

QUIZZES IN ETHIOPIAN FAMILY LAW

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Readers of the *Journal of Ethiopian Law* are invited to test their knowledge of the law and their skill in formulating answers to legal quizzes by submitting* to the *Journal* written answers to the following problems selected from the author's 24 *Problems in Ethiopian Family Law*, which was published in mimeographed form during the 1970-1971 academic year. The best written answers to each quiz submitted to the *Journal* in either Amharic or English will be printed in volume 10-2 of the *Journal*. Answers should be submitted before October 11, 1973. Each participant whose answer is selected for publication will receive a free copy of the *Journal* issue in which his answer appears plus five off-prints of his answer. The participant who submits the most satisfactory answer to all four quizzes will receive a year's subscription to the *Journal* without charge in addition to a free copy of volume 10-2 and the author's off-prints for any answer which is published. Participants are not obliged to answer all quizzes.

PROBLEM 1

Pursuant to Art. 777 Civil Code, as modified from its original draft by the Imperial Codification Commission,¹ an action to claim a "status" (of affiliation) brought by the mother shall be instituted against the child.² In other cases (those brought not against but by the child), the action shall be instituted against the mother (or her heirs).³ (Where such action, if successful, would attribute paternity to a man,⁴ the latter shall be joined in the suit.⁵) It follows that in the absence of Civil Status records⁶ a child who possesses his maternal filiation⁷ can never claim non-possessed⁸ paternal filiation since:

1. See René David, *Le droit de la Famille dans le code civil éthiopien*. (Milano, Giuffrè, 1967), p. 67, n. 114.
2. Art. 777(1). Incidentally, the mistranslated English version of Art. 772 erroneously limits its scope to actions "of the child".
3. Art. 777(2). It follows that, in all cases, filiation claims must be brought not by or against the father, but by or against the mother (or her heirs).
4. By virtue of Art. 740(1) *cum* 741 and 745, or 740 (2) *cum* 751. Cf. Art. 740(3) *cum* prohibitory Art. 761.
5. Art. 777(3). Its mistranslated English version should be corrected to read. "In all cases, the child, the alleged mother and he to whom paternity would be attributed if the action were successful shall be joined in the suit". (The same text figured in the original draft of Art. 777).
6. Art. 3361(1).
7. Art. 770(2).
8. By definition, since "possessed" filiation is not claimable.

1. He cannot sue the alleged father without claiming against the mother;
2. he cannot claim against the mother since this is possible only where he does not possess his maternal filiation.⁹

Thus, filiation claims of the only type that practically arise in Ethiopia, i. e. those brought by the mother-possessor of the child, in the latter's name, against the alleged father,¹⁰ should always be rejected by the courts without going into merits. Nevertheless, this is never done by the courts who, moreover, never give their reasons for disregarding Art. 777(2).

In light of the above, answer the following QUESTIONS:

QUESTION 1

The rule of positive interpretation requires us to give the provisions on action to claim status, if capable of two meanings, a meaning "to render them effective" rather than one that "would render them ineffective".¹¹ As shown above, the straightforward meaning of Art. 777(2) *cum* 772 would, if applied,¹² make the law on action to claim status practically ineffective in Ethiopia. Is another meaning possible? If yes, what is it?

QUESTION II

Even if another meaning for Art. 777(2) *cum* 772 is discovered and applied by a court, it will not bind future courts. Thus, a permanent solution of question I requires a legislative amendment of these articles. What amendment do you propose? Would an amendment of Art. 761 also be necessary?

PROBLEM 2

David's elaborate draft of Titles XXI-XXII Civil Code has been replaced by texts "hastily prepared by the offices of the Ministry of Justice".¹³ The new Title XXII (Transitory Provisions) provides in Article 336(2) that, until the coming into force of the "civil status registers" legislation mentioned by sub. (1), proof of birth, marriage and death shall be made by acts of notoriety. This *transitory* provision is *inconsistent with permanent* provisions of 1. marriage law and 2 filiation law:

1. MARRIAGE LAW

In default of a civil status record of marriage Article 699(1) requires proof not by act of notoriety, but by "possession of status". Proof by act of *notoriety* may be required only in the *third* place i.e. in case not merely civil status records, but also possession of status is lacking (or contested): see Article 701.

9. (or where its alleged possession is successfully contested under Art. 771). See Art. 772.
 10. Ironically, this normal case is the only one that is ignored by the legislator.
 11. Art. 1737, which applies, a *fortiori*, to interpretation of laws.
 12. Its application has so far been prevented by the absence of knowledgeable defendants to paternity claims.
 13. See David, *op. cit.*, p. 8.

2. FILIATION LAW

In default of a (civil status) record of birth, Article 770(1) requires proof not by act of notoriety, but by "possession of status." Proof by act of notoriety may be required only in the *third* place i.e. in case not merely civil status records, but also possession of status is lacking (or contested): see Article 772.

The resulting inconsistency problems can be solved only by:

- (a) making Article 3361(2) prevail over Articles 699 (1) and 770(1), *or*
- (b) making Articles 699(1) and 770(1) prevail over Article 3361(2).

Choose and argue *one* of the above solutions (a or b).