, and considering that the respondent has no right to sue the appellant without having previously fudicially established his rights against Mr. Cooper, we reverse the judgment rendered by the High Court.

We order each party to bear the costs of the proceedings in this Court. A copy of this judgment shall be sent to the execution officer.
Judgment is given ori Guenbot 7,1956 E.C., in the presence of both parties.

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#### Abstract

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# SUPREME IMPERIAL COURT 

Div. 6

## DOMENICO CROCE v. ITALO FOCACCIA

Civil Appeat No. 1112/56 E. C.


#### Abstract

Contractum obligations - - Written evidence - - Conclustre effet - Oral evidence - Inadmissibility - Arf. $1734 \mathrm{Civ} . \mathrm{C}$.


On appeal from an order of the High Court admitting extrancous evidence to prove that the intertion of the parties was that an uthequisocal letter of acceptance of accounts should constitute a settlement of accounts

Held: Order of the High Coutt quashed.

1. According to Arts. 2005 and $2006 \mathrm{Civ}, \mathrm{C}, \mathrm{a}$ written instrument is conclusive evidence of the agresment thertin containec, and its meaning cannot be altered by extraneous cevidenco.
2. Where an instrument is clearly a letter of acceptence of atcounts, Art. 1734 Cir, C., which prowides that common inlention shatl be sought where there is ambiguity in a contratt, is inapplicable.
3. Communications by the parties to the drafter of a document carnot affect the clear langlage of the document.
4. It must be presumed that a setlement of accounts would have been mentioned in a later letter in which one party declares that he accepts the other's statement of the accounts.

Guenbot 14, 1956 E.C. (Ma : 22, 1964 G.C.); Justices: Mr. G. Debbas, Grazmatch Tessemma Negede, Ato Tsaggai Tefferi: - This is an appeal against an order of the High Court (First Commercial Diwision) dated 12/8/56 in C.C. No. 913/55, whereby extraneous evidence was allowed to prove facts which the High Court considered had been left out of a written instrument produeed as Exhibit D/I before the High Court.

In order to understand the sense of this appeal, we will summarize the case. Appellant left for Italy and left a general power of attorney to his employee, the respondent. On the appeltant's return from Italy, he asked his employee to atcount for the period of his absence and of respondent's administration; an accountant, Nicolas Bova, was chosen by the respondent to make accounts; Bova received documents from the respondent and based his accounts on the respondent's documents, as he testified before the High Court. He found there was a balance due by the respondent to the appellant, anounting to E. $\$ 65,912,80$. That was what we could understand from the records of the High Court; but we refrain from going into the merits of the case. On his return from Italy. the appellant wanted to revoke the general power of attorney which he had given the respondent; and in his letter of revocation dated July 1, 1963, in Italian, addressed to the respondent, the appellant made it clear that be was completely satisfied with the work done by the respondent during his absence in Italy, that he had looked at the accounts (prendere visionc) and that he acpepted those accounts fully as from the period
betwent April 1, 1962 and June 30, 1963. In the second paragraph of that letter, the appellant revoked the power of attorney of the respondent. Apparenty, when the appellant claimed the balance discovered by the accountant Eova in favour of the appellant, payable by respondent, the latter refused to pay, claming that the letter in Italian dated July $\mathbf{1}_{\text {r }}$ [963, was a "Jecter of settlement" and that nothing could be due to Croce. Whereapon, Croce went to conit. The High Court saw the letter in question; and in its order dated 12/8/S6, under appeal here, jt clearly stated that this letter could under no circumstance be considered to be a complete statement as to any setticment or agreenent reached between the parties. The High Court said "It does not say anything about any possible settlement between the parties according to the accepted accounts..." And thereupon it allowed extraneous evidence of Advocate Yohannes Prota, who drafted the said letter. to testify as to whether he had any knowledge of any additional facts from the parties themselves. Wherefore this appeal.

We cannot possibly share the opinion of the High Court regarding this extraneous evidence. It eertainly is not admissible, because whatever Mr. Prota would say will not and cannot possibly change the sense of this letter in Italian (Exh. D/l), which we saw and which is in to way ambiguous. This letter is clearly a letter of acoeptance of accounts but is not a letter of scttlement of accounts. If there should be any document to prove that Focaccia paid Croce the amount due by Focaccia, then let the respondent produce that document. A written instrument, according to Articles 2005 and 2006 of the Civil Code, is conclusive evidence, and no extraneous evidence can alter its meaning, especially when it is soclear and beyond the least shadow of ambiguity. Article 1734 of the Civil Code provides that the common intention shall be sought only when there is ambiguity in a contract; "and there is certainly no ambiguity in this letter. Ato Gila, advocate for the respondent, admitted in his reply that the witness, whose evidence we do not acoept, cannot possibly say what was in the minds of the parties when he drafted that letter. What the paties may have told Ato Yohannes Prota before drafting the letter in question cannot affect the sense of the said document; and if there had been any settlement in cash, or otherwise, then Ato Yohannes would not have failed to mention it in the letter he drafted.

In wiew of the foregoing, and particularly of the fact that there is no ambiguity in Exhibit D/l. no extraneous evidence can be admitted.

It is important to emphasize that if we allow extraneous evidence against a written instrument, which the law considers as conclusive, then litigation would have no end in the courts of law.

Under the circumstances, we allow this appeal and quash the order of the High Court dated I2/8/56 E.C., but only insofar as the hearing of evidence of Yohannes Prota is concerned.

We order that a copy of this order be immediately served on the High Court, to abide by it and to give judgment as it deems appropriate on the basis of evidence before it or any additional legally admissible evidense it may deem proper.

This order is given by majority of the Presiding fustice and Justice Taggai Tefferi. Our brother, Justice Grazmatch Tessemma Negede dissented and dismissed the appeal for reasons detailed in his minority opinion.

Given and delivered in open conrt this 14th day of Guenbot, 1956 E.C. in the presence of both parties' attorneys.

Grazmatch Tessemma Negede, $j$., dissenting: - 1 disagree with the order given in this casc. This was a case where the appedant-plaintiff's claim against the tespondent arises from an alleged embezzlement by the respondent at the time he was working in appellant's garage. This was not a case in which a partnership was alleged to cxist.

In a letter from the appellan to the respondent dated July 1,1963 , the appellant said that he had looked over the accounts of the garage for the period from Apsil 1, 1962. to June 30,1963 , and that he was fully satisfied and had accepted the accounts, At the trial of this case the appellant called a withess in his favor. The witness testified that he did some accounting for the respondent and that he had never facilitated any contractial negotiations between the parties. In turn, the respondent moved in the trial court to call a person to testify who had acted as an arbitrator for the settlement of the accounts. The name of the alleged arbitrator is Ato Yohannes Prota. The Court accepted the motion and ordered that Ato Yohannes be called before the Court to explain the relation betwen the parties. When a witness is calted to testify in favor of the plaintift, it is not proper to deprive the defendant of the right to introduce evidence and thus to force him to lose his case.

Moreover, the High Court's intention was to learn about the case in depth by calling the witness, and a decision was never taken to disprove a written agreement by challenging it by oral ewidence. The fear that if Ato Yohannes were allowed to testify the written evidence would be void is groundless.

Arlicle 2002 of the Ciwil Coce, cited by the respondent, provides that it is perrissible to hear cvidence of a point in dispute between parties to a contract. What is more, where a trial court thinks it best to call witnesses in otder to know the case brought before it in depth, it is not proper for the appellate court, even where the power of such court over the court of first instance is taken for granted, to interfere in the proceeding of a trial to the extent of directing and ordering the trial court as to which points it should decide without seeking further eqidence and which it should decide by secking further evidence. The reason for this is that, after the case has been through the trial court and an appeal is brought over the case, the decision of the trial court may be reversed on a point where such a court has improperly proceeded or judged. If we are to speculate as to the intertion of a lower court, it will be equal to hearitg appeals over the conscience and intention of the judges in a lower court. In this Court, we have already upheld the decision of the High Court in In re KEMIL, Supreme Imperial Court C.A. No. $1088 / 56$ E.C., where the High Court had admitted oral ewidence to challenge the validity of a written instrument. Therefore, if we now refuse the petition of the respondent where the appellant's witness has already been heard in court, we would deprive hirs of his right. If the trial court were to err in admitting such evidence, we should consider this point later when the entire case is appealed. At this early stage, however, it sems to me improper to interfere with the work of the trial court and order it to give a judgment the way we want. For al! these reasons, I dissent.

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# SUPREME IMPERIAL COURT 

Div. 6

# VASKEN SISSIAN w. JACOB FOGSTAD and SYLVIA vACHARCHGIAN 

Civil Appeal No. 127//56 E.C.

Compary law = - Distoldion = Liquidarion procedure - - Comarcial register - Protection of credidors = - Stupersion of exection.

On appeal from a judgment of the High Court ordering the formal fiquidation of a company dissolved by its shareholders and appointing a liquidator.

Held: Judgraent affirmed.
I. Where all the shareholders of a compaby tave agreed on its dissolution, the company must be formally liquidated, so that all crediters may be aotifed and given opportunity to present their claims against the cornpanyr
2. Liquidation involues the discharge of all liabilities of the conpany and the subsequent distribution of the remaining asects among the associates according to law.
3. Until formal liquidation has pockned the Ministry of Commerem and Industry will not erase the narme of the compasy frort the commercial register.
4. Since the purpose of fomal liquidation is the protection of the creditors of the company, all debts claimed from the company nust be temporarily stayed until the final appointment of a liguidator.

Hamle 15, 1956 E.C. (July 21, 1964 G.C.): Justices: Mr. G. Debbas, Grazmatch Tessemma Negede, Ato Tsaggai Tefferi: - This is an appeal against the judgment of the High Court (First Commercial Division), dated Miazia 21, 1956, in C.C. No. $171 / 56$. whereby the formal liquidation of the company "FOGSTAD \& VASKEN CO. LTD." was ordered, and a liquidator in the person of Mr. E. Salole was appointed and vested with the powers and duties of a liquidator under the Commercial Code, subject of course to Mr. Salole accepting the appointment.

This is certainly one of the most interesting appeais we have had this year, as it deals solely with questions of law as to the necessity of liquidation of a company and the difference between the dissolution of a company and its liquidation ...

The appellant and the respondents were shareholders in equal shares in the company "FOGSTAD \& VASKEN CO. LTD." Due to endless disputes, a Board of Arbitrators was seized with the matter and pronounced its award on May 18, 1962, providing for the splitting and the winding up of the company. Subsequent to the award, an Extraordinary General Meeting of the company was held; it provided for the dissolution of the company. The shareholders originally agreed to appoint Mr. E. Salole as liquidator. The appellant apparently disregarded the provisions of the law regarding liquidation of the company, and thus the respondents were compelled to petition the High Court for an order to enjoin the appellant to appoint a liquidator, or alternatively, to have a
liquidator appointed by the Court itself. The High Court granted the petition and ordered formal liquidation in accordance with the law. Wherefore this appeal...

The facts are not disputed. A company was fommed between the appelfant and the respondents, in which those three persons were the only shareholders. Endless disputes between the shareholders were submitted to a Foard of Arbitrators under a term of referenct which was finally amended on January 31, 1962. The object of the amended submission was clearly to dissolye the company, each shareholder taking a share of the assets and assuming a share of the liabilities. The shareholders had agreed to split up the com* pany on the above basis and the award in fact decided on a scheme as to how this should be done between the shareholders, so that each shareholder could continue his business individually.

On the day the award was pronounced, an Extraordinary General Meeting of the company was held and it was resolved as follows:-

1. To cease operations of the Fogstad and Vasken Co. Ltd. and wind up the company.
2. Pending the winding up of the company, the parties divide the assets and assume the liabilities in accordance with the Award of 18 May 1962.
3. A copy of the resolution and a copy of the Arbitration Award is to be forwarded to the Ministry of Commerce and Industry, with a request of advice as to the best manner of implementing the winding up.

Regarding the above point No. 3, the Ministry of Commerce and Industry recommended that a liquidator be appointed to wind up the company (See Ministry's letter No. 196/4/55 addressed to the company and advising ,formal liquidation by appointing a liquidator who shall be in charge of the assets and liabilities of the company" and Ministry*s letter No. 1218/4/56 addressed to the same company and notifying it that its name has not been cancelled from the register for the simple reason that no liguidator had been appointed for liquidation).

In addition to those two letters of the Ministry of Conmerce and Industry asking for appointment of a liqutdator according to law, we have seen the copy of the resolutions of the Extraordinary General Meting of 18 May 1962 , whereby all three shareholders, including appellant, resolved to "cease operation of Fogstad \& Vasken Co. Ltd. and wind wp the company." The three shareholders have signed the resolutions of the Extraordinary General Meeting. We consider it, under the circumstances, as pure loss of time to continue arguing this appeal. How could this appellant come before this Court, when he has bound himself by the final resolutions to "wind up the company." The appelfant's arguments cannot be better summarized than they were in the English version of the judgment of the High Court: 'There is nothing to liquidate as the company was liquidated two years ago, and the petitionets, i.e, rcspondents, have received their shares of the assets and thein shates of the liabilities." From the arguments of the appellant, it seems that he has no idea what dissolution means and what the difference is between dissohution and fomal liguidation of a company. Vasken Sissian is satisfied to say that he chose for himself some creditors of the company whose debts he would pay and that he took his share of the assets; and that would be all, according to him. Mr. Vasken possibly forgot that liquidation involves much more than assuming some liabilities: there is involved the discharge of all liabilities of the company and the subsequent distribution of the remainder - whatever it night be - among the parthers of associates according to law. As was stressed in the judgment under appeal, although the company has been dissolved, it survives as an entity until the dissolution is completed
for purposes of the liquidation of the company's affairs. There could easily be additional creditors or different amounts due to the creditors, and this is brought to the notice of the liquidator by the interested creditor as soon as the liquidator makes the press advertisements according to law. That the name of a creditor has not been itcluded in Sissian's list or that an amount listed is incorrect does not necessarily make the creditor lose his right: neither does it absolve the parties of their obligations. That is why a liquidation is necessary and why even the Ministry of Commerce insists on it. That is why the name of a company is never struck off the commercial register unless and until a liquidator has been appointed and has fiquidated all according to the terms of the law. If the partics have not included all creditors or all amounts due to them, and did not consider pending eases, that list is of no value as to final obligations and does not and cannet liberate the parties from their final obligations for the surplus or remaining balance to be paid by the company.

In this particular case, at the time of the dissofution of the company, there were pending tax appeals before the Tax Appeal Commission, and such appeals resulted in the company already dissolved being condemned to amounts much higher than foreseen by Fogstad and Vasken and stated in the list of creditors. Would that mean that Fogstad alone or Vasken alone should meet those obligations? Certainly not; the company itself shall meet those obligations through the appointment of a liquidator who will care for the assets and liabilities of the company and then officially notify the Ministry of Commerce and Endustry to cancel the company"s name.

In the present case, as well as in all similar liquidation cases, there are various assets and various liabilities; the shareholders cannot decide to divide the assets among thenselves before the ereditors have been fully satisfied; until all creditors have been satisfied, the assets of the company remain the property of the company, and the ereditors may levy execution on them.

In view of the foregoing, it is clear that the agreenent to dissolve the company must necessarily be followed by a liquidation and that was the aim of the resolution of the Extraordinary General Meeting of May 18, 1962. Therefore, there must certainly be a formal liquidation under a liquidator.

We therefore dismiss this appeal and confirm the judgment of the High Court. But whereas the Iiquidator appointed by the High Court may eventually accept or refuse the said appointment, all debts claimed from the company must necessarily be stayed, temporarily, until a liquidator is finally appointed.

The appellant shall pay the respondent E. $\$ 300$ as costs.
A copy of this judgnent shall be served on the High Court for execution.
Given and delivered in open court this 15th day of Hamle, 1956, in the presence of both parties' lawyers.

Grazmatch Tessemma Negede, J., dissenting: - I dissent from the majority opinton in this case. It cannot right to say that liquidation should take place again after one bas said that the agrecment of the general assembly of the company in regard to the dissolution and winding-up of the company shall have force and effect and that the distribution of the assets of the company in accordance with the agreement shall be valid.*

[^0]The majority declares that the dissolution of the company and the distribution of its assets is valid and shall have force and effect. A liquidator was appointed by the High Court atter the company had been liquidated according to the instructions of the Ministry of Commerce and Industry contained in a letter dated Megabit 11, 1957 E.C.: Ref. No. 1946/55, only because the dissolution of the company was not published in a newspaper as is required by law. In such a case, instead of saying that the liquidation shall take place again, it would be better to say that, the creditors of the company, if there are any, shal] be notified through the newspaper to appear before court.


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# SUPREME IMPERJAL COURT <br> Div. IA 

# HIGHWAY AUTHORITY and ESKANISKA CO. w. MEBRATU FISSIHA 

Civif Appeal No. 1665/56



Civil procedure - - Nortee = Subrtiturlon of partles.

On appeal from an order of the High Court enjoining petitioner, a gowemment agency, from quartying stone from respowinal's land.

Held: Injunction order cancelled and continuation of quarrying ordered.

1. Where a person does work on behalf of another person, and where the latter accepts the raquest of the former to defend or to appeal a suit in connection with such work, the Court will substikute the latter for the former as a party to the suit.
2. Under all tircumstanges, the Cout Procedure Rules require that before a oonit order fogiven, the defendant be informed and given an opportunity to answer the complajnt against himi.
3. Procodings authoriztil by Proc. No. 115 of 1951 do not violate Arts. 43 and 44 Rev, Const.
4. The quarrying of stone by a government agency from a person's land in accordance with a procedure established by a proclamation does not violate the provisions of the Constitution establighing stricter procedures for expropriation.

Nehasse 6, 1956 E.C. (August II, 1964 G.C.); Justices: Afenegus Kitam Yitateku, Ato Tilahun Yimeru, Ato Wolde Amanuel: - The respondent, Col. Mebratu Fissiha, sued Eskaniska Co. on Hamle 13, 1956 E.C.

In his complaint in the High Court, he stated that Eskaniska Co. was, without any legal right, quarrying stone from his land.

On this same day, Hamte 13, 1956 E.C., Col. Mebratu Fissiha submitted an affidayit verifying that the land where the work was being done belonged to him and requesting that an injuction be given to stop Eskaniska Co. from quarrying any stone from his land.

The order given by the High Court on Hamle 15, 1956 E.C. stated: "Considering the affidawit given by Col. Mebratu Fissina, we have ordered that the defendant Eskaniska Co. shall not quarry any stome from the land found in Shashamene and belonging to the plaintiff until this Court gives any other order."

The Highway Authority appealed to this Court against this order.
A copy of the appeal petition was sent to Col. Mebratu Fissiha, who then appeared in this Court and gave his answer on Harale 23, 1956 E.C.

Eskaniska Co. also submitted to this Court that, since the company is quarrying stone for the use of the Highway Authonity, the appropriate party to handle any court case in this conncction is the Highway Authority.

The Highway Authority also stated that, since the company is working for it, it should be the Highway Authority that explains to the Court the inappropriateness of Col. Mebrata's request.

This Court, after considering that the High Court, when it issued its order, neither inforned the defendant by sending it a copy of the order nor fixed a time for the defendant to appesar, sent the case back and ordered the High Court to give its final decision before Nehasse 5, 1956 E.C.

It also set Nebasse 6, 1956 E.C. as the date to review the matter in this Court. On that day the attorney for the Imperial Highway Authority was present, but Col. Mebratu Fissiha was not present.

The Court, after studying the claims of both sides, gave the following deciston. The High Court should not have given an injunction to stop the work before notifying the defendant and giving him sufficient time to prepare his defence. Accordingly, on Hamle 27, 1956 E.C., this Court ordered the High Court to hear the parties and give its final decision before Nehasse 5, 1956 E.C. Because this order was not followed, the Imperial Highway Authority has applied today for the cancellation of the order of the High Court.

Considering that the Highway Authority has accepted the request of the Eskaniska Co. to be substituted as defendant and knowing that the work is being done for the Fighway Authority, the Court has agreed to substitute the Highway Authority for Eskaniska Co. and to consider the dispute as being betmeen the respondent, Col. Mebratu Fissiha, and the appellant Highway Authority.

The case must be considered under Proc. No. $115 / 51$ by which the Imperial Highway Authority was established. The most relevant sections of the Proclamation for this caste are Articles 5 (d) and 10.

Article 10 states that, as indicated in Article 5 (d) of the Proclamation, the right given to the Highway Authority to enter into or to take any private land and make it government property is not subject to review or reconsideration by any court.

If a person is not satisfied with the compensation assessed by the Highway Authority in respect of the value of houses, crops, gardens and other immovables on the land, or wants the allotment of the compensation among those bawing an interest in the land to to be re-examined, be can apply to the Awradja Court having jurisdiction on the land or to the High Court.

As Articte 5 (d) of the Proclanation states, the Highway Authority should make an estimate and make it known to the interested party.

If the interested party disagrees with such estimate, he can apply to the Awradja or the High Court and assert his right. Court consideration is required only to that extent. Since the High Court gave the order in violation of this provision and of the Court Procedure Rules, we find that the order was inappropriate.
in answer to the contention of the Highway Authority, Col. Mebratu Fissiha has relied on Articles 43 and 44 of the Revised Constitution.

## Highway Authority and Eskaniska Co. v. Mebratu Fissima

Article 43 states that a person shall not be deprived of his property without due process of law.* Any act done in accordance with the Proclamation of 1951 indicated above cannot be considered as not done in accordance with the law.

Article 44 is concerned with expropriation. Aiso considering this, it is done according to the Proclamation of 1951. In general, the purpose of the Proclamation of 1951 is to benefit society. Hence, any decision made under it may sacrifice the interest of an individual to that of the society.

Moreover, the order given by the High Court violates the Court Procedure Rules.
While the Court Procedure Rules require that, under all circumstances, before a court order is given, the defendant should be informed and given an opportmity to answer the complaint against him, the High Court neither swmoned the defendant nor set a later time for a hearing. All this is contrary to the Court Procedure Rules, and this Court holds that the order given on Hamle 15, 1956 E.C. violates the Court Procedure Rules.

On the basis of all these reasons, since the order of the High Court given Hamle 15,1956 E.C. viotates the law, we have declared it null and void.

We have cancelled the injunction given to stop the work of Eskaniska Co. and the Highway Authority, and have ordered that the quarrying continue.

To have this order executed, a copy of the order shall be sent to Shashamene Woreda Court. This order shall not bar Col. Mebratu Fissiha from bringing an action in connection with the compensation to be given.

The High Court, apart from considering the issue of compensation, does not have any authority to consider this case further, since this Court has given this order not to delay road construction. Therefore, a copy of this order is to be sent to the High Court.

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#### Abstract

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# SUPREME IMPERLAL COURT <br> Div. 6 

# NEDDI HAILE w. THE ADVOCATE GENERAL 

Criminal Appeal No. $522 / 55$ E.C.



On appeal from the High Court's judgment of conviction for cold-blooded murder and sentence of fiftetn years inprisonment, the appellant based his claim for release on the fact that he had compensated and reconciled with the relatives of the deceated.

Held: Conviction affirmect.

1. Whereas it may well bave been, under the old Penal Code of 1930 , that a murdeter could escape penal liability for his act by the payment of bloot money, he cannot do so under the new Penal Code of 1957.
2. Art. 221 of the Penal Code of 1957 applies only to crimes punishable upon private complaint as defined in Ant. 217, and a prosecution for cold-blooded murder does pot depend on a private complaint.
3. Reconciliation with the relatives of the deceased may, in a murder prosecution, be taken as an extenuating pincumstatice in fixing the sentence.

Maskaram 21, 1957 E.C. (September 30, 1964 G.C.); Justices: Mr. G. Debbas, Ato Haile Aman, Grazmatch Tessemma Negede; - This is an appeal against the judgment and sentence of the High Court (Ist criminal division) in Cr. C. No. 220/52, whereby the appellant was found guilty of murder and, in wiew of extenuating circumstances, was sentenced to fifteen years" imprisonnent only.

The main ground of appeal is that the appellant has settled amicably and reconciled with the relatives of the deceased, and that having consequently paid them blood money and given them a piece of land for reconciliation, he should now be released from jail. That is the only argument of the appellant. On the other hand, he admits his cold-blooded murder, thus supporting two eye-witnesses who testified against him, and he does not attack the finding of the High Court to the effect that he was guilty of murder.

Ato Negga for the Attorney General strongly objected to the release of the appellant, as the reconciliation that intervened between him and the relatives of the deceased cannot be the basis for such release. He said that although the appellant could have had a chance for release after payment of blood money under the old Penal Code, he cannot under the new Penal Code of 1957. Article 22I of the Penal Cope of 1957, cited by the appellant, applies only in cases of crimes putishable upon private complaint, as defined in Article 217 of the Penal Code, while a prosecution for murder does not depend on a private complaint. Under the circumstances, Ato Negga asked the Court to dismiss the appeal and confirm the sentence of the High Court.

The appellant, nevertheless, begged for reconsideration of his fifteen years' imprisonment, because he reconciled with the relatives of the deceased and gave them a picce of land.

The Court finds no way out but to agree with the opinion of Ato Negga. Article 225 of the Penal Code applies only in cases of erimes punishable upon private complafit; and this is a cold-blooded murder for which the prosecution does thot depend on a private complaint as defined in Article 217 of the Pensl Code. Consequently, Article 221 is inapplicable and rejected by the Court. It may well be that appellant could have had a chance under the old Penal Code; but it is no longer in existence.

Upon reconsidering the period of imprisonment imposed on the appeland by the High Court, we wish to draw the attention of the appellant to the fact that he escaped the death sentence; the High Court considered his reconciliation and his youth as extenuating circumstances. We cannot see that the High Court was too firm with the appellant. The penalty it imposed was rather light; but since the respondent asked for its confirmation and did not appeal, we simply confirm it.

The appeal is therefore rejected, and the fifteen years' imprisonment of the High Court are hereby confirmed.

The High Count and Prison Authorities are to be notified in Amharic,
Given and delivered in open Court this 21st day of Maskaram, 1957 E.C., in the presence of appellant in person and Ato Negga for the respondent.



















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# SUPREME IMPERIAL COURT <br> Div. IA 

## ZEYENU ABDELLA $v$. WOBEAYEHU SEMAHEGNE

Civil Appeal No. $1792 / 56$ E.C.

 Afts. $2479,3059-3087,3480,3117,3171$, and 3124 Citr. C.

Ctstomary law = - Antichrests.

The High Court gate judement in favor of the lender under a loan agreement with a contract of antichresis appended; it had been stipulated that the borrower would retain the boure cowered dy the contract of antichresis and pay reat of Es300 in the place of interest. On appeal, the borroucer argued that to give effect to this stipulation woulf allow an evasion of the usury rules, which are imperative, and that, therefore, the stipulation should nof be enforced.

Held: Judgrment reversed.

1. A contract of antichnesis is a eontract, subsidiary to a loan, by which the leader takes certain propenty of the borrowwit as security and raceives the use, rents, fruits, or profis from the property in the place of interast.


2. If a pergon enjoys the fruits of an immovable secured to him under a contract of antichuresis, it replaces the siterest to be paid on the forned money and means that the borrower ghould not pay intercst: If the lender gets money by letting the immovable, howewer, and particularly by lettiog sucta imuovable to the borrower, he cannot collect under the guise of antichersis more interst than is permilted by law.

Ter 29, 1957 E.C. (Febnuary 6, 1965 G.C.): Justices: Afenegus Kitaw Yitateku, Ealambaras Tessema Wondemench, Ato Taddesse Tekle Giorgis: - Respondent and appellant entered into a loan contract by way of a witten agreement signed on Maskaram 1,1955 E.C. The lender and the borrower entened into a contract of antichresis in respect of the loan. The respondent clamed the sum of $\mathbf{E} \$ 6000$, which she loaned to the appellant, and also the amount of the rent for the house in accordance with the contract of antichresis between the two parties.

Article 3117 of the Civil Code, defining the term "antichresis" ${ }^{\prime}$, states: "A contract of antichresis is a contract whereby the debtor undertakes to deliver an immovable to his creditor as a security for the performance of his obligations."

The lender, Woizero Wobeaychu, demands that, since the borrower has himself taken in lease the house which be wodertook to deliver under the contract of antichersis, he pay her the rent for the house instead of the interest on the money loaned. Article 3 of the contract provides: "I, the debtor, have undertaken to pay the rent of the house. being the sum of $\mathrm{E} \$ 300$, which I have delivered to the lender under the contract. ${ }^{*}$

To this the appellant has answered that he, the borrower, must not pay in the guise of a contract of antichresis more money in cash than that allowed by law. He has argued that the interest must be only that amount peamitted by law.

The High Court held that it is impossibie to amend the terms of the contract and, therefore, the borrower, Zeyenu Abdella, according to the contract, must pay to the lender the rent instead of the interest.

From this decision the defendant appealed.
Articte 3121 provides:
(1) The person having created the antichresis shall deliver the immovable and its accessories to the creditor or such other person as has been specifed in the contract.
(2) The antichresis shall have the same effects as a mortgage until such delivery has taken place or after the immovable has been returned to the person having created the antichresis.

Article 3124 provides:
(1) The creditor under the contract of antichresis shall pay no rent to the person having created the antichresis.
(2) The use the creditor makes of the immovable and the fruits and profits he derives therefrom shall replace the interest on the claim.
(3) Any provision whertby the creditor is entitled to interest in addition to such use, fruits and profits shall be of no effect.
In our customary law, antichresis meant for the lender of money to take and use the crops from the land of the borrower in place of the interest on the loaned money, or for the lender to take the house of the borrower and live in it. Article 3124 of the Civil Code is in accord with our customary law.

If a person takes in possession an inmovable under a contract of antichresis and lives in it, exploits it, or uses it, such person should not pay rent to the owner of the immovable. If a person enjoys the fruits of the immovable secured to him under a contract of antichresis, it replaces the interest to be paid on the loaned money and means that the borrower should not pay interest; it does not mean that if the lender gets money by letting the immovable, and particulatly by letting such inmovable to the borrower, he can collect interest mote than that permitted by taw under the guise of a contract of antichresis.

The provision in Article 3i24, Paragraph 1, whick says "The creditor under the contract of antichresis shall pay no rent to the person baving created the antichresis', is clearily talking about the immovable delivered to the lender and used by the lender and is not talking about an immovable that he himself does not use. Article 3121, Paragraph 2, of the Civil Code says, "The antichresis shati have the same effects as a mortgage until such delivery has taken place or after the immovable has been returned to the person having created the antichresis". This is referring us to Article 3059-3083 of the Civil Code.

Article 3080 of the Civil Code states that the rent on mortgaged property is at the rate of interest provided by law. In general, it is prohibited to create a mortgage in order to pay more than the legal interest rate.

The lender who takes delivery of the immovable of antichresis and uses it for himself shall not pay rent to the owner. The profit he derives from the thing and its use shall be deemed interest on his claim. A contract made between a lender and a borrower by which the borrower agrees to pay rent for his own property shall not be deemed to be a contract of antichresis. Were this allowed, it would amount to making a contract in order to coltect interest in excess of the rate permitted by law and this would pernit the lender to circumvent the mandatory provision of the law.

The terms of the contract clearly show that the contract entered into between the appellant and respondent is a contract of loan.

Article 2479 of the Civil Code provides that, by agreement of the parties, the rate of interest may be 12 per cent. But where the parties do not stipulate any rate, it shall be 9 per cent, and where it is agreed in excess of 12 per cent, it shall be only 9 per cent.

The lender may not directly or indirectly contravene such a rule made for the protection of the public. If it were not so, the rule that states that no interest shall be collected above the legal interest would be meaningless.

For all the above reatons we reverse the judgment of the High Court and decide that the appellant borrower, Zeyenu Abdella, shall pay to the respondent lender, Woizero Wobeayehu Semahegne, 9 per cent interest and not the rent of his own house, which is $\mathrm{E} \$ 300$ per month, as interest. This is the opinion of the majority. The minority would affirm the judgment of the High Court.

Ato Tadderse Tekle Giorgis, J., dissenting:- I dissent from the majority opinion in this case for the reasons detailed below.

A contract of lease of a house and a contract of antichresis were entered into by the parties on Maskaram 1, 1955 E.C. Art. 1731 of the Civil Code states that the provisions of a contract lawfully formed shall be binding on the partics as though they were law. Because the parties have freely entered into the contract of antichresis, no one should in any way vary the provisions of the contract. Article 3124, sub-section one, states that the creditor who is in possession of immovable property under a contract of anticheresis shall pay no rent or payment for agricultural products to the person who has transferred the property under the contract of antichresis.

The majority opinion decided that if the creditor under a contract of antichresis lives in the house delivered to him under antichresis he shall not pay rent to the owner of the house. But if the creditor leases the house, the rent shall be considered as interest. It is my position that it should not make any difference whether the creditor under antichresis himself tives in a house delivered to him or leases such a house to sorneone else.

Moreover, since the debtor under the antichresis in this case is a businessman who knows his losses and profits best, it was with full knowledge that he entered into the contract of antichresis and then rented the house which he delivered under the antichresis. The decision, therefore, that the rent of the house under the antichresis contract shall be deeded to be an interest payment on the loan for which the antichresis contract was entered was not proper. I woufd affirm the decision of the High Court.



























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## HIGH COURT

Addis Ababa, Com, Div. No. 2

> GRAZMATCH WOUBE WOLDE SELASSIE $\%$. DEJAZMATCH KEFELEW WOLDE TSADIK,

in his capacity as Gowentor of Tegulet and Bulga Awradja Gezat

Civil Case No. 70/54 E.C.

Constitutlon - Independence of the judiciary - - Executive or administrative interference - Judiciar declaration of multity of acts of interferemce $=-$ Arr. 110 Rev. Const.


#### Abstract

Respondent in his capacity ${ }^{5}$ Goverwor issued an order to the President of an Awradja Court dirbeting him to tum over land to a party with whom petitioner was engaged in litigation as to the question of ownership. The land was conveyed to that party pursuant to the crder and petitioner filed the present suit in the High Court against the Govemor to have his above ordsr delared pull and void.


Held: Relief granted. Ocder of Govertor deelared null and void.

1. Art. 110 Rev. Const. guarantees the independence of the Judiciary.
2. Any action of the executive or administrative authorities which interferes with the independerase of the Judiciary will be declared nuil and woid.
3. Judges should disregard uneonstitutional interference with their sonstitutional prerogatives and adjudicate disputes solely in accordance with the law.

Megabit 10, 1954 E.C. (March 19, 1962 G.C.); Judges: Dr, W. Buhagiar, Ato Josef Tekle Mikat, Ato Mekonnen Getahun:- This is a petition by the petitioner in which he prays for a declaration that the order No. 598417 dated Megabit 21, 1953 E.C. given at Debra Berhan by the respondent in his above mentioned offical capacity is null and void.

The facts, which are not denited by the respondent, are as follows:
By proper civil proceedings instituted by the present petitioner, the present petitioner was given possession of a plot of land in 1938 E.C., and from that time until 1944 E.C. he remained in possession and enjoyed the benefits of that plot of land. In 1944 E.C. a certain Ato Kiltu Balcha re-entered in possession of that land, whereupon the present petitioner caused criminal proceedings to be instituted against him, in the Awradja Court, in File No. 51/51. The Awtadja Court gave judgment on Hamle 9, I951 E.C. (Exh. P/2); in the course of the trial it was proved that Ato Kiltu Balcha, the accused, had acquired possession of the said plot of land by order of a pertain judge, Grazmatch Asfaw, and for this reason the Court held that the accused could not be liable. In the judgment the Court added a rider to the effect that, with regard to the right on the land, the parties could take the necessary action for execution in accordance with the previous judgment, that is, the judgment of 1938 E.C. (Exh. P/4).

From this judgment of the Awradja Court, the present petitioner lodged an appeal to the High Court in Addis Ababa, that is, Criminal Case No. 696/51. By judgment delivered on Sene 17, 1952 E.C., the High Court dismissed the appeal holding that Ato Kiltu Baicha could mot be guity of any crime because the use of the land had been given to him by a judge; the Court also added that the case of the appellant, Grazmatch Woube Woide Selassie, was one of a civil nature; the judgment of the Awtadja Court was confirmed.

Relying on this judgment, the present petitioner lodged an application to the Awradja Coart of Tegulet and Bulge requesting that the judgment of 1938 E.C. be execated in the sense that he get the possession of the land in question. This application was ganted and an order for execution was issued, as a result of which the present petitioner re-acquired possession of the land.

On this change of possession of Land, Ato Kiltu Balcha lodged a petition to the High Court in the former appeal file No. $696 / 51$, in which he alleged that one Ato Taddesse Medifu, together with Ato Demissie Bedane, had transferred the land from his possession to the present petitioner and that this was done with the intention of haming him, he having had possession of this land for a long time. The High Court rejected the application, reserving to the applicant, Ato Kiltu Balcha, his right to file a civil or criminal case against the Deputy Governor, Ato Taddesse Medifin, before the appropriate court (Exh. P/5).

It seems that Ato Kiltu Balcha did not avail himself of judicial proceedings, but preferred to appeal to the administrative authorities, and as a result of his complaints, the present respondent in his capacity of Governor issued the onder No. 598417 on Megabit 21, 1953 E. C. (Exh. P/3) addressed to the President of Tegulet and Bulga Awtadja Court ordering him to hand over the property in question to "the judgment creditor" Ato Kiltu Balcha with all mesne profits from the hands of the "illegal possessor" with the understanding that any one who claimed a right to the property should have the right to file a civil case.

As a resull of this Order, ' ie land was transferred again to Ato Kiltu Balcha.
Now as stated above the respondent does not deny such facts; his defence is that after the criminal case, what the present petitioner should have done is to file a civil case against Ato Kitu Balcha for the recovery of the possession of the land.

This Conrt cannot refrain from remarking that the whole matter regarding this plot of land has been clouded in its various stages by procedural irregulanities, culminating in the Order now being challenged. Whatever procedural irregularities there may have been on the part of the courts, the Order of the respondent in this capacity as Governor dated Megabit 21, 1953, E.C. is a clear interference with the independence of the Judiciary and against Article 110 of the Constitution. Such an order is beyond the pewers of a Governor or any other admintrative authority and is null and void; indeed, the President of the Awradja Court to whom it was addressed should have completely disregarded it and left it to the parties concerned, that is, the present petitioner and Ato Kiltu Balcha, to challenge the validity of execution granted previously in favour of the present petitioner in a proper coutt of law.

For the above reasons, the petition is successful and the Order issued by the respondent under No. 598417 dated Megabit 21, 1953 E.C., is hereby declared null and void.

The respondent shall pay court fees according to receipt and costs to the petitioner of ESIO0.
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HIGH COURT
Addis Ababe, Com. Div. No. 2

# S.A.C.A.F.E.T., SOCIETA' ANONIMA v. THE MINISTRY OF STATE DOMAINS AND MINES 

Civil Case No. 178/54 E.C.

 

In an action for infunction, the petitioner claimed that termination notice sent by the respondent under their lease agreentent was insumifient in that the notice required pas not given and the termimation was not for "govemment use" as required by the lease; sinilitarly that expropriation procesdings under Art 1461 Civ. C. were not properly instituted, to that the fispondent cannot now claim that ant expropriation was intended.

Held: Permanent injunction granted.

1. The Civil Code provisions seting forth the procedure for expropristion ponstitute the special expropriation lew referred to in Art. 44 Rev. Const.
2. If the government wishes to enpropriate a person's flghts under a lease, it must foltow the procedures set down in the Civil Code, which containt the spectal expropriationi law enacted porsuant to Art. 44 Rev. Const.
3. A simple letter from the Minister of Pen to the Ministry of State Domains to the effect that premises should be etmatked for a certail purpose, with no mention of an existing kase, doen not amodnt to a ministerial order to bredel: the lenge as is required by Art. 44 Rer. Const. and by the Civil Code.

Megabit 13, 1954 E.C. (March 22, 1962 G.C.); Judges: Dr. W. Hunagiar, Ato Josef Tekle Mikael, Ato Mekonnen Getahum: - In his statement of claim, the plaintifi company stated that there was an agreement of lease entered into between that company and the defendant Ministry for premises to be used as a workshop at Mexico Square for a period of one year ending on Maskaram 30, 1955. This agreement is ewidenced by Contract of Lease No. 2167 (Ext. P/1). The plaintifif also stated that by letter dated Ter 22, 1954, No. $4731 / 3181 / 54$, (Exb. P/2), the defendant Ministry requested the plaintiff company to vacate the said premises by Ter 30, 1954. It is submitted by the plaintify com pany that such request to wacate the premises is contrary to the lease agreement, which, in clause 3, stipulates that in case the premises are required for Government use, the plaintiff company is to be notified at least two months in advance for the purpose of terminating the lease and handing over the premises. The plaintiff company further states that apart from the fact that the prowisions of elause 3 of the agreement have not been followed as regards the notice to be given, the purpose for which the premises are required are not "for Government use"; in fact, the letter of Ter 22, 1954 clearly states that the premises have been assigned to the Chamber of Commerce; according to the submission of the plaintiff company the Chamber of Commerce is not a Government Department. Having premised the above, the plaintiff company prayed that the defendant Ministry

## S.A.C.A.F.E.T., Societa' Anonima y. The Mintstry of State Domains \& Mines

be enjoined from proceeding with the request of taking over the premises on Ter 30, 1954, and also prayed for a declaration that the notice (Exh. P/2) is contrary to the terms of the agreement and therefore null and void.

By interlocutory order dated Ter 29, 1954, this Court prohibited the defendent Ministry from proceeding with the eviction antil further Order of Court.

By the defence, dated Yekatit 26, 1954, the defendant Ministry did not deny the facts as alleged in the statement of claim or any of the documents produced by the plaintifif company, but, the defence stated, the order for the taking over of the said premises for use as a Chamber of Commerce was given by His Excellency the Minister of Pen, and in support of this there was submitted a letter from that Ministry to the Vice Minister of the Imperial State Domains dated November 3, 1961, Ref. No. [310/8/868/17, (Exh. D/1). Furthermore, it was submitted in the defence that it is possible to take over the said premises uader the provisions of Article 1461 of the Civil Code. Now as regards the letter from the Ministry of Pen, this amounts to a direction that the premises in question be earmarked for the Chamber of Commerce; it is not an order for the immediate possession of the premises; furthermore, nothing is stated therein regarding the present existing lease in favour of the plaintiff company; such letter therefore cannot amount to an order to the defendant Ministry to breach the agreement existing in favour of the plaintiff company.

As regards the submission of the defendant Ministry that the lease could be taken over under the provisions of Article 1461 of the Civil Code, it is true that under the Civil Code the competent authority may take action to expropriate land and that under Article 1461 expropriation procedings may be used for terminating a contract of lease prior to the agreed term, but the Civil Code lays down a definite procedure for expropriation. This procedure, as laid down in the Civil Code, is the special expropriation law enacted in accordance with Articles 88,89 , or 90 of the Revised Constitution, pursuant to Article 44 of that Constitution. In the present case, no expropriation proceedings have been taken in accordanse with Article 44 of the Constitution or the articles of the Civil Code; it cannot, therefore, be said that there has been any expropriation, since if there had been, such expropriation would have been against the Constitution.

For the above reasons, the Court holds that article 3 of the lease agreement (Exh. P/1) has not been followed by the defendant Ministry in that, even if the premises in question were required for Government use, a notice of two months is required under article 3 for the termination of the lease and the evacuation of the premises, and therefore the notice given by the defendant Ministry by letter dated Ter 22, 1954 (Exh. P/2) is illegal and of no effect.

The defendant Ministry shall pay the plaintiff company court fees according to receipt and costs of E\$100.

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HIGH COURT
Addis Ababa, Com, Div. No, 2

# H.V.A. ETHIOPIA v. THE INLAND REVENUE DEPARTMENT 

Civil Case No. 20/54 E.C.


#### Abstract

Taxarion - - Income tax - Deductions - Travel expenses - - Written agreemehr - - Revenwe expermit tures - Capital expenditures - - Kepairs - Art. 59 meone Tax Decree of 1956 (Decree No. 19/56) - - Arts. 7 (a), 7 (b), 7 ( (I), and 8 (c) Leg. Not. No. 215/58.


On appeal from a decision of the Tax Appeal Committor denying deductions from income for purposes of taxation (1) for traveling expenses of forcign experts traveling to and from Ethiopia in connection with the appellants' concem, on the ground that the appeliants' concem had no written agreencent with the experts in respect of such expenses, and (2) for expenses for repairs of machinery, etc., on the ground that the repairs were usable for a long term and therefore ponstituted capital expenditure, which is not deductible.

Held: Decision on the first point reversed and the matter referred back to the Committee to examine appelants" docunhents to see whether, as a matter of fact, the expenses were incurred for the alleged purpose; decsion on the second point reversed and the expenditures ruled dednctible.

1. No written agreement between a concern and expert personnet is required to establish that enpenses were incurred by the concent for such pertonnel under Anth. 7 (b) and 7 (f) of Ley. Not. No. $215 / 58$.
2. Capital expenditure, within the meaning of Art. 8 (e) of Leg. Not. No. 215/58, is an expenditure that is made once and for all and that brings into existence an asset or advantage for the enduring benefo of the trade or business, while a rewenue expenditure is one which will reeur year by year.
3. Where expenses incurred in the trade or business do not bring any new capital, but are only intended to maintain existing capital, such as repairs of machinery, whether or not ussble for several ycars, such expenses conssitute revenue expanditure and not capital expenditure.
(Ed. Note: The Inconfe Tax Decrec, 1956, Dee. No, 19/56, and the Income Tax Regulations, 1958, Leg. Not No. 215/58, have becn cepealed and replaced, tespectively, by the Income Tax Proclamation, 1961, Prec. No. 173/61, and the Income Tan Regulations, 1962, Leg. Not. No. 258/62. The law femains substantially the sance, bowevtr, Atts. 7 (a), 7 (b) and 8 ( f ) or Leg. Not. No. 215 are the same as Arts. 16 (a). 16 (b) and 17 (b) (v) of Leg. Not No. 258. Art. 7 (f) of Leg. Not. No. 215 does not appear in Leg. Not, No. 258, but is substantialy the same as Art 16 of Proc. No. 173. With regard to expenses for professional pertonnel, Leg. Not. No. 258 added a new provision in Ast. 16 (c).)

Megabit 20, 1954 E.C. (March 29, 1962 G.C.); Judges: Dr. W. Buhagiar, Ato Josef Tekle Mikath, Ato Mekonnen Getahun: - This is an appeal under Articie 59 of the Income Tax Decree of 1956 (Decree No. 19 of 1956) from two points in a decision of the Tax Appeal Committee given on September 4, 1961. These two points concern an item of E $\$ 97,538$, which the appellants allege was incurred as traveling expenses of foreign experts traveling to and from Ethiopia in connection with the appellants" concern, and an item of $E \$ 122,769.50$, which the appellants allege was incurred by them as expensts of a current nature such as milling rolls, repairing machinery, etc. The ground of the appeal is that the Tax Appeal Committee erred in law in assessing the appellant to pay tax on items which are deductible under Article 7 (b) and 7 (f) of Legal Notice No. 215
of 1958 and also erred in law in the interpretation and application of article 8 (e) of the said Legal Notice in that it included ordinary general expenses as "capital expenditure" and thus included anounts which should have been deducted for purposes of taxation.

Now with regard to the item of E\$97,538, the Tax Appeal Committee considered that these expenses could not be dedueted on the ground that, as the auditor pointed out, there were no writteit agreements concerning these cxpenses, that is, expenses for air passages for experts in the service of the appellant company who trawed to and from Ethiopia in connection with the work of the company. In the decision of the Tax Appeal Committee it is stated that that Committee asked the appellants whether there was any agreement about such expenses and the appellants replied that there were only verbal agreements; the Committee went on to state that taking into consideration the fact that for such an enterprise as the Wonji Sugar Factory to have only verbal agreements was unreasonable, the expenses should be subject to taxation. In the opinion of this Court, this is a poor and untenable argument. As a matter of fact, there is nothing in law which requires agreenents of this nature to be in writing. Furthermore, it is well known that an enterprise of the scale of the Wonji Sugar Factory has its rules and regulations governing the terms of service of their employees, and in fact, appellants showed the Court such regulations of the appellant company. There has also been shown to the Court various applications to the Ministry of Interior regarding entry visas for the employees of the company in respect of whom such traveling expenses were incurred. It seems that the appellants have sufficiont documentary evidence to show that these expenses were in fact incurred for their expert employces, who in turn ate necessary for the production of the income. This Court is, however, concofned only with a point of law and as a matter of law this Court holds that no written agreement is required to establish that the expenses were incurred for the purpose alleged. On this point, therefore, the ruling of the Tax Appeal Committee is quashed as being legally untenable, and the matter is referted back to the Tax Appeal Committee to examine any documents the appelants have to satisfy the Committee that the expenses were incurred for expert personnel.

With regard to the seconc point, that is, the item of E\$I22,769.50, there can be no question that under Article 8 ( 4 of Legal Notice No. 215, capital expenditure is not deductible for purposes of assessing tax. The argument in this case is whether appellants' above-mentioned expenditures were capital expenditures or other expenditures under Article 7 (a) or Article 7 (f) of the said Legal Notice. The Tax Appeal Committee held that they were capital expenditure (except for an amount of E 33,120 ); the Tux Appeal Committee based itself on the opinion given by the auditor who suggested that the said expenses should be written off in a number of years in terms of depreciation because these were expenses made on goods and on repairs of a large scale, usable for a long term; the auditor also mentioned that during his examination he was told by the engineers of the factory that the said goods could be used for a number of years, It is quiteclear from the decision of the Tax Appeal Committee that that Committee did not consider such expenses as being expenses incurtec in improvement and alterations as laid down in Article 8 (e) of Legal Notice No. 215. Their decision was based solely on the suggestion of the auditor that the repairs were usable for a long term. There is no question, therefore, that these expenses were expenses for repairs. The distinction between capital expenditure and revenue expenditure is of great importance. Various tests may be suggested for this distinction, but substantially the distinction lies in this, that capital expenditure is an expenditure that is made once and for all and that brings into existence an asset or an advantage for the enduring benefit of the trade or business, while revenue expenditure is one which will recur year by year. Now there can be no question that any tepars which are carried out on machinery in a trade on business are an advantage to the trade but
they are not such as bring into exirtence an asset or an advantage; the asset was there already, and the repairs have the effect of enabling such asset to continut to bring income to the business, with more efficient working. In other words, where expenses incurred in the trade or business do not bring any new capital (such as the complete renewal of a building) but are only intended to maintain existing capital, they are revenue experditure, not capital expenditure. For thest reasons, the Court holds that the Tax Appeal Committee was wrong in law in deciding that the expenses of E $\$ 122,769.50$ were capital expenditure, reverses their decision on this point, and decides that such expenses ase deductible under Article 7 (a) and ( 0 ).

The respondent shall pay haff the court fees, according to receipt, and costs of E\$50 to the appellant.

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HIGH COURT
Addis Ababa, Com. Div.

# TENAGNE WORKE ABDI v. YEJOTE WORKE LEGESSE 

Civil Case No. $202 / 56$ E.C.

 <br>Statatory intepretarlan.


#### Abstract

In response to a petition by the mother of the doceased for a declaration of ber successional tights, the half-brother of the deceased objected that the property in question was family property from the paternal lime and, therefore, showld devolve upon hirn as the representative of his facher rather than opot the deceased's mother.


Held: Objection sustained.

1. Where the doceased is not survived by a descendant, his father and mother shall be called to his succession and each shall receive half of the inheritance.
2. A predeceased tather shall be represented by his descendants.
3. The rule paterna polernth materna maternis, which is consained int Art. 849 Civ. ©. provides an exception to the general surcessional rules in the case of immovable property that has devolved rithout interfiption to the second degree (generation), and later degrees, from the person who tirst acquired $j t$.
4. Property that is subject to the rule paterna paternis materna maternis shati not be transfered from the paternal line of the family to the matemal, or wife versa-
5. In the absence of an heir in either the paternal line or the matemal line, the rationale for the rule may disappear, together with its legal effoct.
6. The person who would be entitied to the propefty if it were not "family property" is stillentited to a osufructuary interest in it.
7. It is a principle of statutory interpretation that every word of the law is to be construed in such a way as to have a meaning.

Hedar 15, 1957 E.C. (December 24, 1964 G.C.); Judges: Ato Belatchew Asrat, Ato Mekonnen Getahun, Blatta Yishack Tefferi: - Woz. Tenagnc Worke Abdi petitioned the Court to declare her right to the estate of her son, Kaleab Legesse who died intestate without a descendant.

In reply to notice given in a newspaper, the deceased's half-brother, Ato Yejote Worke Legesse, appeared and filed an objection that the inheritance should devolve on him and not on the petitioner. The ground for his objection is that the immovables constituting the succession are family property derived from the paternal line of the deceased's family, and cannot. therefore, be assigned to the maternal line.

It is conceded that the deceased was the son of the petitioncr and Ato Legesse Worke

Ingida. The petitioner stated in ber petition of Miazia 1, 1956 E.C. that the property of the deceased is derived from the deceased's paternal grandiather.

Questions of intestate succession are governed by Articles $842-856$ of the Ciwil Code.
Where the deceased is not survived by a descendant, his father and mother shall be called to his succession. The father and mother shall each receive a half of the inheritance. The predeceased father shall be represented by his descendants. The respondent is the son of Ato Legesse Worke and can, therefore, represent his father. Hence Woz. Tenagne Worke Abdi and Ato Yejote Worke Legesse are the persons entitled to the deceased's succession.

The objection that the deceased's property deriving from the paternal line should not be assigned to the petitioner raises a problem. Article 849 lays down the role "paterna paternis materna maternis." It is evident that the rationale for the rule is to prevent the transfer of immovable property outside nataral relations. In the absence of an heir in either the paternal line or the matemal line, the rationale for the rule may disappear, together with its legal effect.

Before the rule "paterna paternts materna maternis" can be put into effect, one has to deternine what is "family property or family land." The law does not define these terms unequivocally.

Article 849 (3) states: "The rules laid down in sub-articles (1) and (2) shall apply up to the second degree so that immovable property deriving by donation or succession from the grandpaternal line be not assigned to an heir of the grandmaternal and vice versa."

The phrase "shall apply up to the second degree" does not seem to be related to the preceding articles and, therefore, the concept is not clear-

Degree of relatiomship is governed by Articles 550 and 551. "The second degree" mentioned in Article 849 (3) refers to Articles 550 and 551 ; it does not refer to fefirst relationship" and "second relationship"' as they are used in Articles 842 and 843 . "First relationship" in Article 842 includes children, grandchildren and any other desendants, while "the first degree" (generation) includes only parents and children. "The second degree" (generation) includes grandparents, parents, and children.

Is "the second degree" mentioned in Article 849 (3) to be counted from the deceased or from ascendants toward the deceased? If there is immovable property deriving from a great-great-grandfather and if we count the "degree" up from the deceased, the property becomes "family property" when it is traced back to the grandfather, but ceases to be "family property" upon passing to the deceased's father and to the deceased himself, If the degree is counted toward the deceased, it means that the property shatl be considered "family property" at the second generation from the first owner of the property. As stated above, this is not in accondance with the spirit of the law. The familial nature of an inmovable never weakens; it strengthens the longer it is handed down through the generations. To interpret "the second degree" (generation) in a sense that weakens the familial nature of property upon the passing of an additional generation woutd be to deviate from the spirit of the law.

The phrase "shall apply up to the second degree" must be given effect. Every word of the law is construed to have a meaning. If it appears to be meaningless at first, it must be construed in such a way that it has a meaning. This is one of the principles of statutory interpretation.

In our opinion, "the second degree" (generation) referred to can have meaning within the spirit of the section where it helps to determite what is "family property." According to this construction, an immovable is "family property" when it passes from the first owner to the first degree (generation) and then from there on to the second degree (generation). It cannot be considered "family property" upon acquisition by the first owner, nor upon devolution on the first degree (generation). As soon as the second degrec (generation) receives the property by succession or donation, it becomes "family property," From then on, Article 849 (1) and (2) can apply. The rule "paterna patemis materna maternis" therefore applies to immovable property that has devolved without imternaption to the second degree (generation), and later degrees, from the person who first acquired it.

The immovable property of Kaleab Legesse derives from his grandfather through his father and, in light of our discussion, is "family property." As such it cannot be assigned to the deceased's mother, the petitioner. The petitioner would have been entitled to half the property if it were not "family property"' derived from the paternal line. She is still entitled to the rights reserved urider Article 850 (1).

Effective upon the death of the deceased, the ownership over the immovable property of the deceased must devolve upon Ato Yejote Worke Legesse, while the petitioner keeps her usufructuary right to one half of such property.

The parties shall defray their own costs.
The execution officer shall be instructed to execute the decision accordingly.



























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## HIGH COURT

Addis Ababa, Com. Diy.

# TEFFERA GHLZAW v. MENNA BEKEEECH 

Civil Case No. $339 / 54$ E.C.

Adoption - Curtomary law - = Formalities required - - "Yemar lij."

On the femand for retrial from the Supreme Imperial Court of an appeal taken to pontest the High Court's declaration that petitioner is to succeed to his sigter's intestate estate over one claining to be both the godehild (ytmar lij) and a secretly adopted child of the deceased.

Held: For petitioner.

1. Athough the relationship of "yemar lij" creates intimacy, it does not create the legal rights of an adopted child, such as the right to suecessfon.
2. To create adoptive filiation under customary law, a formality is required to clearty show the desire and consent of both parties to bring about such a bond of filiation.
3. A legally binding adoption cannot be said to exist when it is concluded secretly, berause the serney itself throws doubt upon the desire and intention to adopt and notice is not given to interched persens.

Ter 21, 1957 E.C. January 29, 1965 G.C); Judger: Ato Belatcherw Astat, Ato Mekonnen Getahan, Blatta Yishack Tefferi: - This file was opened by the pettioner"s request that this Court declare his right of succession to the inheritance of his sister, Woz. Bekelech Ghizaw, who died intestate without leaving behind a descendant. After hearing several objections to the petition, this Court decided on Yekatit 25, 1955 E.C. that the petitioner alone is entitled to the succession.

Out of the persons whose objections were rejected, Woz. Menna appealed, and in its decision of Ter $15,1956 \mathrm{E} \mathrm{C}_{\mathrm{t}}$ the Supreme Imperial Court, in fts appeai file No. $984 / 55$. remanded the case for retrial with a directive that the High Court should find out whether the appellant was "Yemar lij" to the deceased according to custom.

Pursuant to the directive from the Supreme Court, we have heard witnesses ealled by Woz. Menna to show that she is "Yemarlij". The petitioner's witnesses were also heard.

The Court has rejected as irrelevant the respondent's request to submit evidence to show that she was reared and given in marriage by the deceased.

We have studied whether Woz. Menna is an adopted child according to custom or merely a "Yemar lij" of the deceased. Woz. Menna"s first witness was Woz. Sirgute Wolde Johannes. She testified that the deceased was Woz. Menna's godmother, that guests were invited to a baptismal banquet arranged by the deceased, that the deceased wanted to

* Translator"s note: Literally means "honey child ${ }^{4 \%}$ it is used itherchangeably with "yyetut lij" which literally meanss "breast child." "Yemar abat"* and "ytutut abat" respectivety mean "honcy father" and "breagt father."
adopt the child secretly, and that the deceased gave Woz, Menna a gift of dresses and declared that she woukd bring her up with milk and honey like her own child. We reasonably believe that this witness, who is the respondent's mother would be in a position to know the matfer best. Her testimony to the effect that the deceased wanted to adopt the respondent secretly is decisive in the issue under consideration.

Woz. Sirgute's testimony regarding the secret adoption was in conflict with that of the 3rd, 4th, and 5 th witnesses, who stated that the adoption was made in public. This Court gives weight to the testimony of the first witness, who was more directly involved in the event - whether it was adoption or otherwise.

The respondent's witnesses stated that Woz. Menna was adopted by Woz. Bekelech and her husband. Fhis means that Woz. Bekelech and her husband secretly made the respondent their adopted child.

The custom in this country requires a special formality to give an outsider a status of a child with all filial rights and obligationts, including a right of succession. When the fomal procedure is followed, there is no distinction for any purpose betwetn a natural child and an adopted child.

Adoption is widely known and practised anong the Galla's who call it "gudifecha". Among the Ambaras there is a practice known as "Yemar $\mathrm{Ij} \mathrm{j}^{\text {" }}$ or "4yetut lij", which may have a different legal effect than "gudifecha." A "gudifecha" child is considered for all social and legal purposes to be a child of the adopter, whereas for "Yemar lij" to be legally considered as a natural child, an explicit and unequivocal formal procedure must be followed.

To create adoptive filiation, custom requires a formality that can clearly show the desire and consent of both parties to bring about such a bond of filiation. There is no rule whereby the details of such necessary formalities are specifically set forth. The existence of adoptive filiation can be decided ondy from the circumstances of an individual case. There is, however, one basic general principle that holds true. This principle requires that, even if the detail of its application varies, there must always be a special formality for the creation of an adoptive filiation. This formality distinguishes an adopted child, who has the bond of filiation with the adopting family and who for all legal purposes is deemed a natural child of the adopter, from another who may be nominally and casually referred to as one's gwn "child" without any bond of filiation.

For a bond of filiation to exist through adoption, it is essential that a special formality be undergone publicly without reservation. Since the child leaves his family of origin to join the family of adoption, both families must know about the adoption. A bond of filiation has legal effects and, therefore, should not be kept secret, especially when created by a contract of adoption. If the adopter wants to create adoptive filiation secretly, it becomes doubeful whether he has a full desire and intention to adopt the child at all. If the adoption is made openly, that gives interested persons an opportunity to know of the situation and raise any legitimate objections. If, for instance, a person other than a natural parent of the child wants to give his consent with a wew to bind a minor child in adoptive filiation with a third person, the natural parents do not have an opportunity to object to the arrangement where the contract is secretly concluded. In such a case, no legally binding adoption can be said to exist.

As stated above, an adopted child leaves his onginal family. Both families must, therefore, be aware of the situation.

Even if there are no detailed and specific formalities for adoption, the general principle that some formality must be openly performed seems to be a recognized and accepted principle. The person adopted must be known as an adopted child, not onty to the adopter, but also to other people. Otherwise the formality of adoption misses its Iegal as well as social purpose.

Whether the formality for adoption has been duly and openly followed in order to create adoptive filiation can be known only from the particular acts performed. The formalities used may vary from one locality to another. Nevertheless, all have as a common factor the requirement that the adopter must perform a special formal act to unequivocally show his intention and consent to make a person his adopted child. The child or, where he is a minor, his parents acting on his behalf must also perform a formal act to clearly show their consent and desire to be bound. In the absence of such formalities, it is not possible to know whether or not there was an intention to create a legal bond of adoptive filiation.

In one locality, for adoptive flitation to exist the adopter must prepare a banquer and invite guests to declare his intention to adopt a child. In another locality, the formality is fulfilled where the adopter takes an oath before a priest vowing that he will take and for all purposes treat the child as his own. It is possible that other customs may have still other types of formalities for creating adoptive filiation.

There is another situation where people bring up their godchildren referring to them as "sons" or "daughters." This does not, however. give to godchildren the status of natural of adoptive children. It does not give the right of succession. The godfather may make a legacy in favour of his godchild, but where the godfather dies without leaving a legacy, the godchild cannot claim any right to succeed. If that were not the case, many people would bewe refrained from having godchildrea.
"Yemar lij" is intended to create a close tie between an outsider and a family where the outsider who is made "yenar lij" is looked upon with fawour by the family who is taking him in. The relationship reates intimacy and close connection whereby each party shares in the sorrow and happin $5 s$ of the other It does not, however, create a legal right to be a member of the family. "Y emar lij" may get a legacy, but the testator is not under any obligation to make a legacy in favour of his syemar lij." Where "yemar abat" dies intestate, "yemar lij" cannot claim any right of succession. If that were not the case, many would fave refrained from having "yemar lij". People would also have avoided bringing up children of their friends.

A godfather or "yemar abat" (or "yytut abat") can adopt his godehild or "yemar lij" (or "yetat lij") by performing the nesessary legal formality. We will now try to relate these general observations to the case at hand.

It is established that Woz. Menna is the godehild of Woz. Bekelech, that she was brought up by Woz. Bekelech, and that Woz. Bekelech is Woz. Menna's aunt. We have not, however, found the requirement of a formality of adoption fulfilled. Even if it could be held that the formality was performed, the fact that it was performed seetetly would be sufficient to make the performance invalid. Woz. Bekelech did not under oath, in accordance with customary law, unequivocilly declare that she would for all purposes take Woz. Menna as her child. A priest gave a benediction after the end of the feast prepared for the baptisinal occasion, but this is a customary practice that takes place at any meal and cannot, therefore, be taken as a special formality. The fact that Woz. Bekelech brought up her godchitd cannot by jtself give the godchild filial status.

We are of the opinion that Woz. Menna"s witnesses were misled by the fact that Woz. Menna was brought up by Woz. Bekelech, who was at the sane time her godmother.

When it is alleged that Woz. Bekelech and her husband adopted Woz Menna, we fail to understand why Woz. Menna did not assume the family name of Woz. Bekelech's husband.

Even without considening the testimony of petitioner's witnesses, we found that the evidence of the respondent, apart from showing that the respondent was Woz. Bekelech's godchild, does not show that the respondent was, according to customaty practices, Woz. Bekelech's adopted child. We, therefore, declare the petitioner legal heir of Woz, Bekelech, and as such, all property that the deceased inherited from Azage Ghizaw Endalemaw shall devolve on the petitioner.

The respondent shall pay the petitioner $\$ 200$ in court costs plus reimbursement of expenses incurred for petitioner's witnesses.

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## ARTICLES

# AN INTRODUCTION TO LABOUR DEVELOPMENTS IN ETHIOPIA 

by Georg Graf won Baudissin<br>Labout Advisor, Ethiopian Government

## I. The Bacl pround to Laboar Policy

Ethopia is particularly favoured by its geographical position, climate, and agrarian and mineral wealth. It has, on the Red Sea, two medium-sized ports suitable for modern import and expoft (Massawa and Assab) and further access to thr sea through Dibouti. Road and rail provide sufficient communication between the coasi and the "-iterior. The modern aviation services of Ethiopian Air Lines link the capital and other cities with Kenya in the south, Aden to the east. Lagos in West Africa, and to the north. Western Europe. The good rainfall and moderate highland situation at ar average distance of approximately $1,000 \mathrm{~km}$. from the equator means that agriculture, stock-raising and forestry are possible throughout this Empire of over a million square kilometers, with the exception of a few low-lying valleys, Accordingly, about 90 per cent of the estimated 20 million population have remained on the land and in the rural occupations. This does not amount to overpopulation.

As Ethiopia modernises its traditional agricultural methods, it may well become an African granary; but at present its exports are modest. However, agricuiture is only one part of the potential wealth. Great treasures lie below the surface, exploited on a small scale. but mostly either just discovered or not even explored.

Aware of their country's great economic resources, and of nature's generosity, the inhabitants have at no time been under any particular pressure to improve their methods of work and so raise the general level of productivity more than seemed necessary in order to satisfy their needs - which were small. The relative immunity from disturbance by external influences, quarrels or conquests, may also have contributed to this self+sufficiency and satisfaction with inherited conditions whict have long prevaifed. So for many years Ethiopia lacked the naturaf motives for $£$ rapid development similar to that which has carried many countries in the northern hemisphere to industrialisation and world trade: and even today the country is only entering the epoch of economics and technology

Until recently, therefore, labour, in the modern sense, and everything connected with it was an idea which had still to find its way into the national consciousness. The Revised Constitution of Ethiopia of 1955, the one now operative, does not even mention "labour", to which Constitutions in other countries devote whole chapters. It speaks only once of "occupation". Also in public affairs, there is no mintstry or other statutory body dealing specially with tabour questions, although in the last few years a start has inevitably been made in such fields as placement and the settlement of labour disputes. The increasing importance of manpower for devetopment of the country's economy and
resources was only recognised reluctantly and by degrees; but finally the inevitable conclusions were drawn.

It may be of interest to spend a few moments on the exception long provided by the province of Eritrea. Apart from its position along the Red Sea, that section of the country is far less generously endowed with worldly goods than Ethiopia proper. But Eritrea was a colonial area for many years; after the Second World War it was given a special status, similar to that of a unit in a Federation, with legislative powers in several fields including labour faw. Not until the end of 1962 was it fully integrated into the Empire of Ethiopia, ${ }^{1}$ Consequently, there are still labour regulations effective in Eritrea going back to 1922, though they have been revised and consolidated in the Eritrean Employment Act of 1958. That measure, until further notice, provides the statutory basis for a regional labour administration, some minimum conditions of work and even a slight degree of labour protection. ${ }^{2}$ On the whole, however, these provisions have not been strikingly successful: the labour administration is a relatively modest set-up which may be adjusted to the general standards achicved in the rest of the Empire at the moment. The efiorts made by the Ethiopian Government to learn from such experience in building up its own labour legislation and administration in order to avoid the mistakes which stem from using foreign patterns, will be described in due course.

The industrialisation which gradually occurred during the post-war years affected almost exclusively a few of the more important cities, such as Addis Ababa and Dire Dawa. Besides a number of large establishments operated by public authorities, industrial undertakings and commercial firms sprang up in the cities and in some rural districts, creating an ever-increasing demand for all kinds of manpower. Cotton mills, tobaceo and sugar plantations, breweries, cement works and other installations were established and now include a number of undertakings employing thousands of workers, women as well as men. Many new industrial establishments are being built or have been planned. Furthermore, conmerce is expanding. the number of retail establishments has risen considerably, and communications and travel have intensified with all the ancillary services and employments involved. Although no statistical data are available, the total number of persons employed outside the traditional rural oceupations must be ower 200,000 and is noticeably increasing.

This industrial growth brought the Government up against the problems which, to some extent, every nation must face as soon as industrialisation begiris. It was Ethiopia's secular introversion which so long deferred the encounter with the age of technology and made the problems more complex when the event occurred. An additional handicap was the fact that the industrialisation confined itself mainly to a few centres instead of spreading throughout the country.

The primary problems before the Ethiopian Government were:
(1) How to reduce the unemployment which had arisen in the big tities, or at least to prevent its further increase;
(2) How to establish labour-management relations which would be appropriate to both present and future undertakings - industrial or other-and ensure stability without hampering econonic development, and at the same time meet the growing needs of the wage-earning class;

[^7]
## An Introduction to Labour Development in Ethiopia

(3) How to produce an efficient indigenous work force which would be as independent as possible of foreign advisers and assistance.

All three questions arose, by themselves so to speak, out of the unusually sudden transition from a primitive secluded economy to the modern economic forms of the technological age. These, once thought out and brought neaser to solution, led to many other problems, mostly Iong-term, which ought to have been taken into account from the beginning. This second category includes problens of workers' health and safety. general education, vocational training, and social security.

The Ethiopian Constitution of 1955 provided a reasonably satisfactory framework for the transmission of such ideas. All Ethiopians have equal civil rights and equal protection under the law. Freedom of movement and assembly also are ensured to everyone. The citizen's right to choose his occupation freely and to join associations can only be restricted by legislation. There is a general tight of petition to the Emperor.

Other sources of policy are as follows:
(1) The Slavery Abolition Proclamation No. 22. 1942:
(2) The Factories Proclamation of 1944, an enabling measure under which the Minister of Commerce and Industry can issue regulations with respect to labous protection in factories, No use has yet been made, howewer, of that power to isste subsidiary legislation;
(3) The Civil Code Proclamation of 1960 . As in some European countries, in eddition to the general rules regarding employment, this includes a nomber of minimum labous standards. Particularly, Chapter XVI of the Civil Code lay down provisions on the conclusion of individual contracts of cmployment and collective agreements, the general contents and character of the cmployment relationship, the groinds for and effects of temination, holidays. abserce and sickness pay. Other c'auses deal with the employers' obligutions in comection with employment aec dents or occupational diseases. Another chapter (IIE contains provisions of associations which were to take on some importance when employers organtisations and trade unions came to be etablisled:
(4) A few other relevant prowisions were to be found in various special yaws:
(5) Customary law is also of some importance.

## II. The Approacth to Moders Labour Legislation

In the above circumstances, anyone who contemplated building up a realistic and integrated body of labour legislation and creating, as far as possible, unified machirety for its applitation and supervision, had to work out a concrete programme and specific principles for the purpose.

The first step could only consist of basic research, since practically no relevant documentation or statistical material was on hand. Apart from a thorough inventory of the existing statutory provisions, a comparison was made with the systems of labour legisfation adopied in various other developing nations and some of the industrial countries. The Conventions and Recommendations of the International Labour Organisation (1. L. Of) were also examined. But all this was not enough; just as important were effective
conomic and working conditions, labour-management relations and other similar matters as they existed in the more important parts of the country, including Eritrea. Extensiwe investigation, long journeys, visits to various enterprises, and many conferences were all ar indispensable prelude to legistation which, with all due regarif for international standards, had to be shaped to mett the special needs of Ethiopia. Such a survey could of course only cover the most important places and undertakings in the first instance, but it seemed to produce a sufficiently complete picture of the gencral situation. Its results confimed the urgency of measures regarding the employment market, managementlabour relations, and the wide field of vocational training.

The Government then set up a small inter-ministerial group of experts which was to review the results of the survey described above and convert it into proposals for legislation and organisation. In this connection the following principles gradually emerged:
(1) All labour matters throughout the country should be handled by one central authority (ministry) with appropriate regonal and local machinery;
(2) This responsibility should, however, not extend to civil servants ${ }^{3}$ or the armed forcer:
(3) Employees of govemment and other public commercial and industrial undertakings should, as a rule, be treated on the same footing as employees of private urdertakings;
(4) The legislation and organisation should be progressive but realistic; in this conmection, regatd must be given to probable budgetary respurces in future years and to the current level of training of administrative officials;
(5) Item (4) must be taken into account in particular when establishing future labour authorities (employment offices and other services);
(6) In wiew of the urgency of certain tasks, a start should be made with a law on employment administration and another on labour relations; only subsequently should protective provisions, minimum conditions of mork and vocational training programmes be tackled - not to mention social insurance plans;
(7) The laws must be easy to understand but detaifed enough to keep doubts about interpretation down to a minimum; if for technical reasons the statutory provisions themselves could not fully satisfy the marked popular meed for specific transtation of legal principles into practical rules, a competent mitister should be empowered as far as necessary to issue subsidiary regulations.

## UII. Organisatipmal Questions

Among the many factors that onntributed to implementation of the above programme, suffice it to mention the pioneer spirit and sense of co-operation with wibich the foundations of Ethiopia"s future labour and social structure were established.

There wras a long debate as to the proper place for a central labour authority in the machinery of govensment. The various Ethiopian statutes on organisation and jurisdic-

[^8]tion, particularly the Definition of Powers Order, No. l, of 1943, had failect to make any particular ministry responsible for labour matters. In practice several initial steps towards organisation had been taken to cover the most urgent iteds: there was a placement office under the Addis Ababa Munieipality; there was a semi-official Disputes Board in the Ministry of Commerce and lndustry that shared the function of settlement with an advisory office in the Ministry of Justice; in connection with price control and related finctions there was a small office for matters of labour protection in the Mintistry of Commerce and Industry, which originally was also the official contact with the I.L.O. To give this latter Ministry general competence for labour regulation seemed at first sight natural, but this idea was finally rejected because the Ministry had its own basic function, not entirely identical with that of solving labour problems; and also because it was responsible, as employer, for a number of state-owned undertakings.

With the importance of labour problems still only gradually emerging, the establishment of an independent ministry was thought premature and also unjustified on the grounds of cost. Consideration was long given to the inclusion of a labour department or board in the Prime Minister's Office, where the various particular interests involved might have been oo-ordinated but this solution seemed too cumbersome. Finally it was decided to place responsibility with the Ministry of National Communty Development, which already handled some more or less related matters such as social welfare, rural development and co-operatives. As became still more evident at a later stage, this was a sound decision and at some point it will no doubt be formally refieted and confirmed by an addition to the Ministry's present statutory terms of reference. ${ }^{4}$ Accordingly, the central authority for labour affairs was organised under the Minister of National Community Development with the Vice-Minister and the Head of the Department of Labour, consisting of, but under curtent review:

## 1st Dixision:

## Labour Standards

(a) Legal and Incernationsl Section.
(b) Labour Relations Section.
(c) Labour Protection Section.

## 2nd Divislon: Central Poblic <br> Employment Office

(a) Manpower Section.
(b) Labour Exchange Section.
(c) Foreigners' Section.

Helow this central establishment (in which the disputes organ, the Labour Relations Board of Addis Ababs, bas a special independent position) come the regional and local employment offices. These have already been set up in Addis Ababa, Dire Dawa, ${ }^{6}$ Asmara, Massawa, Keren and Agordat, and others wizil gradually follow in a fiexible way until a network of the Labour Department's agencies covers the whole of Ethiopia,

This structure is presented mainly in the Public Employment Administration Order of $1962^{5}$ and to a mintor extent in the Labour Relations Decree of $1962 .{ }^{7}$ Both measures are so framed that in the future the machinery can be extended by administrative ection or, in certain cases, by subsidiary legislation.

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## LV. Contents of the Legislation

It seems advisable here to examine the further contents of those two laws more closely.

1. The main objectives of the Public Employment Administration Order of 1962 are to mobilise the country's manpower reserves for general economic development: to improve the workers' level of performance, and to provide each one with a job corresponding to his wishes and abilities. The prineiples of free choice of ocetipation by the worker and voluntary engagement by the employer are fully maintained: the Government merely offers its good services with a view to placement, i.e., the services of the Public Employment Administration set up by the Order and described in Part III of the present article. In addition the Administration is required:
(a) to study and observe the employment situation in Ethiopia and to compile statistics upon it;
(b) to make proposals for the improvement of the employment situation;
(c) to adwise the public, and especially young persons, regarding choice of vocation and wocational training:
(d) to co-operate ins an advisory capacity in public and priwate ceonomic planning:
(e) to propose action to prevent rard exodus;
(f) to maintain registers of persons secking employment and of vacant posts.

A further function of the Public Employment Administration is to issue, in all appropriate cases, work permits to forelgn nationals. The basic principles for the general policy in that dificult field are established by Articles 15 and 17 of the Public Employment Order of 1962, which tocordingly reflect the constitutional concept that the right to engage in any occupation is limited to Ethiopian subjects and employment of others needs the Government's special permission (see Article 389 (3) of the Civil Code). The recent Legal Notice, called Foreign Nationals Employment Regulations of 1964, ${ }^{\text {a }}$ has defined more closely the terms under which the Employment Administration shall grant work permits to foreign nationals or refuse to do so in the future. That Legal Notice is primarily designed to reconcile the obvious need for employing more Ethiopian nationals in the country's profitmaking enterprises and to raise their skills correspondingly, with the expectation thai centain important future investments from abroad cannot be easily obtaned without sufficient flexibility on the Ethiopian side as regards reasonable concessions, with respect to the employment of forcign experts, technicians, etc., at least during the first period of establishment. The Regulations require by a number of prowisions the training of Ethopians who may replace such foreign staff in due time.

The whole idea behind those efforts made by the Public Employment Administration is to contribute to the raising of economic standards and thus to help the general employment situation. As another means to that end, the Administration has started to prepare a manpower survey in Ethiopia which is to cover, step-by-step, the whole working population of the country and to disclose essential details of such things as age, sex, and skills of the workers. Together with other data, this manpower survey is designed to lay a sound foundation for such matters as occupational training and guidance as well as any social scestity system which might be established after a number of years. The Public Employment Administration hopes to be advised on various sonts of employment problems by the Employment Advisory Committees as already established in Addis Ababa and Dire
R. Negarir Grzela, 23rd Year, Aught 31, 1964.

Dawa by Legal Notice No, 267, of 1962. They have a tri-partite character which provides for equal representation of employer and worker elements.
2. The development of stable labour-management relations is the object of the second measure, the Labow Relations Proclamation of 1963, which was enacted by a large majority in Parliament. It deals in particular with the following problems, which had been onfy touched on in the Constitution or other legislation:
(a) Formation of employers" associations and labour unions. Under the current law of association, which is found in the Civil Code, either party may organise freely and combine in federations. On the labour side there are organisations of two kinds: the "plant union", which may be formed in any establishment having more than 50 employees, and the "general union" for employees of smaller undertakings and for specialists. Organisations on tither side are empowered to protect and develop the coonomic, social and moral interests of their members and to negotiate with the other party on labour conditions on a collective basis. On that legal basis, more than fifty labour unions, predominantly with a plant-anion status, have been established and registered in the course of the last two years. Membership is estimated to be over 30,000 Employers created the Federation of Ethiopian Employers in March. 1964. All unions are co-operating under the Confederation of Ethiopian Labour Unions, (C.E.L.U.) which was founded one year earlier.
(b) The Act stresses free and voluntary collective bargaining as the main method of determining working conditions. The Government restricts intervention on its own part to exceptional circumstances, although the Minister of National Commenity Development may fix minimum conditions of work where necessary.
(c) Unfair labour practices by employers or workers, carefully defined in the Proclamation, are prohibited. The principle of co-operation is stressed in the interest of sound national economic development, and a "peacefinl attitude" is made an obligation of both sides. The organisations mest abstain from political activity. Unfair practices can be brought before the Labour Relations Board which, after consideration, may prohibit a particular practice and enforce its decision, if necessary, by recourse to other authorities. In certain circumstances of this character, an organisation can be dissolved by judicial order.
(d) The Labour Relations Board has another mueh more important funcion: either party - and the Minister of National Community Development can call it in to settle a collective labour dispute. The Board is then required first of all to atternpt to settle the dispute by agreement. Only when all attempts to do this have failed may it arbitrate. The award, from which an appeal may be made to the Supreme Court on questions of law only, is enforceable in the same way as a court judgment and any person failing to comply with it may be punished. An important clause is that which provides for a "cooling-of" period of 60 days from submission of a dispute to the Board: during this time any strike or lock-out would be unlawful. Many important items of the proodure under which the Board acts are written into the Proclamation and will be supplemented by Standing Orders now in the course of preparation.
(c) Unilike collective disputes, individual labour disputes remain a matter for the ordinary courts of law. This differential treatment may cause diticulty in
practioe, and the distinction is indeed frequently unclear or misunderstood. The time for setting up a regular labour court does not yet seem to have arrived. Accordingly, the Labour Relations Proclamation states that the Minister of Justice shall "arrange for the establishment of labour divisions within the courts' to deal with cases arising out of individual contracts of employment. In practice the Labour Department provides a counselling and conciliation service, for those who desire it, in individual as well as collective disputes, but there is no power wested in that administration to take a decision orn such cases.

It is of course a far cy from the first two tegislative measures to a complete labour code, if a labour code can ever be considered complete. Anyway, further important labour legislation is already in preparation or is being planned.

As described under Part I herein, the Ciwil Code Proclamation has established certain more or less general principles on contracts of employment, including certain minimuma provisions on safety and health of workers as well as related labour standards in Ethiopia It is obvious that such general principles or minimal need not only regular review and, if justified by the general growth of the economic output of the country, gradual improvement, but also a machinery adequate to control or even ensure implementation of such types of labour standards in the various undertakings. As developments have shown, the important fields of labour protection and inspection were placed, unlike in other developing countries, relatively low on the legislators' priority list, because employment problems and labour-management relations seemed more urgent. But the time has come to finalize sequeral related legal projects which should ensure introduction of more advanced labour standards, with a special emphasis on health and safety of the employes in industry and trade, and the establishment of a labour inspection service able to move in and help to enforce any legal arrangement in the various undertakings. Regarding the latter, a first step was made by the Legislature on December 4, 1964, when the Labour Inspection Order, 1964, was proraulgated. ${ }^{9}$

As another project for legislation, solutions will have to be worked out before long to improve the country's wocational system including such matters as apprenticeship, adult workers education, etc. Such legislation will have to follow essentially Ethiopia's needs, as they result from the economic development and the kind and structure of future industrial, commercial or other enterprises. Legislation has, therefore, to wait until the manpower suryey presently underway and other statistical bases necessary for thorough planning have beer terminated and evaluated.

At about the same time it may be possible to reffect on and, if approprate, to introduce fully or in part a system of social security which might include unemployment insurance, old-age or disability insurance, sickness insurance, etc., for the Ethiopian workers in a way which could cower the specific needs of this country. Again, however, such a program pre-supposes not only careful studies but also a great deal of actaal data of various kinds which are the indispensable prerequisites of any realistic planning in this area.

## V. Relationa with the International Labour Organisation (LL.O.)

Ethiopia has belonged to the International Labour Organisation since 1923 and is thus one of its oldest members. Partly because of histonical events such as the lialian

[^10]occupation and partly because more active exercise of its membership was hampered by the peculiar character of its own development, this country remained largely aloof from I.L.O. affairs for many years. The conditions for proper representation at the annual Conference in Geneva were not fulfiled, although Government representatives could have been sent, as representative employers' and workers' associations did not yet exist. For this reason alone it is not at all surprising that Ethiopia's role in the international labour scene long remained a very modest one. This passivity was reflected in the absence of Ethiopia's name from the list of countries which had ratified I.L.O. Conventions and similar matters.

Membership in an organisation can only have life and reality if it involves mutual give and take. The International Labour Organisation made that possible for the developing countries when it evolved its many programmes for techincal assistance after the Second World War. In exchange for their contributions, those countries were offered a generous equivalent, of which Ethiopia took advantage on various oceasions. The assistance began in the early summer of 1960 with a survey of the possibilities of wocational rehabilitation of the disabled and an investigation of the social security field. This has been followed by missions of long-term experts, in these fields, in workers' education and in clerical training. Later several Ethiopian officials were sent to special I.L.O. courses in Europe and Africa. Useful regular contacts developed, not only with headquarters in Gereva, but also with the L.L.O. Airican Field Offices at Lagos and in Dar-es-Salaam. Many comments on Ethiopian draft laws and regulations were sent from Geneva. Invitations came from Dares-Salaan to short courses for labour officials, to be attended mainly by future inspectors. For over ten months an LL.O. expert has been working in Addis Ababa on the establishment of employment offices and the planning of a manpower survey. Further programmes of these and similar kinds are in preparation. Moreover, as a result of developments in Ethiopia, the Nation has begun to realise the part which it ought to play in I.L.O. activities. At the 46th Annual Conference in 1962 it was still only tepresented by two Govermment representatives acting as observers; employers' and workers' representatives were still tacking, as the Labour Relaions Proclamation had not yet been issued, and so the formation of employers' associations and trade unions were not yet possible. At the 47th Session of the Conference in June 1963, for the first time in the loug bistory of its membership, Ethiopia was represented by a full. though small, tripartite delegation led by the Minister of National Community Development. The Conference heard a specth by the Minister on questions of principle in which he was abte to mention what had been achieved, to outline the main features of plans for further action, and to inform the Session of the ratification of the four following I.L.O. Conventions:
(1) Right of Association (Agricultore), 1921 (No. 11);
(2) Freedom of Association and Protection of the Right to organise, 1948 (No. 87);
(3) Employment Service, 1948 (No. 88);
(4) Right to Organise and Collective Bargaining, 1949, (No. 98).

Those ratifications which mean a legal obligation of member states to implement the standards established by those conventions, will no doubt soon be followed by others. Members of the Ethiopian delegation were selected to sit on several committees, and an Ethiopian is now a deputy member of the Governing Body-

The Conference prowided an opportunity for contact with the various divisions of the International Labour Office and discussion of further developments and technical details; all this will pave the way for closer co-operation in the future. Among other things
a method was worked out by which Ethiopia could best make good the delays which had oceurred for a number of years in regard to the submission of l.L.O. Conventions and Recommendations to the competent national authorities.

A start has now beent made with the instruments adopted in 1961 and 1962, and those of 1960 and 1963 are to come nexi. So that these matters may be actively pursued, a specialist has been appointed in the Department of Labour to handle 1.L.O. relations only, from the regular payment of contributions to the application of training projects. This year this official will spend several weeks in Geneva for an on-the-spot briefing on all distinctive features of the International Labour Organisation.

The December 1964 meeting of the Second African Regional Conference of the International Labour Organisation in Addis Ababa's famous Africa Hall was opened by the Emperor of Ethiopia. Addressing the attending delegates from more than thiry African countries - governmental, employers* and workers* representations - His Jmperial Majesty stated, inter alia:
"Africa today stands in a serious need of a balanced socio-economic development which will assure that equitable distribution of income which will enable the African people to attain and maintain a fair standard of living. The resources, both physical and humanis which such development must build exist, and it is our lask and our challenge to find the ways and means of employing those resources so that pur stated goals may be obtained.'"

It is in this spirit that the present Article was written as a possible means to inform a growing number of interested people on what has been achieved or remains to be cone in order to implement the general targets of Ethiopian labour policy.



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# PROSECUTING CRIMINAL OFFENCES PUNISHABLE ONLY UPON PRIVATE COMPLAINT 

by Philippe Graven<br>Ministry of Justice

Article 1 of the Ethiopian Penal Code of 1957 states that "the purpose of criminal law is to ensure order, peace and the security of the State and its inhabitants for the publicgood." The Code achieves this purpose by laying down prohibitions from acting or obliga tions to act whencver it is in the general interest that one should act or refrain from acting. Whosoever conmits a criminal offence by disregarding these prohibitions or obligations is answerable. therefore, to the community. Hence the principle that criminal offences are prosecuted and punished, on behalf of the public, by the State acting as the agent of the citizens. There are offences, however, which do not jeopardize the order, peace and security of the State and its inhabitants but are contrary solely to the tights of a given individual. These are offences of a purely private or personal character, the effoct of which does not extend beyond the individual thereby injured. In such cases, the State, though it is generally responsible for instituting criminal proceedings whether or not the victim of the offence agrees thereto, will not carry out this duty unless the victim indicates rfirmatively that he wants the offender to be prosecuted.

The prior consent of the injured party is requited, firstly, because public interests are not at stake as the offence does not endanger the society at large, and secondly, because the institution of proceedings, against the will of the injured party, might often be more hamful to him than the commission of the offence, for it might draw the attertion of society to certain facts, such as his spouse's unfaithfulness or his child's cishonesty, which are precisely what he toes not want known publicfy. In these situations, the institution of criminal proceedings is conditional upon a complaint first being made by the individual concerned. Where he makes a request to this effect, the State then acts, not on behalf of the public, but as the custodian of his rights for the purpose of prosecution and punishment insofar as this is possible. This raises two questions: which are these offences so punishable on complaint and what are the effects of such a complaint being made.

The Penal Code does not specifically set out a complete list of offences punishable only on complaint and Article 217 confines itself to making reference to the Special Part of the Code or any other faw defining "offences of a predominantiy nature which carnot be prosccuted except upon a formal accusation or request, or a complaint in the strict sense of the term, of the aggrieved party or those claining under him."

Many provisions in the Special Part of the Penal Code prescribe that "Whosoever... is punshable, on complaint, with..." These are Articles 38 客 (2) (destruction of documents belonging to a relative); 407 (breach of professional secrecy); 409 (disclosure of scientific,

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industrial or trade secrets); 539 (I) (common witful injury not in aggravating circumstances); 543 (3) (common injury caused by negligence); 544 (assault); 552 (intimidation); 553 (threat of accuration or disgract); 555 (deprivation of powers of decision); 2563 (1) (ascendant abducting a child); 570 (violation of the right of freedon to work); 573 (wiolation of the privacy of correspondence); 587 (prescribing that all offences against the honour are purtshable on complaint; see, however, Articles 256, 276 and 278); 593 (semual offences without violence against women in distress); ${ }^{3} 596$ (seduction); ${ }^{3} 612$ (indecent publicity); 614 (fiaud and deceit in marriage); 618 (adultery); 625 (failure to maintain one's family); 629 (prescribing that all offences against property committed within the family are punishable on complaint if they do not involve violence or coercion); 632 (abstraction of things jointly owned); 643 (misappropriation); 644 (unlawful use of the property of another); 645 (misappropriation of lost property); 649 (damage to property caused by berds); 650 (1) (disturbance of possession not in aggravating circumstances): 653 (damage to property in aggravating circumstances); 661 (fraudulent exploitation of public credulity); 665 (incitement to speculation); 666 (incitement of minors to carry out prejudicial transactions); 671-676 (offences against intangible rights); 680 (fraudulent insolvency); 681 (irregular bankruptcy) and 721 (i) (a) (petty offences of a private nature).

Whenever an offence is committed in violation of any of the above-mentioned provisions, no action may be taken except at the initiative of the persor qualified under the law for making the necessary complaint. ${ }^{5}$ If the offence is a flagrant one, the offender may not, it seems, be arrested without a warrant unless a complaint is first made. Article 21 of the Criminal Procedure Code states (1) that, in cases of flagrant or quasi-flagrant offences, proceedings may be instituted without an accusation or complaitt (in the general sense of information) being made, unless the offenct is punishable on complaint (in the technical sense of the term) and (2) that the offender may in such cases be arrested without a warrant in accordanoc with Articles 49 ff . It may be argued that sub-article (2) dealing with arrest is as gencral as it could be and that bad it been intended to probibit an arrest without a warrant from being made when the flagrant or quasi-flagrant offenee is puntshable on complaint, this prohibition would have been expressly laid down in sub-article (2) or, like the prohibition from instituting procecdings, in sub-article (1) of the said Anticle 21. There are, howewer, a number of reasons which militate towards a different construction of this Articie. Firstly, it is debatable as to whether the words "in such cases" appearing in sub-article (2) art meant to refer to all cases of flagrant and quasi-flagrant offences or only to those where proceedings may be instituted without an accusation or complaint being made, i.e., all cases where the offence is not purishable on complaint (stricto sensu). Secondly, when a flagrant offence is committed, justice is set in motion by the mere fact of the antest; to allow an arrest without a wanrant when the offence is punishable on complaint would be inconsistent with the principle that it

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## Prosecuting Criminal Offences Punishable Only Upon Private Complant

is for the injured party to set justice in motion. Thirdly, one of the purposes of an arres without a wartant in flagrant cases is to prevent public order from being disturbed of further disturbed; yet, he who is about to commit or is committing an offence punishable on complaint does not disturb publie order. Finally, to permit an arrest without a warrant when the flagrant or quasi-flagrant offence is punishable on complaint would as ofter as not resuit an defeating one of the main purposes of the complaint, that is, to ayoid scandal when the injured party does not want certain things known. This is probably the strongest argument against taking the said Article 21 to mean that such an arrest is permitted. It is undesirable, to say the feast, that any one, whether a member of the police or a private person (see Article 50 of the Criminal Procedure Code) should be entitled, for instance, to grab by the neck and bring to the nearest police station, corant populo, two persons he finds in the act of committing adultery. It seems that an arrest should not be made in such a case except by, or at the request of, the injured spouse. For obvious reasons of convenience, the complaint should then be made orally to the police, and not in writing as required by Article 14 of the Criminal Procedure Code, so that the arrest, if to be made by the police, may be made forthwith. This oral complaint should thereafter be confirmed in writing.

It must be clear that the sole purpose and effect of the complaint is to enable the public prosecutor to institute proceedings. It may not be held that offences purnishable on complaint are offences which may be prosecuted only by the injured party. The second paragraph of Article 217 of the Penal Code states that "this form of ... complaint upon which... the bringing of the public action depends..." The bringing of the public action obviously means the institution of proceedings by the public prosecutor. It is quite true, as will be seen later, that a private prosecution may be instituted with regard to offences punishable on complaint, but this is permissible only after the public prosecutor has found himself unable to carty out his duty to institute procetdings as he is bound by Articles 216 of the Penal, Code and 40 of the Criminal Procedure Code to do whenever any breach of the law ocemrs. As noted above, the public prosecutor will act as custodian of the injured party's righes insofar as is possible; only when this is not possible may the injured party substitute himself for the prosectulor.

Regarding the manner in which offences punishable on complaint are to be prosecuted, the Penal Code and the Criminal Procedure Code must be read together. Thus, the person or persons against whom an offtnce punishable on complaint has been committed may set justice in motion by making a complaint in accordance with Articles 220 of the Penal Code and 13 ff . of the Criminal Procedure Code unless the offender is a juvenile, in which case the provisions of Article 172 of the Criminal Procedure Code will apply. ${ }^{6}$ The question as to who is qualified to file a complaint is resolved by Articles 218 and 219 of the Penal Code. It must be noted, however, that the general rules contained in the latter Anticies are sometimes departed from in the Special Part of the Penal Code. In cases of adiltery, for instance, the right of complaint does not pass to the next-ofkin (Article 619), contrary to what is provided for by Article 218.

The compiaint must be made within three months of the injured party's knowledge of the offence (as a complaint may, according to Article 15 of the Crinintal Procedure Code. be made against an unknown offender) or that of the offender (Article 220 of the Penal

[^17]Code), unless the law itself makes it clear that this period of three months begins to run from a different date, as is the case under Articles 599 and 614 (2) of the Penal Code. After a complaint has been made, a police investigation will be held as provided for by Articles 22 ff . of the Criminal Procedure Code. After considering the findings of the polioe, the public prosecutor, ordering further investigations in questionable cases, will either close the polioe investigation file with an unappealable decision (Article 39 of the Criminal Procedure Code) or institute proceedings unless there are reasons why proceedings may not or cannot be instituted (Article 42 of the same Code),

When the public prosecutor institutes proceedings with respect to an offence punishable on complaint, the ordinary provisions regarding the charge and the trial will apply (Articles 94 f . of the Criminal Procedure Code) or, where appropriate, those regarding petty offences. (Articles 167-170 of the same Code) ${ }^{7}$

However, as the public prosecutor prosecutes only because the injured party has expressly requested him to do so, it follows that, where the complainant declares that he no longer wants the offender to be prosecuted, i.e., where he withdraws his complaint as he is entitled to do under Article 221 of the Penal Code. the public prosecutor is compelled to withdraw the charge. ${ }^{4}$ The accused may not, as a rule, object to such withdrawal and demand that the case should be carried forward.'

Where, for reasons which are to be given in writing to the injured party (Article 43 of the Criminal Proctdure Code) in the manner prescribed by Form $V$ in the Third Schedule to the said Code, the public prosecutor refuses to institute proceedings with respect to an offence punishable on complaint, procedings may nonetheless be instituted, depending on the reasons upon which this refusal is based. If the public prosecutor refuses to prosecute for any of the reasons set out in Aricle 42 (1) (b) * (d) of
7. According to Articles 100 of the Peed Code and $154-159$ of the Criminal Procedure Code, the injured pasty may then apply for permission to join in the criminal procedings with the view of merely claiming conpensation for the damage arising out of the offence. See Graven, Joinder of Criminal and Civi Procedings, I Journal of Ethiopian Law 135 (1964).
8. Although this case is not specifically deatt with in the Criminal Procedure Code, it should be clear that Article 127 of the said Code is inapplicable. If the complaint is withdrawn at any time before judgment, the procedings must be discontinued and the public prosecotor must, thereforc, withdraw the charge whether of not the court agrees thecto. The cituation is then the same 的 if no pomplaint had been originally made. Consequettly, as is provided by Article 217 of the Penal Code, the court has no power to try the offotoe and no petialty may be imposed. Without prejudice to the provisions of Article 14I of the Criminal Procedure Code, an order for the discharge of the aczused ought to be made which will, in fact, amoutt to an acquittal since a new complaint may cot be made rezarding the same facts (Article 221 of the Penal Code). Another instance where proccedings must be discontinued as a mattre of right, though on different grounds, may be found in Article 619 of the Penal Code (death of injured party in adultery cases).
9. This is without prejudice to the provisions of the last paragraph of Article 222 of the Penal Code, according to which the accused may "insist on beibg tried" bit only when he is charged with others and the complaint is withdrawn regarding only part of the acsused persons. Nothing however, permits one to say that this js a gencral rube that may be invoked even when only one person is being tried for an offenct puristiable on complaint. It is regretuble that the aceused cannor almays require that the procsedings be continued so that he be found not guilty and acquitted instead of being discharged. This is of importance in wiew of Article 44] of the Fenal Code which does not apply wiless the person agsinst whom a false aceutation has been made if found to be innocent. In this connection, it should be hesid that, for the purposes of the said Articte 441. the discharge of the person to whon the complaint relates has the same effet as an acquiltal, as has bern sugetsted in note 8 supra. is similar view may be found in the Recwell dficiel des aretis du Tribunal flederal suispe 72 IV 74 or Journal des Tribumaux 1946 TV 184.) If this were not so, the complainant could withdraw his complaint whenever be felt that the accused would be acquitted and he would then escape the application of Article 441, im appropriate cases, on the ground that technically speaking the accused was not found innocent.

## Prosecuting Crbinal Offences Punishable Only Ufon Priyate Complaint

the Criminal Procedure Code, his refusal is final (as it is, also, when the offence is not punishable on complaint). Eut if the prosecutor refuses to institute proceedings because he is of the opision that there is not sufficient evidence to justify a conviction, that is, he considers in accordance with Article 42 (1) (a) of the Criminal Procedure Code that he is unable to prove that the offender is guilty of the offence to which the complaint relates, a remedy is available to the injured party. What then is the nature of this remedy and what are its effects?

The remedy consists of providing the injured party with a certificate specifying the offence to which the refusal relates, stating that public proceedings will not be instituted with regard to such offence, and authorising the injured party to conduct a private prosecution with respect thereto (Article 44 (1) of the Caminal Procedure Code) at his peril and at his own expense (Articles 46 and 221 of the same Code). ${ }^{10}$ A copy of the certificate, for which there is unfortunately no form in the Third Schedule to the Criminal Procedure Code, will be sent to the court having jurisdiction, enabling it to ascertain, in accordance with Article 150 (2) of the Criminal Procedure Code, that the offence charged by the private prosecutor actualify is the offence in respect of which he has been authorized. under the certificate, to institete private proceedings. ${ }^{1}$

The question may be asked whether the certificate is to be autonatically issued upon the public prosecutor's refusal to prosecute, in which case it ought to be attached to the copy of the decision sent to the injured party in accordance with Article 43 (2) of the Criminal Procedure Code, or whether it is issued only at the request of the injured party in which case this request ought presumably to be made within the same period of time as an appeal under Article 44 (2) of the said Code. Although the law makes no specific provision on this point, the first solution should prevail. Since the publie prosecutor may, it no case, object to the institution of private proceedings after he has declined to prosecute on the ground of lack of evidence, it is of little importance whether the certificate is issued automatically or on application. This being so, the more convenient practice of giving the certificate inmediately, regardless of whether the jngured parcy antends to make use of it, ought to be followed.

Another question is whether, as of the time that he has beer issued a certificate, the private complainant may exercise all the rights which the public prosecutor would have in pubfic proceedings. Although a provision like Article 153 (1) of the Ctiminal
10. Where the pulfic prosecutor refuses on the ground of insuficiency of evidente, to institute proceedings with respect to an offence which is not punshatble on complaint, a different remedy is available to the iniured party. He may not be authonized to conduct a private prosecution but he may, in accordance with Article 44 (2) of the Criminal Proctdure Code, appeal against the refusal and seek an order to the effect that the publie prospcutor be compelifd to institute public proceedings. As this order is sought from the court that would have appellate juristiction if proceodings were inseltuted, it follows that should proceedings be instituted by order of that court and the catse come beFore the said court on appeal, the judges having made such order should ditsualify thertiselwes and not sit on the appeal, for as a rule a judge may not act twice in the same case in a diffetent coppacity.
11. Since the certificate may be issutd only in cases of insufficiency of evidence, it may happen that there be doubss as to the nature of the offence committed. There should then be nothing to prevent the private prosecutor from framing a darge contaning alternative counts under Article 113 (1) of the Criminal Procedure Code provided that the offences thus charged are all punishable on complaint. Consequently, the certificate should not be too nestrictive reparting the offences against which private proceedings may be instituted, and the public prostevtor might well allow the complain to charge the offender with common wilful injury not in agoravatiog circumstances, under Article is: (1) of the Penal Code, and in the alternative, with common injury caused by neqligence, under Artick 543 (3) of the same Code. It must be clear, however, that the provisidets of Acticle 113 (2) of the Criminal Procedure Code will apply even though the certificate does not teserve the possibility of framink altornative charges.

Procedure Code would induce one 10 answer in the affirmative, it seems more reasonable to consider that certain powers and particularly the power to select the court having local jurisdiction, are retained by the public prosecutor even though he does not prosecute. If a reasonable doubt arises as to the place where the offence punishable on complaint was committed (see Article 102 of the Criminal Procedure Code), it should not buheld that the power to direct the place of tral, which is nomally exercised by the pubtic prosecutor in accordance with Aricle 107 of the said Code, passes to the private prosecutor, for this might cause confusion. It should rather be held that, in sach a case, the public prosecutor mast, prior to issuing the certificate, decide as to the court in which: the complainant will file his charge, and such court ought, therefore, to be mentioned in the certificate. This interpretation is confirmed by Article 44 (l) of the said Code which, as has been seen, compels the publie prosecutor to send a copy of the certificate to the court having jurisdiction, which tem does not mean only material jurisatiction but int cludes personal and local jurisdiction. also. Should several courts have local juritdiction. the public prosectar would clearly be unable to comply with this duty if it were not for he and he alone to decide in which of these courts the private prosecution would have to be conducted.

The effect of a certificate baving been issutd is that the injured party or his representistive, as defined in Article 47 of the Criminal Procedure Code, may institute procecdiggs in the court mentioned in the certificate. He will frame a charge. ${ }^{12}$ and the case will then proceed in accordance with the prowisions of Article 150-153 of the Criminal Procedure Code. ${ }^{3}$ It will be noted that even in these cases the injured party may apply to be allowed to clatm compensation while at the same timt conducting the prosecution (Article 154 (3) of the Criminal Procedure Code). 14 unless the aceused is a juvenile (Article 155 (1) (a) of the same Code).

The above explanations are without prejudice to the provisions of Article 48 of the Criminal Procedure Code, according to which a private prosecution mats be stayed at any stage thereof at the request of the public prosecutor, if it appears in the coutse of such prosecution that the accused committed a more serious offence than that for which the certificate had been issued under Article 44 (i) of the said Code. Ari example would
12. According to Article 108 (1) of the Criminal Procedure Code no charge need be framed when the prosecution relates to a petty offence. in which case the provisions of Articles $167-170$ of the said Code are applicable to connection with petty offeners, a peculiar situation arises under Article 12 I (1) (b) of the Penal Code, which prescribes that brtaches of subsidiary legislation arc prosecutad upon a complaint being made by the duly authorized representative of the Govemment Agency transacting the business specified in the law which thas been violated. Although one may be inclined to think that a complaint should be dispensed with, for these are not offences of a private nature, the purpose of this requirement may be to avoid the public prosecutor's instituting proceedings in cases where, under the law which has beer wolated, a setliersent may be effected (exg., custonts cases). But diffeculies will oceur when, a complaint having been made, the public prosecutor refuses to prosecute on the ground of lack of evidence, for, if a ceatificate were issucd under Article 44 (1) of the Criminal Procodart Code, one could handly speak of a private prosecution since the representative of the Apency concerned would prosecute on behalf of the State. This is why it may be advisable to hold that the complaint referfed to in the said Article 721 (1) (b) is not a complaint stricto senst, but an accusation. Cases of this nature should, therefore, be sibject to the rules rejarding the prosecution of offences which are not punishable on complaint and a refusal to prosecute should be dealt with under Article 44 (2) of the Criminat Procedtere Code.
13. Acsording to Article 166 of the Criminal Procedure Code, the case may not prooced in the absence of the accused. This, however, is without prejudice to the provisions of Article 170 (4) of the said Code which permit judgrient to be given forthwith if the aceused fails to appear without good eave in private procedings relating to a petty offence. The wision of the latter rule would appear to be questionable.
14. Regarding the trial of the civil claim and the effects of a withdrawal of complaint, conviction, discharge or acquittal (Articles 157-159 of the Criminal Procedure Code) see our article quoted at note 7 supra.

## Prosecuting Criminal Offences Punishable Only Upon Private Complaint

to if the certificate were issued with regard to an offence under Article 644 of the Penal Code (unlawful use of the property of another) and it were disclosed during the trial that the accused actually had the intention of obtaining an unlawful enrichment and should, therefore, have been charged with an offence of theft in violation of Article 630 of the Penal Code. ${ }^{15}$ In this respect, it must be clear that a stay of proccedings should not be ordered whenever new evidence is produced and the public prosechtor declares that had he known such evidence before, he would not have refused to prosecute on the ground of insufficiency of evidence but would himself have instituted public proceedings. It seems that a stay of proceedings should be ordered only where it appears that the offerce actually committed is such that the public prosecutor could, in no casc, have issued a certificate under Article 44 (1) of the Criminal Procedure Code because this offence is not punishabse on complaint. Although the said Article 48 does not expressly so provide, ene should consider that after a certificate has beer issued, the public prosecutor may not interfete in private proceeding unless the case clearly is not one in which only private interests are involved.

## CONCL.USION

These are the general rules to be followed when an offence is committed that cannot be tried except upon the request of the person whose rights or interests have been affected by the offence. Similar rules will seldom be found in other countries for, although many foreign laws prowide for offences punishable on complaint, few of them authorize the institution of private proceedings, as this is deemed contrary to the principle that prosecution and punishment are not an individual but a collective concern and that a perons who commits a criminal offence is answerable to the community, regardless of the fad that only one member thereol has been injured.

The system laid down in the Ethiopian Criminal Procedure code of 1961 is meth more restrictive, and rightfully so, than the one which existed previousily. According to Section 9 of the Public Prosecutors Proclamation No. 29 of 1942, implicdly repeated by the Criminal Procedure Code, when a criminal case was not conducted by the publio prosecutor, the court was bound to permit the injured party to conduct the prosecution. either personally or by an advocate, irrespective of the nature or seriousness of the offence or of the reasons why the public prosecutor did not prosecute. This provision, whicli so emphatically stressed the importance of the part traditionally played by the njured party in criminal proceedings, resulted in disregarding the Fundamental diflerences that exist between civil and criminal liability and procedure, as did also the now abolished practice of awoiding certain criminal prosecutions by paying blood money, It is only, proper that this differenee should be clearly made today in the provisions of the respectiwe Penal and Criminal Procedure Codes relating to offences punishable on complaint.
15. Atlicle 48 of the Criminal Procedure Code unfortunately fails to sperify how the public prosecutor will be informed, and this may require that the public prosecution department send a representative to attend all private prosecutions, a rather inconvenient requirement. Since the cases in which a private prosecution may be stayed are (if the suggested construction of Article 48 is concet) cases where public procesilings should have been instituted in the general interest, it should have been provided that a private prosecution may at any time be stayed by the court of its own motion or on application. This should be the case panticularly when the more serious offence disclosed (such as theit, triable by an Anradja Guezat court) is pulside the jurisdiction of the sourt trying the less serious plence charged (such as unlawful wse of the property of another, triable by a Woreda Guezat court).




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# NATIONALITY, DOMICILE AND THE PERSONAL LAW IN ETHIOPIA by Robert Allen Sedier, Faculty of Law <br> Haile Sellassie I University 

## INTRODUCTION

In this article the writer hopes to explore the Ethiopian law of nationality and comicile and the law applicable to determine matters of personal status. In Ethiopia the foreigner has always been welcome. Many foreigners live and work here, ofter 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 domicied 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 Elbiopian 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. " 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 Gemnany or abroad while
J. 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 indinated. Howewer, Ethiopian cases are cited to the Ethiopian Calendar.
3. Of these two terms, "rationality" is used more in an international context and "citixcnship" in a local context Distinctions between titizens and nationals are frequentiy made in countries that have colonial possessions. Fer example, a person bom in a possession of the United States is celled a national rather than a citizen. United States Code. Title 8, Section 1408. For purposes of intermiational law, there is no distinction between citizens and nationals. Set generally. Silving Nationality in Comparative Law, 5 Amertcon Journal of Comparative Law 410-415 (1956). Nationals of a country having a monarehial form a government such as Ethiopia are sometimes called subjects. As used in this article. "rationality" and "eitizenship" have the same meaniing.
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 bern 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. ${ }^{3}$ The United States is primarily a jus soli nation. The Fourteenth Amendment to the Constitution provides that "all persons born or thaturalized 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 Arnetican citizens. This provision also proved of great value during the large wave of immigration to the United States in the late ninetuenth century, as all the children born in the United States of newly arrived inmigrant parents would be American citizens. ${ }^{\text {E }}$ 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 ${ }^{10}$ se 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 parcnt 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. 1 t Where one parent is a citizen who did not reside in the United States for a contimuous 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 servies 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. Eut 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 fus songuinis 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

[^39]majority clain French nationality. The French approach fluctuated over the years as different nationality laws were enacted, but the French Nationality Law of 1945 extensiwely 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 Iegitimate 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 urknown. Ualike the United States, there are no residence requirements imposed on the parents. Where a child first establishes filiation ${ }^{[2}$ against a French parent, whether the father or mother, that child is French. So too, if one pareat 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 Articie 19, subject to an option to repudiate, the legitimate child of a French mother and foreiga lather is French, as is the natural child recognized by or successfully filiated against patents, one of whom is French. The above provisions are essentially based on jus sanduinds, as the country of birth is irrelevant.

The French law also contains many elements of jus soli.t3 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 Framee 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 govemment may oppose the petition. Under the Law of 22 December 1961 , military service can be substituted for the tive year residence. Such a child can also claim French nationality prior to reaching majonity 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 fus sumginis, has adopted many elements of jus soli in an effort to increase the number of French nationals.

Since some states use jus soll 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 Gemian 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 atise also if a woman takes her husband's nationality upon mastiage under his national law, but does not lose nationality under her national law. Some states provide that a national loses mationality

[^40]by accepting foreign nationality; others permit their nationals to take on fortign nationality without losing original nationality. In the latter case, dual nationality may also result. Conflicts frequently afise; for example, during the Sevond Worid War, when children born in the United States of alien parents were wisiting 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. ${ }^{16}$ Effots have been made by some nations to resolve the problenn of dual nationality. ${ }^{17}$

Another condition that may arise is statelessacss. 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 nationallaw ${ }^{18}$, without acquiring another nationality. ${ }^{19}$ As we wilt 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 clect 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 bisth. ${ }^{21}$ A child born to an unmanied Ethiopian woman would, of course, be Ethiopiani,

The Law contains no provisions by whech a person born in Ethiopia of foreign parents is or can become an Ethiopian national except by naturalization. In other words,
16. Another confliet may arise as to claims against a government where the claimant is a National both of the claimith state and the state against whom the claim is made. In the Cancwaro Care, decided by the Permaneat Court of Arbitration in 1912 , the Italian and Peruvian govemments agaed to submit te arbitration claims arising out of the Eailure by the Peruvian government to homor octain checks issued by thal government to a firm. The claim passed into the hands of ertain persons, one of whom was Rafael Canevaro. The tribunal was given jurigdintion only to cormider claims of Italian netionals against the Peruvian gowemment; Lus, if Canevaro were not an Italian national, che tribunal would thate no jurigdiction to hear his claim. Peru followed jus soli to determine nationality while Italy followed fus sempinis. Since he wha born in Peru of an Italian father, both Pent and Italy would congider him their national. The court held that for purpeses of his status as a claimant, Perit had the right to consider him as its national and that he was not an Italian national within the meaning of the arbitration agrement.
17. One is the Hagee Convention of April 12, 1990. Another is the Protocol on Military Obligations in Centain Gaser of Double Nationality, Not all countries are signatories to these agrements.
18. During the Nazi regine many pertons were deprived of German nationalify bemute of their neligion or political associations. These people were thus renderfed stateless. Also, dertain countries provide for forfeiture of nationality by the commission of certain acts, and the person who thus foffeits his mationality may become stateless.
19. Son the discussion of attempts to prowide protection to stateless persons and the material cited therein in Bishop, mfemational Low 414 (2d ed 1962).
20. The tent "subject" is used, simor Ethiopia is a monarchy. Note that for international law puposes thert is no distinegipn betwern a national, citizen of subject. The status of Ethiopians biving jn Eritrea is geverned by Otider No. 6 of 1952, Megarit Gazeta, September $\$ 1.1952$. Under Section 9 of that Order, it is provided that all inhabitants of the tertitory of Eritrea, exatpt persons posterging formgh matjonality, are Ethiopiac matiopals, All inhabitants borth in Eritrea and hiving at featt mite indigenous parent or geandparent wete alto declered to be Ethiopian nationals. Howeveri, if suth persputs possessed forsign nationality; they could renource 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 Froclamation establishing the Federation. See United Nations Proclamation Kio. 390 (4), Depember 2, 1950.
the concept of jus soh 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 nationatity through naturalization. However, many persons from areas such as the southern Sudan, nothetn Kenta 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 permanently22 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 matriage, legitimation and adoption mpon 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 nationaliry upon her. This insures that no Ethiopian woman will become stateless by matriage and, where possible, tries to prevent married women from having dual nationality. ${ }^{35}$

The same principle is applicable with regard to legitimation. Note that legitimation dow not exict in Ethiopia, bocause there is no legal concept of illegitimacy. A child is the chald of parents against whom filiation is established; once established it is irrelevant whether the parent against whom the filiation was estabtished is married to the other parent. Thus, the chijd filiated against an Ethiopian mother or father would be Ethiopiar. But, if a child born to an ummarried Ethiopian woman would become legitimated by a Foregn father under his law, problems would arise. Again, in an effort to prevent cither dual mationality 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 canse the child to lose his Ethiopian rationality. Conversely, a child who is adopted by an Ethiopian does not thereby acquire Ethiopian nationality. Here, dual nationality and statelessness are possible. For example, ir ath Ethioptan child is adopted by a foreigner and under the national law of the adoptive parent the child takes on the nationality of his father, sueh 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 corcigners 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 Enhopian child adopted by a foreigner should not lose his Ethiopian nationality, though it is difficult

[^41]to see why fe 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 fiwe 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." ${ }^{25 m}$ Finally he "must have not previously been condemned to any purishment 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. Perbaps 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 fecogsized as wrongfot. 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 applitation upon reaching the age of eightern.

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 foreignery providing his national law conferred his nationality upon her. 25 Where a person voluntarily acquired another nationality, he would tose 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 govermment loses his French mationality. He must quit within six months after the receipt of notice unless it is impossible for him to do so. ${ }^{2 E}$ France aiso 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 Ftance, conviction for crimes puntshable

[^42]28. Nationality Law of 1945, Article 97.
29. Nationality Law of 1945. Artick 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 erime which is sabject to punishment of five years of imprisonment. These acts must have occurred within ten years from the date of acquisition of French nationality. "' 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 forejgr 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 forciga state without permission of the United States government, accepting employment for a forcign government where an oath of allegiance is requited, voting in an efection in a foreign state, desertion in time of war, comnitting treason and departing from the United States with the intention of avoifititg 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 punish ${ }^{-}$ ed 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 meater what he has done. As the lave now stands then, Ethiopian nationality can only be lost by the voluntary acquisition of another nationality or the obtaining of another nationality by marnage 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 for-igner may re-obtain Ethiopian nationality upon dissofution of the mantiage by divorce, separation or death if she becomes domiciled in Ethiopia and applics 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

[^43]legitimation. Where Ethopian nationality is reacquired, the person is considered an Ethiopian subject by birth rather than by naturalization.

In summary, Ethiopian follows the principle of jus sanguins to determine nationality. With the possible exception of children born in Ethiopia whose parents, though forejgners, 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 Eationality Law of 1930 seems well-suited to Ethiopia's present needs.

## Distinctions between Ethippian 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 adruinistration 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 tor candidates for the Chamber of Deputies. So too, under Article 96, Deputies mast 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 of 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 tong 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 wet1, the distinctions are such that it is clear that there is no attempt to impose serious disabilities upon foreigners. ${ }^{40}$ This spirit is refiected in Article 389 of the CiviI 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 Atticle shall affect such special conditions as may be prescribed regarding the granting to a foreigner of a permit to work in Ethiopia.

[^44]
## An Entroduction to Lapour Development in Ethiopla

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 testriction is that foreigrers may not own immovable property here except in accordance with Impertal Order. ${ }^{41}$ This is also applicable to rights of usage for a period exceding fifty years or a like interest terminable on death.*2 A foreimet must dispose of such property to an Ethiopian wititin six months; otherwise the property will be seized and sold by the competent authority. ${ }^{33}$ 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 foreigrers, 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 unresticted movement throughout the Empire ${ }^{46}$ No Ethiopian subject may be banished from the Empire, ${ }^{4}$ 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. ${ }^{4}$ With these exceptions, all other rights guaranteed by the Constitution, stich 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. ${ }^{4}$ All in all, it is clear that foremgers in Ethiopia enjoy fall protection of the law and most of the nights 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 annoally.

At present there is no comprehensive law relating to the deportation and expulsion of foreigners. When the Minister of Interior decides that any forcigner is an undesirable immigrant, he is to notify the Minister of Forejgn Affars, who may cencel his resident pernit. Them, the Minister of Interior is to arrange for the deportation of the fortigner 51 Under Articte 154 of the Penal Code, the court may order the expulsion from the Empire either temporarily or peritanently 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, ${ }^{2}$ It

[^45]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.

## pomicile

## 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 tives in a place for three months, he is deemed to have his residence there. ${ }^{34}$ 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. ${ }^{36}$ 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. ${ }^{37}$ 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 tive there "permanentily".

## 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 ${ }^{38}$ 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 "foating intention to return" should not be suff-
53. Civil Code of Ethiopia, Article 174.
54. Civil Code of Ethiopia, Article 175 (2).
55. Civil Code of Euhicpia, Article 177 (i).
56. Ciwil Code of Ethiopia, Articte 186
57. Each state must decide where a person is domiciled in aconntance with its own law. As the High Court pointed out in Kakkimos v. Kokkinos, Clvil Case No. 47I/52: "The fact that the pelitioner may at Greek law be considered as domicied in Ethiopia under article 54 of the Greek Civil Code does in no way imply that be woukd have to be considered as domiciled here according to Ethiopian law. As already mentioned, it is Ethiopian law atone that determines this point." See also In re Amester [1926| 1 Chancery 692, where the Court of Appeal held that a British subject was domiciled in Fraco under the British conception of domicile, though under French law she would not be deemed to have acquired a French domicile.
58. The tein "business" thould 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 hirn, 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 prowisions of Article 184 of the Civil Code, which provide as follows:
(1) Where a person has his nomal residence in a place, he shall be detmed to have the intention of residing permanently in such place.
(2) An intention to the contraty 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 $\tilde{i}$. e. the expiration of the five years. In the case of Shatto w. Shatfo, ${ }^{59}$ 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 dissentingi denied his petition for homologation of divorce on the ground that he was not domiciled here, as he might sone 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, $6{ }^{\circ}$ 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 carliet approach, at least as evidenced by the holding of the Supreme lmperial Court in the case of Partori $v$. Aslonidis, 6 decided before the Code. The person whose domieile was in question was a Greck 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 concituded 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 firected that it be executed by the Graek 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 charge of domicile:

[^46](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 donvicile 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 domicted in Ethiopia. The intention to return to Greece was "ffoating" 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 tive 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 counts have put upon them, favors a finding of domicile when a person lives and works here. This insures that foreigners residing here and hawing 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 dees 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 ${ }^{53}$ 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 hef beck 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 this 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 permamently. 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 hawe 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 particutar part of Ethjopia. 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 ith 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 Ethiopina domicile.
63. 31 Wet Virginia Reports 790, 8 Southeasterin Reporter 596 (1888).
64. For cases involving this question and holding that the person acquired a domiciled in that state, see Marks v. Marks, is Federal Reporter (U.S. Circult Cowf, Tennessec) 321 (1896); athd Whant p. Whans, 205 Massochusetts Reports 388, 91 Nartheastem Reporter 394 (1910).

Article 185 of the Code provides that where a person perfom the work of his calling in a place and passes his family or social life in another plate, he shall in tese of doubt be deemed to have his donicile in the latter pilace Such a situation confithted two American state conirt, where the pertion whose dornicile was in quatrion had his business in State $A$ and lived with his family in State B. The court in State A held that he wes domiciked there, In re Doframce's Enote, 115 New Jersey Equity Reporis 268, 170 Attantle Reporter 601 (2934); the court in State 8 held that he was domieiked in
 The question is clearly resolved in Ethiopia by the provtsions of Article 185.

The intention under Articies 183 and 184 must be the intention of liwing 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 actuatly living elsewhere. Consider the situation presented in a case such as Kirby y. Town of Charlestor. ${ }^{\text {G }}$ 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, siniot 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 retum, 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 teaches 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 courss bave 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 honie in their old age. When such a person died, if he were found domiciled in England, English law rather than colonial law would deternine the distribution of his estate. The American courts, on the other hand, have held that the person retains his former domicile tintil he acquites 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; ${ }^{64}$ 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, ${ }^{7 \prime}$ though he too may acquite a separate residence. ${ }^{22}$ An interdicted person retains his donicile at the time of his interdiction ${ }^{3}$, 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. Pergons 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 wrorking 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

[^47]Jetermination 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 witi which an indiwidual 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 determirfes such questions is called his personal law. In many states personal law detemines all questions of sutecession to movable property. The questions that are determined by pertonal law are found in each state's rules of private international law, or conflict of laws, as it is sometimes called. ${ }^{\text {I }}$ 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 具 domiciled.

The problem is complicated in Ethiopia by the fact that at present the private inter national law has not beet codified. The provesions of the draft Ciwil Code dealing with private international law were not included in the final cnackment. 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 liave by and large adopted nationality as the governing personal haw, though sonce 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 constry;* and the French rules of private international law hold that the personal law of foretgers residing in France is the law of their nationality. ${ }^{7}$ Article 17 of the Italian Civil Code prowides 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's, Hungarian lat ${ }^{80}$, Bulgarian law ${ }^{\text {BI }}$, and the law of many other European countries and countrics that employ the civil law. ${ }^{2}$
75. It has been held in Ethiopia, as we will sec infra that personal law governs questions of status and succession to movables.
76. David A Civil Code for Ethiopia, 37 Tulane Low Review 187 (1963).
7. Sec the discussion in Planiol, Treatise on the Civit Law 181 (Englist Trans. 1959).
78. See the discussions in MeCusker, The Italian Rules of the Confict of Laws, 25 Tulane Law Review 70,75 (1950).
79. See the discussion in Nisoletopoulos, Private International Law in the Ncw Greek Civil Code, 23 Tulane Law Review 452, 455 (1949).
60. See the discussion in Drobing, Confict of Laws in Recent East European Treatits, 5 Americar Journal of Comparative Law 487, 489 (1956).
81. Ibid.
82. Set I Rabel, The Comflict of Laws: A Comparative Study 113-115 (2d ed. 1958). See also McCusker stprit, 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 practicat. In commenting on Italian law, one writer observed ${ }^{93}$ 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 mationality principle was most fully deweloped 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 ${ }^{8}$. In other words, a person carties his national law with hirn irrespective of where he resides. ${ }^{6}$ 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 at violation of the sowereignty of the emigre's nation if the receiving ration should apply to the emigre laws not made for him; finally, legal ties of the emigre 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 acoorded to foreigners far fewer in number - who happened to reside in Italy.

Another author, commenting on Greek law, ${ }^{16}$ points out that Greece has a large number of nationals who emgrate to various parts of the world (there is a substantial namber 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 betwen socialist states such as Hungary and Bulgaria retairs nationality as the basis of personal law. One writer, commenting on this treaty, ${ }^{3} 7$ says that the reafirmation 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 socialisi 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 systen, with alien ideas, particularly as to manriage and the farnily. One writer, in pointing out why Eelgium, The Netherlands and Luxembourg have followed the nationality system, ${ }^{3}$ s observes that "many Eastern countries have quite different conceptions of marriage and parentchild 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. MeCusker, supra note 78, at p. 72.
84. Ste the ditchusion of Mancin's theory in Stumberg, Cases on Confiets 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 prowides that "the laws of police and publice security bind all the inhabitants of the teritory."
B6. Nicoletopoulous, supra note BD, at p. 455,
8 J. Drobing, stpra note 80, at p. 496
京禺. Meijers, The Benelux Convention on Private International Law, 2 Amerfoom Johmar of Compararibe Law 1-2 (1953).

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

The same type of considerations have Ied 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. ${ }^{\text {s }}$. 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 ${ }_{\text {f }}$ thur, 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 tationals domiciled in other countries. With variations, this approach is taken in Chile, Colombia, Ecugdor. 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 Freach 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 eause ill-will among nations; if a nation believes that personal law should be that of nationality for its nationality domiciled abroad, then it should net 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 ro statutory provisions dealing with personal law in Ethiopia. In the past, judicial decisions bave 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 beld that nationality was the governing personal law. In Verginella v. Antonionis ${ }^{2}$ 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 courth, was not known in Ethiopian law. The court held that [talian law should apply and ordered the judicial separation, Its reasons for applying Jtalian law were as follows:

[^48](1) the petitioner was an Italian subject;
(2) the respondent was also an Italfan subject;
(3) the marriage was celebrated in accordance with Italian law;
(4) there was no provision in Ethiopian law dealing with juficial separation; and it was the practice of the Ethiopian courts to apply ptinciples of foreign lan in matters between foregners 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 $\boldsymbol{v}^{\text {. Kalsoulis. }}{ }^{93}$ where the parties were Greek nationals domiciled in Ethiopia. The petitioner sought a divoree 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 Andriamparana v. Andriampanana94, and Zervos $v$. Zervos, ${ }^{9}$ 's 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 divoree 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 wre will see, under the Code the courts will rot usually take jurisdiction to decree a divorce.

Two Supreme Imperiai Court cases, on the other band, have held that domicile should be the basis of personal haw. In Yohannes Prata v. W/T Tsegainesh Makomen, ${ }^{96}$ the court was confronted with a situation of an Italian national who died domiciled in Ethiopia. He was married to a woman in ltaly and left children by her He lived with an Ethiopian womat and also left childien by her, who would be considered illegitimate under Italian law. Undet 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 ltalian children alone would inherit. If Ethippian law - the law of comicile - were applitd, all children, ltalian 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 beta 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 originat 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 Pantori 1 . Mrs. Asianidis and George Aslaridis, ${ }^{97}$ which held that the question of proprietary rights between husband and

[^49]wife was governed by the law of the matrimonial domicile rather than the law of nationality. ${ }^{9}$

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 liwes here, where the opportanities 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 counties. The foreigners domiciled here live their liwes 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 doniciled there and want to control the status of their nationals. In other words, the rule as to governing taw is in no small part fashioned on the basis of the interest of the country applying the rule. Ethiopia shopld 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 subrnitted that the courts of Ethiopia should hold that the personat 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 ander which the courts of Ethiopia will take jurisdiction to dotermine 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. Hollock, ${ }^{99}$ the party seeking a divonce was an American employed by Ethiopian Airlines. He was here on a term contract and was domiciler int 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 divotce. 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 Patliament establishing tesidence as a basis of jurisdiction to divorce, the court would require that at least one of the parties be domicied in Ethiopia. Consequently, the petition was dismissed. The same result was reached in KokEinos r. Kokkinos, ${ }^{\text {roo }}$ where the coutt 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, sinse 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

[^50]arbitrators, ${ }^{103}$ and the role of the court is to decide whether or not a divorce has been pronounced. ${ }^{104}$ As the Supreme Inrperial Court pointed out in the case of W/O Jamanesh Amare w, Ato Teferra Wolde Amomel: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 persors called the family arbitrators to whon all difficulties arising between the spouses duning 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 divoree; the Court can, however, decide whether or not a divorce has been pronounced by the arbitrators."
The Code makes no prowision for special treatment for persons not doniciled 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 fanily arbitrators; ${ }^{106}$ as the court pointed out in the case of Kokkinos v. Kokkinos, ${ }^{103}$ it is more reasonable for such persons to petition the courts of their domicile for the divoree.

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 foreigmers 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 prewiously, 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 divorec action. Jurisdiction to divorce then exists only on the basis of domecile, and under the Code divorce mus! be pronounced by the family arbitrators rather than the courts.

## CONCLUSION

In this paper an attermpt has been made to discuss the Ethiopian law relating to nationality, dormicile 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 donicile 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. Artieles 725-72吕.
104. Civil Code of Ethiopia, Aricle 729.
105. Civil Appeat No. $101 / 56$.
106. Howewer, in some eircunstances, where the appointruent of farmily arbitrators is impheticat, the couth may decres the fivoros. Forif v. Forti, Civil Case No. 174/55. In that ease the wherwhouts of one of the parties was quknown.
See also Zew y. Zevi, Civil Appeal No. $1199 / 56$, where the Suprome Imperifi Cout beld that the majority of the eftituators had erred in denyitas the divorce. Therofore, it confromed instead the report of the mfnotity of the arbitrators grantiog the divores.
107. Sypra Inpte 100.






































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## CURRENT ISSUES

## CIVIL CODE ARTICLES 758-761: SIDE ISSUES

(Paternity claims barred by Article 761 of the Civil Code; The problem of substitute remedies.

## INTRODUCTION

Some members of the Ethiopian legal profession are concerned about the severity of our codified law of iliation which has been comprehensively restated in Workiresh Bezabih v. Yidenekou, recently decided by the Supreme Imperial Court and reported in Volume I of the Joumal of Ethopian Law (1964) at page 17. Rather than adding to that luminous opinion, this note is concerned predominantly with certain side issues raised by the situation of a deserving mother-claimant who does not satisfy the strict conditions required by Artiele 758 of the Civil Code for a iudicial declaration of the pateraity of her child. The text below constitutes a succinct anailytical exploration of the following question:

What remedies, if any, may still be available in such a situation with respect $\omega$ (1) paternity, (2) damages, and (3) aliments?

## PATERNITY

There are no remedies with respect to a decfaration of paternity under Articie 758 of the Civil Code in circumstances other than those of rape or abduction. Article 761 expressly prohibits the consideration of other circumstances, e.g.g seduction or admission (see also the prohibitions under Article 721 of the Civil Code). Remedies, if any, available to a claimant denied recovery under Articles 758861 of the Civil Code may lie not with respect to a declaration of paternity, but with respect to offences, fanits, or acts which are not grounds for a declaration of paternity.

Consequently, we have to explore, outride the domain of declaration of paternity, the possibilities of giving redress to a claimant failing or likely to fail in her suit for a declaration of paternity of her chitl. There is ample scope for such redress and precedents in its favour exist abroad. Some rennedies may lie clearly in Tort (see the discussion below under Damages), while others are argued for, with scant clarity, by the protagonists of "alimentary" or "quasi-alimentary" redress (see the discussion below under Aliments).

## DAMAGES

If the defendant"s conduct, not amounting to abduction or rape (Articles 558 and 589 of the Penal Code), constitutes a seduction in terms of Article 596 of the Penal Code or constitutes any other penal offence, a claim for damages can be besed on Articie 2035 of the Civil Code.

If, without amounting to an offence, the defendant's faulr merely consists of conduct contrary to good morals, a claim for damages can be based on Article 2030 of the Civil Code in its Amharic and French versions. The English version of this Article is wtong in that "offence" should read "fault" and "public morality" should read "good morals." Atticle 2030 will allow damage-redress whenever the case of a mother-claimant denied recovery under Atticles 758-761 shows a minimum of merit. But fornication alone, without other blamable conduct, is insufficient to ground any claim (Article 721 of the Civil Code).

In appropriate casss, morol damages may be awarded over and above the material ones on the basis of either Article 2107 or 2114 of the Civil Code in the Amharic-French versions. The English wersion of both seems wrong:
(a) Article 2107 (compare 2038) deals with a "repulsive" variation of what should perhaps be termed battery rather than assault.
(b) Article 2114, in the French version, speaks not of assault but of "atteinte a la pudeur" and (apart from rape) of "acte contraire a la pudeur." It also quitu clearly contemplates moral reparation, which the English version does not. Article 2114 requires a penal conviction prior to damage-awards. So the French master-versions of the Civil and Penal Codes might have to be collated to find the penal comnterparts for this provision, without which its object, moral damages, cannot be attained. Such counterparts should presumably be sought in Articles $590-595$ of the Penal Code dealing with "sexual outrage."
Where the defendantrs illegal or immoral conduct (e.g. an unfair seduction) was due to his intent to injure, Article 2106 (compare 2032) of the Civil Code may alone suffice to ground a claim for moral damages.

## ALIMENTS

Can redress be given in the form of aliments or (maintenance,) under Article 808 of the Civil Code? The answer clearly is in the negative, unless the required relationship (in our case paternity) is specifically established in the ways prescribed. These ways are more limited in Ethiopian law than in the French law, which recognizes, for example, seduction or admission as sufficient grounds for a declaration of paternity (see Freach Civil Code, Article 340 , as of July 15, 1955). Two points remain for discussion:
(a) Even without the establishment of paternity, French courts sometimes impose an alimentary obligation by ctrcuitous methods (see Encyclopedie Dalloz, Droit Civil, Tome 1, Aliments, No. 63-77), which we shall now illustrate in terms of Ethiopian law. A defendant's conduct not amounting to the formal acknowledgment required by Article 748 of the Civil Code, but otherwise clearly recognizing his probable paternity (statements, acts of supporting the child, etc.) may be alleged to constitute an actionable novation of a non-actionable moral obligation to maintain the child. Moral obligations are recognized as to their defensive effect by Aricle 2166 (1) of the Civil Code. But we could hardly imply an acceptance and conclusion of their novation in view of the striet requirements of Articles 1682, 1826, and 1828 of the Civil Code. Still more questionable are some French decisions which, even in the absence of such "novations," award compensation in the nature of quasi-alimentary (revisable) obligations in cases of nonestablished paternity (Encyclopedie

Dalloz, ibid, No. 13 , including further reference). The aforementioned circuitous methods of alimentary relief are widely criticized as itlogical (e.g., Mazeaud, Legons de droit civi, Tome I, No. 963. See also No. 982). They would be exceptionally disruptive in Ethiopia in view of the recent restrictive purposes clearly and mandatorily expressed in Articles 761 and 721 of the Civil Code, and whose change, therefore, lies in the power of the legislator alone by the interpretative canons of the Common Law, the Continental Law and the Ethiopian Law alike (Article 1733 of the Civil Code a fortioni: see G. Kroeczunowicz, "Statutory Interpretation in Ethropia), I Journal of Ethiopian Law (1964) at page 318).
(b) In Ethiopian law the only effect given to non-legal (notorious) filiation is that of Article 584 of the Civil Code, which does not concerm aliments. But Articles 745 and 708 of the Civil Code (conceraing ifregular tinions) greatly facilitate the establishment of presumptive legal filiations which do carry alimentary duties in terms of Article 808 of the Civil Code.

## CONCLUSION

A mother-claimant who does not satisfy the requirements of Article 758 of the Civil Code has no other possibility to obtain a judicial declaration of paternity of her child. Her substivute remedies are:
(a) in fit cases, to clain damages for material and/or moram harm to herself;
(b) whert the intercourse has fnitiated an "irregular union," to claini afiments for the chifd (not for berself: see Article 711 of the Civil Code) (since in such case the child "has a father" Article 758 becomes jizapplicable even if there was rape). She tas no other possibility to recover aliments.

By: George Krzeczunowicz<br>Professor of Law, Haile Sellassie I University


[^0]:    (*Ed note: The Ambaric version of the majority opinion was written by Ato Tsaggai Tefferi. I.s and differs from the English version which was writien by Mr. G. Debbas l. in that is explicitly states that the agreement of dissolution and dittribution of assers pursuant thereto are valid

[^1]:    * Tramplator's note: A literal translation of the Amharic. however, is: "No one shall be deprived of his propetty except in acco tance with the law."

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[^7]:    1. By Order No. 27 of 15 Nowember 1962.
    2. The Erirean Gaxeffe, Supp. No. 5, 23 May 1958.
[^8]:     No. 3, 20 October 1961, and Amending Order No. 28 of 1962 Megarit Gamta, $22 n d$ Year, No. 6, pp. 33 et seq.

[^9]:    4. Order No. 15, of 1957.
    5. Public Emphoymeat Regalations No. 1, Negarit Gazeta, 22nd Year, No. 5, of 10 December 1962
    6. Negarit Garefa, 21st Year, No. 18, of 5 September 1962.
    7. Ibld, pp. 136 et seq. Promulgated, after adoption by Parliament, as a Proclamation, No. 210 of 1963, Negarit Gazeta, 23rd Ytar, No. 3, of 1 November 1963.
[^10]:    9. Order No. 37 of 1964, Nepxrat Gaxeta, 24th Year, No. 4.
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[^15]:    1. The word "complaint" as used in the Pedal and Ciminal Procedure Codes means a request, by the injured party or those laving rights from him, which is "an essential condition setting in motion the public prosecution'" (Article 216 of the Penal Code). This complaint must be distinguished fro n an "qucsusation" which may be made by anyone atnd whict, like a complaint, is "in the nature or an information" (fbld., but, wnlike a complaint, is "merely the occaston seting in motion the public prosecution" (ibid.). This distimetion is clearly made in Articks 11 and 13 or the Criminal Procedure Code dealing stepoctively with "accusation in eneral" and "offences punishable of pomplaint"
[^16]:    2. If the offence is committed in aggravating circurnstances, as defined in Article 561, no complaint shourld be required (although Article 561 does not expressly so provide) owing to the seriousness of the punishment that may then be ordered (rigorous imprisonment not excoeding five years).
    3. If the offence is commited in ageravating circunstancost as defined in Article 598, no complaint shoutd be required (elthough Article 598 does not expressly 50 prowide), sinte the punishment is then rigorbus imprisonment not exceeding ben years.
    4. Although Article 721 is very gentril, it uould appear that ooly offerses under Articles 778 , $7877_{r}$ $794,796-798,805$ (if private property), $806,807,810,812$ and 813 of the Penal Codie Fall within this cabepory. As for the complaint required by Article 721 (1) (b) of the Penal Code; see note 12 infru.
    5. If this offence is conamitted together with another offense not punishable on complinin, the public prosecutor may, in the absence of a complaint, prosecute only for the latter offence. He may not disclose that anothrr offence has been comminted, nor may the covirt increase the sentence on the ground of concurrence of offences as though the aberased had also been chatged wilh, and found guilty of the offence pumishable on complafnt.
[^17]:    6. Pursuant to the rule of indivisibility (Article 222 Penal Code), if several persons are involved in the commission of one and the same offence putishable on complaint, they will all be proseruted even though the complaint is made with regard to only some of them; if the offence is mot punishable on complaint but some participants cannot be prosecuted in the absence of a complaint (e.g., Article 629 (2) Penal Code), the rule of indirisibility does not apply.
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[^39]:    4. Reich and State Nationality Law of July 27, 1913, paragraph 4. Under Articte 116 of the Constitution of the Federal Republic (TYest Germany) all pertons whe postessed Germath natifntality or who were acoepted as refuges of German stock as of 31 December 1937 ate Germins. 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 ef a German motherSer the discussion in Oppenheim, Internationtal Law (gith ed., Lauterpacht). Vol. 1, p. 651.
    5. Oppenheim, bid. This would not, of course, include children of foreign diplometic representatives.
    6. Oppenheim, ibid.
    T. For a listing of the different approaches eourard ationality based on a 1935 study see Bishop, In termational Low 415 (2d ed, 1962). The oniginal study will be found in 29 American fournal of Ittermational Law 248, 256 (1935). Although some changes no doubt have been made, the study gives a general idea as to the distribution of the differeni approaches.
    7. In the case of United Stateg F. Wong Kim Ark, 169 U.S. 649 (1896), the Suprempe Court held that the child bom in the United States of Chinese parents was a cititen of the United States, though at the time the parents were not eligible to become naturalived citizens. Under the fur soli appraach 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 bomm i.e., they are not diplomatic officials.
    8. This is set forth in United State Code, Titte 8 , Sertipn 1401 .
    9. Only American citizens by birth are eligible wo become President. Constitution of the United States, Article $\Pi_{1}$ Section I(5).
    10. See United States Code. Titte 8, Section 1401 (5).
[^40]:    12. Filiation in the broad semse is the propess by which the parentage of a dild is ascertained See generally Civil Code of Ethiopia, Clapter to. The temm may also nefer to ato ection brought by the child for a judicial deefaration as to his parcotage.
    13. See particularly Aricles 23, 24, 44 and 52 of the French Nationality Law of 1945.
    14. If the principle of fus soli were strictly followed, the child would be French irrespertive of where he was residing.
    15. Law of 22 Decenber 1961, Article 55.
[^41]:    21. This is important, ath thene are distinctions is the enjoyment of political rights between subjects by birth and others. See the discuesion. infor at note 3 B and atcompanying text.
    22. In other words, domiciled here. Set the discussion, infra at notes $53-62$ and accompanying text.
    23. A forejgn woman martied to an Ethiopian might hawe dual nationtidy if her national law did not cause her to lose her nationality as a result of the marriage. Sill, it is desirable from Ethiopias standpoint that a married woman have the same nationality as her hasband.
    24. Civil Code of Ethiopia, Chapter 11.
[^42]:    25. France formerly denied an adopted child the status of a Frenchman. But now such a child can pleim French nationalify if he resides in Framoe. Law of 22 December 1961 , Article 55.
    25a. Under a later amendment to the Nationaity Law, 25 Maskaram, 1926 EC. the requifemenis of five vears of residence and flueney in Ambaric may be wained by the Compristion.
    26. Under American Law a woman does not lose ber nationality by marriage. Upder French law a woman keeps ber French nationality upon martiage 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. Annerican law is to the mame effoct. United States Code, Tite 8 , Section 1481 (a) (1). In Ftames, bowever, such a perton does not lose his French nationality until fifteen years have clapsed from the time he was eligible to perform military service. He may repudiate his forteigh nationality during that time, and if he does so, he will not lese his French nationality. Nationality Law of I94s, Artices 87, 88.
[^43]:    30. These sections cover the crimes against the Constitutional Chafter, violations of the civil rights of others and attacks against liberty.
    31. Nationality Law of 1945. Article 99.
    32. Nationality Law of 1945 , Aticle 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 y. Merdoza-Martinex, 372 U.S. 144 (1940).
    37. In Schneider v. Rusk, 84 Supreme Court Reporiter 1187 (1964), it was held that Congress could not constitutionally prowide that a naturalized citizen lost his citizenship by residing for three years in the country of his birth. The court emphasised that native born citizens wert not subjoct to this restriction and held that the discriminatfofi was so unjustifiable as to violate due process.
[^44]:    38. Rights which imply such participation may convenienty be called political rights.
    39. The requirement for appointrent to the judiciary are set forth in Article 111 of the Revised Constitution.
    40. It is interstimg to note that under the Adnainistration of Justice Prodamation of 1942, Negaril Gazeth, January 31, 1942, the courts are probibited from giving effect to any law that makes harsh and insquitable distinctions berween Ethiopians and foreigners.
[^45]:    41. Civil Code of Ethiopia, Artick 390. Likewist, forcigners may not be members of a Farm Workers Cooperative. Farm Workers Cooperative Detret, Negarit Gazeta, October 27, 1960.
    42. Civil Code of Ethiopin, Article 393.
    43. Civit Code of Ethiopiz, Articles 391-2.
    44. For the law with respect to the ispunce of work permits to foreigners see Order 26 of 1962 , Chapter VL, Negarit Gazeti, September 5, 1962.
    45. Revised Constittaion of Ethiopia, Article 45.
    46. Rovised Constitution of Ethiopia, Article 46.
    47. Revised Constitution of Euhiopia, 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 Gayeta, April 29, 1944.
    51. Proclamation 36 of 1943, Ncgarit Gazefa, April 30, 1943. This act governs ithmigrationa.
    52. In such a case the court should consull the ofompetent public authority.
[^46]:    59. Civid Appeat No. 784/S6, I Journal of Ethiopian Law 190 (1964.)
    60. Cinil Appeal No. 633/S6.
    61. Civil Appeal No, $338 / 47$.
[^47]:    65. 99 A.lantic Reporter 835 (New Hampshive Supreme Court 1916).
    66. Udny v. Udhy, [1869] Law Reports, 1 Sc. \& Div. 441.

    67, In re Jones, 192 lowa Reports 78, 182 Northwestern Reporrer 227 (1921).
    68. Civil Code of Ethiopia, Atticle 189.
    69. The recent trend in the United States and in some other countries has been to permit the wife to acquire a separate domicise even during the continuance of the marsiage. Ethiopia's approach to domicile is the same as her approach to nationality.
    70. Civil Codt 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.

[^48]:    89. Set the discussion in Stumber, supar nole 84, at p. 3.
    90. Nadelman, The Question of Revision of ibe Eustmante Code, 57 Americon fopmail of Intermutional Law 384 (1969).
    91. Article 27.
    92. Civil Case Ne. 905's0.
[^49]:    93. Civi Case No. 250/51.
    94. Cini Case No. 441/52.
    95. Civil Gate No. 154/52.
    96. Civil Appeal No. 698,49.
    97. Civi] Appenl No. 338/47.
[^50]:    98. Note that in that case the court found that the parties were not domiciled in Eubiepia See the digcrssion, supra note 61 and acoompanying 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 y. Antoniani, supua cote 92; Katsoulis v. Katsoutis, supra note 93; Andriampanana y Andriampanana, sypred note 94; Zervos v. Zervos, supra note 95.
    102. Civil Code of Ethiopia, Artble 189.
