

St, Mary's University College

FACULTY OF LAW

LL.B THESIS

DIVISION OF COMMON PROPERTY AND THE
RIGHTS OF WOMEN AFTER DISSOLUTION OF
MARRIAGE IN ETHIOPIA: THE LAW AND THE
PRACTICE AT THE FEDERAL LEVEL

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ID.No. ELD. 0642/97

ADDIS ABABA ETHIOPIA

June 2009

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Oh my God, You have given me the strength to start and finish my studies. Glorified be your name for ever.

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Genet Mamo

June, 2009

Addis Ababa

Dedication

To the Memory of
w/o Tsehai Gebremenfes Oljira

ANNEX

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CHAPTER ONE

1. INTRODUCTION

1.1 BACKGROUND

Once marriage is concluded between the spouses, it does not end there. It is rather subsequented by personal and pecuniary effects between the spouses. The institution of such legal relation is very much affected by the break and dissolution of the union. Legal consequences in regard to the division of property between the spouses results from dissolution of marriage.

The common property owned by the spouses and controlled by them during the continuance of the marital relationship are usually the result of legal and conventional conditions¹ in the ownership of property. When one envisages the conditions of property ownership, it might suffice to indicate that it would be legal when ownership is imposed by the law and conventional when such ownership results from an express agreement undertaken by the spouses concerned.

The imposition of the law regulates the property rights of the husband and the wife in the absence of an express agreement between the spouses, whereas the conventional common property arises from the express agreement reached between the husband and wife in the marital undertaking.

As marriage is an institution as old as human itself, it would be appropriate to see such an institution from a historical perspective and therefore, we come across property personally owned by the woman, but being administered by the husband. This was the case in early England where the husband stood to be the owner of the wife's personal property¹

This kind of relation however, was later abolished by the married women's act² with the effect of handing over to the women the right to own, hold and control of her separate or personal property like any other citizen. As has been indicated in this

¹ American jurisprudence Vol. 41, Corpus Juris Secundum, Husband and wife. Pp/988

² American Jurisprudence Vol. 41, Jurisprudence Publishers Inc., 1968. Pp. 996

married women's act of the common law, the Act recognized that every property which the wife acquires in the continuance of the marriage either by way of inheritance, purchase or gift remains her exclusive property³. On the other hand the civil law whose concept came from the Code Napoleon, maintains that married couples acquire an undivided interest in property that is obtained in the course of marriage.⁴

When raising the issue of property, it would be appropriate to see properties acquired by onerous and not onerous title. The black's law dictionary explains onerous title as:

A title acquired by the giving of valuable considerations as payment of money or rendition of services or the performance of conditions or assumptions or discharge of liens or charge----

As the dictionary meaning of onerous titles indicates the manner of securing one form of property, there is also an indication of property acquiring by non-onerous title. Property so acquired without the giving of such valuable consideration in return would therefore be property of not onerous title. The Revised Family Code of Ethiopia under Article 57, Article 58 and Article 59 provides for the description and administration of such property. Further, with a view to extending legal protection to the most stabilizing element of the family which is property, the Revised Family Code has Articles 85 through Article 93 and handling of cases of such nature in time when they arise.

As regards the Rights of Women it has been maintained that the place of woman, customarily used to have been at home for a very long years in the history of the Ethiopian society. Why this was so may be justified by what has been carried on by one of the oldest news papers in the country; it goes on to tell that "... if they were allowed to go out, they will trigger all manners of trouble, for the fact that, by their very nature they are gossipers and deceivers".⁵

³ Bromely, P.M. Family Law (7th ed) 1987.

⁴ Coulson Robert, Family Mediation, Jossey-Bass publishers Sanfrancisco 1996 p.58

⁵ The Ethiopian Herald, Nov. 1, 1970; Berhanina Selam Printing Press, (P.3)

Although much has been improving these days, the long standing custom of the Ethiopian people had contributed for woman to be treated as a mother and wife. Most notable duties in her life were to give service to her husband and behave as a good wife⁶. As has been the case, women of Ethiopia have suffered the oppression of cultural, religious and economic pressures and had been kept inferior to men for centuries. Women's economic misery kept them dependent on men, as they were not integrated into the development activity. In every aspect of life, women were made to work with that aspect of life attached to the house and kitchen.

At the time when things improved and women came out from the house to work in the factory and in the offices in the recent past, but were only subjected to exploitation. They did not achieve equal pay for the work that is equal in weight to that of man, nor did they secure sufficient leave of absence for pre-natal or maternity leave.

Religious-wise men were taken to be superior to women and therefore, women were made to accept and abide by the opinion largely carried around. Moreover, the economic dependence of women was justified by religion and superstitious beliefs which considered the superiority of men as a law enacted by some supernatural force.⁷

After the demise of the monarchical system of rule, the onset of the popular revolutionary period in 1974 has brought about meaningful changes in the improvement and handling of the rights of women.

Among all these problems this research paper intends to show the trends and dwell up on the provisions of the law and the practice.

⁶ Balaba, *The role of Women in national development*, Addis Ababa 1969, p.3

⁷ *Journal of Modern African Studies*, Vol. 19. No. 4 (1981) p633

**RESEARCH TITLE: DIVISION OF COMMON PROPERTY AND THE
RIGHT OF WOMEN AFTER THE DISSOLUTION
OF MARRIAGE: IN ETHIOPIA THE LAW AND
THE PRACTICE AT THE FEDERAL LEVEL.**

1.2 STATEMENT OF THE PROBLEM

The right of Women had been looked down for centuries. Further more, the dissolution of marriage has its own effects as regards division of property in regard to the situation as handled in the Revised Family Law. As marriage has the protection of the law in respect of it being the core of society, it is to be seen in that measure which is not always the case. When a marriage is dissolved by divorce a court of Jurisdiction is expected to decide on issues related to division of property. In principle common property will be divided equally between the spouses in the situation when there is no agreement to this effect. However, practically courts don't give specific order as to the different model of partition and they also fail to identify common properties. In the majority of the cases; courts leave the division of property to the spouses with whom the husband usually manipulates on the forms and conditions of the partition. Thus, women are affected by the process of the division and lack of supervision by the court. In some cases when the court orders the division of property, identifying common property and the partition is treated differently from court to court. Thus, one can see either problem of implementation or different interpretation in understanding common property and division of property upon dissolution of marriage.

The study therefore, inclines to throw light on matter of common property that falls between the married persons at a time when marriage breaks down. It has been observed on many occasions that the dissolution of marriage is followed by one of the parties controlling the common property of the spouse until the property is taken

account of and divided between them. This situation usually leaves the party who is not in control of the property to face difficult times until the property of its share is secured in its interest.

Therefore; the research will attempt to bring to the attention of the reader and of those interested the situation that such delay creates on the parties. In dealing with the matter of the research; cases that have been decided by courts will be treated to show the problem. As a logical corollary therefore; the paper indicates a way out by providing recommendations, at the end.

1.3 OBJECTIVE OF THE STUDY

1.3.1 MAIN OBJECTIVE:

The main objective of the study is to find and show that cases that prop up in regard to the partition of common property in the event of dissolution marriage is handled by the law in a manner acceptable to the spouses concerned.

It is also the objective of this study to see to it that the written law provides for the respect of the rights of women if there happens to exist any enforcement actions available for women who have suffered wrongful acts.

1.3.2 SPECIFIC OBJECTIVES:

- It is in the interest of this study to show the protection the law extends to women as an equal partner when the question of partition of property arises.
- Revisit decided cases against the background of the provision of the law as enshrined in the revised family code of Proc. No 213/2000.
- Shade light on the execution of division of property where seemingly women suffer some impediments in securing equitable standards where family arbitration played him major role in the suppression of women's rights.
- Contribute to the cumulative knowledge that has been gathered over the years thereby playing a part in triggering further research in this regard.

1.4 SIGNIFICANCE OF THE STUDY

This study is believed to bring to light the findings of the most common characteristics of human right abuse against women in the relationship known as marriage at the time of its dissolution where there is the tendency of preservation of the belief of women's subordination to the common abuses.

As the country is experiencing gradual development in the laws that deal with family, property and human rights the author is of the belief that the study reasonably contributes to the demand that the government adopts international human rights standards related to women and also that of recognition of particular women's right, as an instrument of protection of women in general and the enforcement of right in the execution of division of common proper

1.5 SCOPE AND LIMITATION OF THE STUDY:

1.5.1 SCOPE OF THE STUDY:

The study is intended to cover the effects of dissolution of marriage in regard to division of communal property with in the limits of the revised family code and the rights of women in the context of the societal outlook, Further; the study is that of finding as to how the provisions of the law are put in to effect in regard to cases related to the rights of women and that of division of common property as equity demands. This however; is quite a task that requires a thorough investigation in to cases decided in this regard and discrepancies observed in the handling of cases that are brought before the appropriate institutions from time to time.

1.5.2 LIMITATION OF THE STUDY

This study is undertaken with a view to writing a senior essay for gradational requirement in law. It therefore makes it cumbersome to explore investigate and show

the findings in an explicit writing both for the purpose it is intended and for readers in law. Therefore, the study faces the limitations of time as it is to be covered in the course of a semester and finance for it has to be covered from what meant to make ends meet. The study therefore runs against the limitations of time and money which intern limit the coverage.

1.6 METHODOLOGY

This study is undertaken to adopt a research methodology most commonly applied to studies of similar nature. It is intended to use both primary and secondary resources to reflect in the findings. As primary resource the author contemplates to embark up on in-depth interview together with sources available in the library in the form of relevant, references as the conditions permit. What has been gathered will be interpreted and analyzed to reflect on the objectives of the study.

1.7 LITERATURE REVIEW

It is in the interest of the subject under study that literature of relevance to the study be reviewed. Therefore, the study will dedicate space to dwell upon conceptual and theoretical underpinnings with a view to approaching the problem with a treatment of theoretical elucidations,

1.8 ORGANIZATION OF THE STUDY

The author has to embarked up on writing a study that embraces an introduction, a chapter that deals with the review of literatures that have relevance to the question at hand, a part that dwells up on interpretation and analysis of the findings, the portion tat covers the conclusion and recommendation and of course the bibliography.

CHAPTER TWO

2. REVIEW OF RELATED LITERATURE

2.1 THE RIGHT OF WOMEN WITH RESPECT TO COMMON PROPERTY IN GENERAL

Before proceeding into the treatment of the rights of women in regard to division of common property, it will be worthwhile to devote a few lines to the notion of property. The term property signifies that dominion or indefinite right of use, control and disposition one may lawfully exercise over particular things or object⁸

Property has important constituent elements for it to be called so. These essential constituent elements of property are: the restrained right of use, enjoyment and disposal of the particular subject of property.⁹ There is therefore, the discretion of a property owner to use his property freely as long as the use does not violate the public peace and that of other rights. Further, the owner is entitled to enjoy the property by excluding others from a similar use of that property. It is also the right of the owner to alienate the property. It is this important element that is embedded in property, which is alienation that identifies ownership from possession or usufruct and the like.¹⁰

As regards ownership, property may be classified as public property and private property and also personal property and common property.¹¹ There are other classifications of property, but I shall restrict myself to those mentioned above for the rest stand beyond the purpose of this study.

⁸ American Jurisprudence V.63,(1972) Property, p288

⁹ *Id.*, P. 290

¹⁰ *Ibid*

¹¹ *Ibid*

Dedicating a few more lines to the classification of property a brief description of the classes of property will be elucidative. Public property is that property which is owned by the public under the control of the government, In like manner private property is the class of property that falls under the control of an individual and devoted to his private use¹². Further, common property is that property that comes under the control and use of individuals in common. Here in this case common property can be indicated as that class of property that the husband and wife own and control during the continuance of the marital relationship. It is usually acquired after the conclusion of marriage, at the time when the husband and wife are living together under the same roof. The property could be acquired by the labor of any one of the spouses or both of them.¹³

The appropriation of the common property could be the result of either of two conditions i.e. legal and conventional.¹⁴ Appropriation of property is legal when the common property is imposed by the law in force; and when it is the outcome of the express agreement of the spouses it is conventional. For all practical purposes, the legal community imposed by the law uses to regulate the property rights of the husband and the wife when there is the express agreement as between the spouses. Nevertheless, the conventional common property arises from the express agreement of the spouses during marriage.¹⁵

As regards personal property or as it is sometimes called separate property, is usually owned by one of the spouses, in her or his own rights in the course of the marriage.¹⁶ This property known as personal property is held for the exclusive use of one of the married couples. Personal or separate property could be acquired in accordance with the law.¹⁷ The property that was already in existence at the time of the conclusion of the marriage forms part of that personal property and does not form part of the common property. However, whether a given property is personal or common is a

¹² American Jurisprudence V ,63(1972) property, P 291

¹³ Ibid

¹⁴ Corpus Juris Secundum (1944) V. 41 Husband and Wife, P. 988

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

matter to be decided by the law. All property which is not designated as personal by the law takes the form of common property.¹⁸

Here one can tell from all indications that it is the marriage which is the main ground for the creation of common property. It is also true that the existence of common property comes to the picture as of the moment of celebration of marriage. In accordance with the law marriage is a decisive element for the creation of common property,¹⁹ or in other words, the creation of common property essentially requires the conclusion of marriage as per the operation of the law.²⁰ All property obtained by the labor of the spouses after the celebration of marriage is common property. It will not make any difference as to whether the property is obtained by the effort of each of the spouses the property so obtained remain to be common property in so far as it is made in the course of the marriage. It will not take the form of separate property. It stays common. The efforts of both spouses exerted in the direction of obtaining property with out doubt leads to common property.

Common property within a given family is important to stabilize and protect the family.²¹ According to the Polish Family law, common property presupposes the maintenance of a common-house hold.²² Common property is created by the operation of the law not only by the will of the parties. It is quite independent of any special contract or settlement. It is a statutory creation applying exclusively to married couples as one of the effects of their matrimonial union.²³ Neither spouse has any definite or definable share in the common property before divorce, but each has equal right in respect of the whole.²⁴

When going further to the explanation of common property, we find that the idea of statutory or legal community is enshrined in the French civil code. Art. 1401 of the French Civil Cod three enumerates these elements composing the legal community.²⁵

¹⁸ Corpus Juris Secundum(1944) V.41., P988

¹⁹ Ibid

²⁰ Corpus Juris secundum, Husband and Wife (1944) V. 41 p. 996

²¹ Dominik Lasok, Polish Family Law P. 89 (A.W Sijthoff-Lehden) 1968

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ancel, Marc, Matrimonial property law in France (Toronto, Canada Cargwell Co.ltd, 1955)p.10-11

- All movables which the spouses own at the time of the marriage and all those which they acquire subsequently by gratuitous or onerous title
- The immovable acquired by onerous title during the marriage, which excludes the immovable given or left by will to the spouses or acquired by them by way of succession
- The fruits, income and interest of the personal property of the spouses as well as the products of their work.

There is a legal community as provided by The Revised Family Code. Article 62 enumerates the elements forming the legal community.

1. All income derived by personnel efforts of the spouses and from their common or personal property shall be common property.
2. All property acquired by the spouses during marriage by an onerous title shall be common property unless declared personal under Act. 58(2) of The Revised Family Code.
3. Unless otherwise stipulated in the act of donation or will property donated or bequeathed conjointly to the spouses shall be common property.

Under Article 63 of The Revised Family Code there is a presumption that all property acquired during marriage is considered common unless there is proof to the contrary. Nevertheless, one of the spouses could rebut this presumption if such property is personal. That is, if the property was possessed at the time of the celebration of the marriage or acquired thereafter by succession or donation as envisaged under Art. 57 or acquired during their marital relationship by onerous title and approved as personal property by law as the personal property of such spouse as per Art 58 of The Revised Family Cod. Administration of the property is undertaken as is indicated in the principle of administration of the personal property as indicated in Article 59 of The Revised Family Code. It Goes on to stipulate that each spouse shall administer his

respective personal property and receive the income there of (Art. 59(1) and further each spouse may freely dispose of this personal property (Art. 59(2)).

So much so, for the treatment of the personal properties of the spouses in marriage, what really matters most in the case under study is the common property of the spouses. I shall therefore exert a focusing eye on the common property and its division on the event of dissolution of marriage. For a better understanding of the subject, I have chosen to illustrate it by way of showing how it is approached by most common legal systems. The approaches adopted by common Law and Civil Law Legal systems are indicated below.

2.1.1 COMMON LAW APPROACH WITH RESPECT TO DIVISION OF COMMON PROPERTY

Administration of common property comes to picture before one embarks upon the division of common property. As has been manifested by the common law, the husband is considered as head and master of the community, he is bestowed with the power to manage and control all the community property; but must act for the benefit of the community and not in fraud towards his wife.²⁶ This therefore, tells that the husband manages and controls the common property. The indication is that, the property is in his possession. The husband acts in the capacity of representation as that of the agent of the community.²⁷ The husband is endowed with plenary power with regard to the administration of the common property would that have any regard towards the wife? According to the common law the wife is devoid of control and management of community property where the wife cannot sell, mortgages or give it away.²⁸ The limitation of the rights of the wife in the administration of common property, however, is subject to certain qualifications i.e. when the law requires the consent of the wife in the disposition of the community property by the husband that mean she has a say. For instance, if the wife purchases property with the community fund and the seller fails to acknowledge that the money paid belonged to the

²⁶ Corpus juris seccendun, Hasband and wife (1944) P. 1072

²⁷ Ibid p. 1073

²⁸ Id P1074

community, the money will be taken to be the property of the seller. The husband therefore, cannot recover the money paid.²⁹

In the event of mismanagement of common property by the husband, the wife may resort to appropriate judicial remedie to safeguards the common property against the husband's inconsiderate and fraudulent acts. The court of equity will afford her appropriate relief and the husband may be restrained from engaging in transactions involving community property which are hostile to the economic welfare of the community.³⁰

Looking into Arizona law,³¹ in the common law domain, the common property is operating on the basis of the principle of equal right without any distinction between the husband and the wife.

The law makes no distinction between the husband and the wife with respect to the rights each has in the community property. It gives the husband no higher or better title than it gives the wife. It recognizes a marital community where in both are equal. Its policy plainly expressed is to give the wife in this marital community an equal dignity, and make he has an equal factor is the matrimonial gains... it recognizes that the wife in her station is an much as agency in the acquisition as the husband.

2.1.2 CIVIL LAW APPROACH WITH RESPECT TO DIVISION COMMON PROPERTY

In the continental legal system, particularly in France, the 1804 code had given to the husband an extensive power of administration and disposal over the assets of the

²⁹ Corpus jirs secundum, Husband and Wife (1944) V. 41 P 1075

³⁰ Id 1096

³¹ Lyns, JohnD, Development of community property law in Arizona, Boton rough, Luisiana state University Press, 1955,

community.³² The husband could without the concurrence of his wife sell, mortgage and even give away movables.³³ The only restriction was that he could not dispose of by gratuitous title of the totality of the furniture or reserve for himself the usufruct of property which he had given away. Nor was he liable to account for his administration to his wife. But certain powers of the husband were modified by the 1938 and 1942 laws.³⁴ These laws provided that the husband could no longer make any donation of the common property without the concurrence of his wife.³⁵

As has been observed in Germany prior to the coming into force of the Family law whatever property the bride brought with her into the marriage passed like her person under the power of her husband, at the most, those objects remained her own that were intended for her exclusive use. The marital property constituted a household estate that necessarily remained dedicated to the purpose of the marriage and above all could not be alienated from the children German Family Law (Article 98), but the wife had no share in the community of rights in the household property which existed between the father and sons. Later on the civil code made an end to the condition of Folk Law of marital property adapting the course followed by the code civil in providing several systems of marital property:³⁶ the administrative and the usufructuary being the two. Here the primary consideration of the legislator has been to give greater security to the wife's legal position; here under the statutory rules for the administration of all usufruct of the wife's reserved estate-as to which no powers of administrative or usufruct exist in favor of the husband (Art 1367) which the wife acquires by her labor.

So far, attempt has been made to show the two legal syntheses that have considerably contributed to the development of laws in many countries amount the world let us see one more approval so that perception could be had in regard to administration of common property. At a point like this, Polish Family Law comes to mind where the husband and the wife conjointly administer the common property. Proceeding from the premises of the equality of the sexes, the Polish Family Law recognizes neither

³² Ancel, Marc., Matrimonial Property law in France(Toronto, Canada, Carswell coltd., 1955 p. 13

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

any division of functions nor any principle that the husband is the head of the household and the chief administrator of the matrimonial property.³⁷ Polish law subscribes to a concept of a collective headship of the family in which both the husband and the wife have equal right and equal responsibilities. This in the area of matrimonial property, husband and wife are bound to cooperate in the task of administration though either is authorized to administer such property independently.³⁸

In Ethiopia, there is a slight resemblance to that of the Polish common headship of the common property. As regards the administration of common property Article 66(1) of RFC stipulates that the common property is administered conjointly unless otherwise there exists an agreement between the spouses empowering one or the other to administer all or part of the common property.

In cases where one of the spouse is entrusted with the power to administer the common property, the incumbent is bound by the duty of informing the other spouse as to the administration of such property as envisaged in the Article 67 of The Revised Family Law .

2.1.3 PROPERTY RELATIONS

2.1.3.1 THE COMMON LAW

The application of the law in the United Kingdom, one of the exponents of the common law, in regard to property is regulated by law. For instance the future spouses who are likely to form a common property in their future marriage may conclude contracts to be known as Ante - nuptial Contracts.³⁹ Ante-nuptial contracts, by which a man and a woman, prior to marriage, seek to regulate their financial liabilities and responsibilities the one towards the other in the event of a divorce.⁴⁰ Such contracts are not enforceable in English law. The English law attitude expresses

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Raydons and Jacksons, Law and Practice in divorce and Family Matters, Finance and Property Vol1 (Butter worth, London, 1977) p. 581

that the contract must be of very limited significance; the rights and responsibilities of those whose financial affairs are regulated by statute can not be much influenced by contracted terms.⁴¹

In cases where assets are owned jointly with third parties, precise ascertainment of the beneficial interest of husband and wife in those assets may be necessary⁴²

2.1.3.2 THE CIVIL LAW

The community property concept came from civil law, based on the code Napoleon that was transplanted from Europe and Latin America in to the newly created states in the South West adopting community property laws that classifies property as “Separate” or “Community”⁴³

Accordingly Robert Colson wrote in his Family Mediation, that

“A married couple acquires an undivided interest in property that they obtain during their marriage, but maintain their individual ownership of separate property that one of them acquired before the marriage or after it was dissolved. Many forms of property may be involved, such as compensation, rents, profits or court awards. The classification process is complicated. For example gifts and inheritance may be separate even though they were received by an individual during the marriage. One court found that calves born during the marriage were community property even though the cows that bore them were owned by the husband prior to the marriage.”

⁴¹ Ibid p.616

⁴² Ibid

⁴³ Ibid

2.2 COMMON PROPERTY AFTER DISSOLUTION OF MARRIAGE

At a time when spiritual, physical and economic unity that existed between spouses can no longer stand in harmony spouses resort to dissolving their relationship. Many legal systems allow such relationship to end in a special form of dissolution of marriage known as divorce.⁴⁴

In the discussion of Polish Family Law Lasok states the rationale of divorce as:

It marriage is for a grave reason, permanently and completely disrupted, if the spouses do not carryout their duty of living together and their duties of fidelity and co-operation for the welfare of the family which they have founded, and consequently the marriage fails to fulfill its social function, the law, which is aware of the general disapproval of such a state of affairs, must admit the procedubesof divorce⁴⁵

On can tell from all indications that

Divorce under Ethiopia Law is free. No one is denied divorce; the spouses in most cases are merely discouraged from dissolving their marriage by way of lengthy procedures as has been the case with laws governing family law prior to the coming in to being of the Revised Family law. The fact that divorce is sooner or later bound to be granted tends support to a conclusion while we would like to sum it the same rational stated by Lasok in relation to polish law is not therefore a form of

⁴⁴ Ibid

⁴⁵ Lasok, Dominic, Polish Family Law (No. 16 A.W. Sij theff Leyden 1968) P. 103

punishment;⁴⁶ but a form of relief in respect of an existing and valid marriage so as to end an unhappy and unworthy union whose negative side outweighs its positive one and has, for all practical purposes, no remedy in sight⁴⁷

2.2.1 EFFECTS OF LIQUIDATION

Once marriage is terminated, as logical corollary therefore, it is followed by the liquidation of pecuniary relations between the spouses. The pecuniary relations of the spouses being a legal incident to marriage, its liquidation is effected upon the termination. The Ethiopian law clearly stipulates that such liquidation is being is too practiced by the mandatory principles of the code where agreement between the spouses are absent or invalid.⁴⁸ Therefore, the community of property as between the spouses comes to an end when the marriage terminates.

It has been shown under Article 63(1) of The Revised Family Code that during the continuance of the marriage the spouses owned common property in equal, undivided and tied-up manner. The liquidation of the community property takes place in accordance with contract of marriage or the agreement of the spouses.⁴⁹ Nevertheless, in the absence of any contractual agreement or valid stipulation to this end, the rules of the law would automatically be applied.⁵⁰ Before going forward to the partition of the community of property, there is a preliminary step that is, the determination of the composition of the community property.

The first step in this process is the retaking of the personal property.⁵¹ This step appears necessary for the fact that, often times the wife, leaves the management of her personal property to the husband and permits him to make purchases and sales of movable assets without properly keeping evidences of the transactions. As a result of such happenings, the woman is frequently faced with the difficulty of indicating as to what her property is. So much so that, this problem getting good understanding has

⁴⁶ Ibid

⁴⁷ Beranemeskel Bitewilign, Consequence of divorce (A.A.U. Faculty of Law 1986 EC) unpublished P 2

⁴⁸ Revised Family Code, Article 85(2)

⁴⁹ Id., Article 85(1)

⁵⁰ Revised Family Code, Article 85(2)

⁵¹ Id. Article 86.

culminated in being recognized and the step that precedes partition of the community of property is retaking of the personal property.

The retaking of personal property conditioned in a manner that each shows that he is the sole owner there of.⁵² And further, if any of the spouses is able to produce an evidence ascertaining that any of his personal property has been Allendale with the price falling in the community property, he is entitled to withdraw his claim before partition of the communal property is undertaken. This does not stop at that entitling one party alone in the common property. Where the claim is of both of the spouses, each of them is entitled to their respective shares in the common property.⁵³

Where the personal property of one spouse on the common property has been adversely affected by reason of acts committed by the other spouse, then that spouse is entitled to reimbursement provided that the spouse who performed the act had no right to do so, or the act performed amounts to mismanagement as clearly provided for in Article 87(1).of The Revised Family Code.

2.2.2 THE EFFECTS ON THIRD PARTIES

Termination of marriage has a diverse and an all embracing effect. Among the various effects of termination of marriage, liquidation of the pecuniary relations is the vital one.⁵⁴ With special regard to the liquidation of property relations between the spouses, one shall enquire the pecuniary effect of termination of marriage upon third parties. Upon dissolution of the community property the allocation of liabilities is a step that precedes partition. The question to be put in connection with the liquidation of pecuniary relations of the spouses is what would the rights of creditors be at the time of dissolution of the community property. It will not be possible for a separate creditor to reach the undivided interest of either spouse in the community property

⁵² RFC, Article 86(1)

⁵³ Id., Art 86(2)(3)

⁵⁴ Association of American Law schools (ed) Selected Essays on Family Law. The Foundation Press(1950)p

during the existence of the marriage relationship.⁵⁵ Therefore, the community property is exempt from liability for separate debts of the spouses.

2.2.3 THE EFFECTS ON THE SPOUSES

This an interesting history behind the notion of community property interest between the husband and the wife. The idea can be traced back 4000 years ago into the Babylonian legislation in ancient Egypt and the modern Greece.⁵⁶ The origin of the system seems rather to lie in the custom of certain Germaine tribes.⁵⁷ The migration of the Germanic tribes throughout Western Europe was very extensive and resulted in a widespread diffusion of the community idea.⁵⁸ Thus the Franks introduced it in to Northern France and the Goths into Spain where distinct evidences of the community appear.⁵⁹

In the civil law, with regard to liability for debts created by husband and wife, all of the community property is exempt from liability for the separate obligations of the husband as well as those of the wife, or he is apparently under the necessity of judicially establishing the community character of the debt represented by his claim if he is to proceed against such assets. By reason of judicially created presumption in the common law, declared that all debts and obligations created by a husband were prima facie community obligations, thus seemingly placing the burden upon husband and wife to prove to the contrary in order to prevent the creditor from securing the judgment against the community which could be satisfied out of community property.⁶⁰

⁵⁵ Association of America law schools, (ed) selected Essays on family law, the foundation press. Inc. N.Y.

1950

⁵⁶ Lobingier, the marital Community: It, origin and diffusion (1928) 14 American Bar Association, Journal

211.

⁵⁷ Huebner, History of Germaine private Law, Continental Legal History Series 621.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Associations of American Law schools (ed) selected Essays on family law, the foundation press Inc. New York, 1950.

In concluding therefore, community property presents a sound and equitable base to the system under study. The system of a community of acquires and gains during the marital period seem the most satisfactory of the various community regimes.⁶¹ When the earnings, income and assets of the two individuals vest jointly during covertures, a real economic as well as conjugal partnership results.

⁶¹ German Civil Code (trans. By Chung Hui Wang) Art 1347 et seq/ art 1519 et. Seq art 1549 et seq/

CHAPTER THREE

3 DIVISION OF COMMON PROPERTY OF SPOUSES IN ETHIOPIA: THE LAW AND THE PRACTICES

3. 1 ADMINISTRATION OF COMMON PROPERTY IN MARRIAGE, AN OVER VIEW

Marriage is a” partnership” to which each spouse makes a different but equally important contribution⁶² The nature of this partnership is different from other partnerships. When one takes a very close look in to the legal system of Ethiopia, will find that this partnership combines two parties from each sex and bestows upon them personal as well as pecuniary effects.

Historically, Women have been given no reason to trust men.....; men have been counseling women into “women’s jobs” for generations⁶³....The extracts are to show as to how women haven’t been given the same kind of opportunities. This could be an indication of the subtle kind of discrimination that women experience. The social, emotional and economic inequalities are but a few points to mention. Although there is no national statistics readily available regarding the status of women in married life or after divorce, the reality is that women are looked down as inferiors for centuries.

In recent times, things have changed for the better and women are holding a much better position in the society. A lot more is yet to be achieved. As regards, the

⁶² . Caleb Roote,Robert J.Leuy,etal,Cases and Materials on family Law(2nd). Little Brown and company, Boston (1976)p.749

⁶³ King, David., Levine,Keren.,The Best way in the world to make money, Warner books Inc. 1979 p.8

rigorous and time consuming dissolution procedure there is a case in point worth pondering.

This is the case registered under computer no.07356 dated puagme 3;1997 E.C. between Yohannes Hailu Vs Yshareg Bihonegn. (See Annex I & II) It was a case of divorce and division of common property that has been instituted in the month of Sene, 1980 E.C. The marriage that lasted 12 years has brought about a change in the family size with a blessing of two children: a boy and a girl. As the course of things were not in favor of the marriage to continue, institution of the case for divorce and division of property did not happen to culminate happily. The case traversed along a bitter and acrimonious travel jumping from one court adjournment to another over the last eight and a half years. No one can tell in precise terms, the effort energy, money and valuable time expended before reaching a peaceful end.

The personal effects are not only of the husband and the wife but embraces also, their relations with the offspring's, relatives and other members of the society at large,⁶⁴ These effects can be regulated by a contract of marriage, but there are limitations on the contract of marriage concerning personal relationship of the spouses, The spouses are not totally free to rule their personal relations in disregard of the mandatory provisions of the law.⁶⁵ Whether the marriage is concluded before an officer of civil status or according to the forms prescribed by religion or custom, it is mandatory to produce some personal effects for all kinds of marriages⁶⁶.These mandatory rules have been indicated both under the Civil code and the Revised Family Code, To make mention of some of the mandatory rules: these rules command the spouses to extend to each other, respect, support, assistance and fedelty⁶⁷. Unless they agree to separate, the spouses are expected to live together in a residence chosen jointly.⁶⁸ Personal relations include the management of the family which adds upbringing of the offspring's and ensuring of the wellbeing of the family.⁶⁹

⁶⁴ Id..P 753

⁶⁵ . RFC. Article 42(3)

⁶⁶ . RFC. Art. 40(2)

⁶⁷ RFC.Art. 49 and Art.56

⁶⁸ RFC Art. 53

⁶⁹ RFC. Art 50

The pecuniary relations created between the spouses can be seen as another effect of marriage. It is all about how the partners govern their financial relations. Here, as at some points, the spouses have the freedom to handle their pecuniary relations based on the contract of the marriage.⁷⁰ It is only in the absence of contract of marriage or where it is, invalid that the pecuniary effect is regulated by law; the law regulates the pecuniary effect of marriage by dividing all the property found in marriage in to personal and common property.⁷¹ The law therefore, fully empowers spouses over their own personal property and also shares the power over the community property equally between the spouses.

3.2. DISSOLUTION OF MARRIAGE

Communal property is also called community or matrimonial property.

It is the asset owned by the spouses together⁷². At a time when a specific property is identified as a common asset, then that is an indication that the spouses have equal right over it the ownership remains undivided before the dissolution of marriage. After the dissolution of marriage however, that common property will be the subject of division of property and will be divided equally between the spouses

The basis of the property division between the spouses emanates from the assumption that each of the spouses was believed to have contributed equally to the creation of the assets.⁷³ Different means can lead to the acquiring of community property. All the income that is derived after the establishment of marriage or irregular union, using personal property common property or personal effort constitute a common property,⁷⁴ This is why all the benefits realized during partnership imply the contribution of both spouses.⁷⁵ Succession, donation, or onerous title may give rise to community property.⁷⁶

⁷⁰ RFC Art 85(1)

⁷¹ RFC Art 85(2)

⁷² Hanary Compell Black,. Black's Lae Dictionary, 6 ed, 1998.

⁷³ Lenore J. Weitzman, *The Divorce Revolution, the unexpected Social and economic consequence, for women and children in frmerica*, Wuyouk, Free press McMilan tiwision , 1985.

⁷⁴ RFC Art 62(1)

⁷⁵ Ibid-supre note 2

⁷⁶ RFC Art. 63(1)

There are times when identifying as to whether a given property is donated or bequeathed conjointly or to a single spouse becomes difficult. At a time like this the law lends itself to giving a solution. Unless otherwise proved to the contrary all

property is deemed to be a common property.⁷⁷ Therefore, the spouse who may allege that the donation is made only to him will be obliged to prove the facts to secure the property to his name. The benefit of such presumption has been appreciated by a law expert. He maintained that, both movable and immovable fall in to the community. This is a useful provision in throwing the burden of proof upon the spouse who is seeking to establish that a particular asset is separate property. With regard to such management of property an interview response by a family Law judge is maintained in the following manner.

In the handling of the case from time to time what has been raised as burning issue was not only of common property, but also of the question of children who might fall under the care of an alien mother in case the father were to remarry while still being in custodianship of the children. Another impediment that stood a hindrance to a speedy termination was that of division of communal property. Not only was division of property the cause of delay but also that of issue of pension that the husband collects together with immovable constructed during the continuance of the marriage which contributed its toll to the prolongation of the case.

Pecuniary effect of marriage is one of the controversial parts of the family code. It is sometimes difficult to identify personal property and common property as every property is presumed to be common during the continuance of the marital relationship unless the contrary is proved (Art 62(1)(2)of RFC). Proving a given property personal is very cumbersome.

The determination of property right can be based only on valid divorce decree and can't be made in the absence of decree of divorce. Weitzman maintains that the fairness of property division on divorce ultimately rests on how marital property is

⁷⁷ Lawson Anton Brown, Introduction to French Law, oxford, clarandon Press, 1963

defined.⁷⁸ For marital property to exist, a man and a woman must have a relationship that the law recognizes as marriage.

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

Separate or personal property is property the spouse owns as his/ her individual right. It is the property the spouses own in his / her right, free from claims of the other spouse as if he/ she is not married.⁷⁹ The RFC was enacted to show the spouses their constitutional right of equality of sexes, and the right to property.⁸⁰ Under RFC matrimonial personal property consists of: Unless otherwise agreed to the marriage contract, all property of the spouses that is acquired before the marriage or on the day of their marriage by way of donation or succession.⁸¹ This includes property given to them individually through inheritance or gifts to be personal property of such spouse.

It also emphasizes that in the legal regime community is the rule and separate property the exception.⁸² In the administration of common property there are times when a spouse or spouses are faced with difficulties in showing property to be common or otherwise, The author's encounter during an assessment of the practice went like this, A spouse who appeared before a court claimed community property and produced an evidence to show the joint ownership. The court demanded evidence that proves the alleged property to be common property. This was the case of Meskerem vs Mekonnen, (File No. comp. 20335). After having heard what is presented, the court declined to accept the allegation that a Tv set and some small

⁷⁸ Lenore, J. Weitzman., *The divorce Revolution, the Unexpected Social and Economical Consequences for Women and Children in America*, 1985.p.53

⁷⁹ Cunningham, Stoebulck, Whitman., *the Law of property* (2nd ed.) :1993. P.233

⁸⁰ Constitution of FDRE, Article 34 and 40 respectively

5 RFC Article 57

6 RFC Art. 58

⁸² Lawson, Anton Brown. *Introduction to French Law*, Oxford, Clarendon press 1963.

items of movable property to fall under the communal category for the fact that there doesn't exist sufficient evidence to prove it. The defendant was not there at the time to defend the allegation in the course of the litigation,

The author is therefore, of the opinion that what the court decided on the case brought before it at this instance is against the presumption of the law and therefore, will leave the party affected in that he would have benefited from the legal presumption of the community property.

As has been maintained, personal and community properties have their own respective characteristics. In certain instances some properties take the characteristics of both personal and communal property.

The form of property categorized as personal property is those things obtained through exchange or sales of another separate property. Properties acquired by onerous title for consideration during the marriage by exchange for property owned personally, or with money owned personally or derived from the sale of property owned personally.⁸³ As this property is acquired during marriage a declaration is necessary by the court. If this is so, one could conclude that if a presently owned asset has its source in the previously owned assets that was separate or personal, the present asset is considered to be personal.⁸⁴

Once the property is categorized as separate such spouse has exclusive right over the property without any claim from the other spouse. But in Germany for instance, although each spouse is entitled to administer his / her property such spouse is forbidden to dispose of his/ her property in its entirety without the consent of the other spouse.⁸⁵

The other form of pecuniary relationship between the spouses is community property. It is described by exclusion; it is a property other than separate property.⁸⁶ Every

7 Supra note 2 p.235

⁸⁵ Judith Arcen; Family Law, Cases and Materials, 1985.p 721.

⁸⁶ Supra note 2. p.234

thing the spouses owned during marriage is presumed to be common property of the spouses. However, this presumption is rebuttable by proof of otherwise.

This could be seen from Art. 63(1) of RFC all property should be deemed to be common property even if registered in the name of one of the spouse, unless such spouse indicates that he is the sole owner thereof ;

In the RFC common property of the spouse unless otherwise agreed in the marriage contract it is made up of:

- Income derived by personal effort of the spouse and common property Art 62 (1) of RFC
- All property acquired by the spouse during marriage even in exchange for personal property of the spouse unless the court declared it personal Art 62 (2)
- All property denoted or bequeathed conjointly to the spouse

Such problems are resolved with the aid of commentaries and other supplementary provisions in property categorization where such are difficult to assign characteristics. Ethiopia suffers from scarcity of supplementary readings as regards classification of property. This in turn has made the situation debatable when it comes to labeling of properties personal and common.

Although the author has repeatedly encountered difficulties of classification of certain items of property, has never the less, observed inconsistency in regard to pension right, damage paid for injury, properties attached to the person of one spouse; such as jewelry, family souvenir, tools and instruments.

Although dealing with all properties that are difficult to assign them personal and common lie beyond the scope of this essay. Attempt will somehow be made to treat in the interest of elucidating a number of them.

The most characteristic feature of the common property is that during marriage it remains in the joint ownership of both spouse each having undivided share until the marriage comes to an end.⁸⁷

It would be noteworthy to have a look at trends different from that of Ethiopia. When taking such step one will find a system of property division at divorce that can be classified into three – title based distribution, pure equitable distribution and martial property distribution.

I Title Based Distribution: ⁸⁸*Properties are awarded to spouses as they owned it during the marriage. In common law property jurisdiction using a pure title system, the spouses in whose name property was titled would receive it at divorce, subject to any claim of the other spouse based on the equitable ownership. In common property ownership jurisdiction using a pure title system would award separate property to the owner and divide the common property equally.*

II Pure Equitable Distribution: ⁸⁹*Here, determining who the equitable owner of property during marriage is critical to implementing a title based system of divorce property division, since the equitable owner will prevail over a title holder who is not the equitable owner. In jurisdiction which mandated such system, the fact that which spouse owned property legally or equitably during marriage maybe relevant but is not determinative of who will get it at divorce so the court's discretion is to divide all property of both spouses as if "just and proper" or through some equivalent formula.*

⁸⁷ William Buhagiar; Marriage under the civil code of Ethiopia, Journal of Ethiopian Law, Vol 1, No, 1. 1964. p 86

⁸⁸ Harris, Teitlebaum, Weisborod; The economic consequence of divorce, Family Law, 1996. P.329

⁸⁹ Ibid p.330

III Martial Property System: ⁹⁰*This system is commonly used in the United States of America. They use equitable rather than equal division of community property and they also used equitable distribution of separate property under limited circumstances. Moreover, most common property law states have gone to a form of deferred marital property which is: as long as marriage lasts, each spouse owns and manages assets that he or she brings in to or acquired during the marriage. But when the marriage ends the assets are shared as if they had been acquired in common property state.*

Let us see pension right to start with. Pension is a career asset that implies the benefit of employment.⁹¹ There are scholars who argue that pension constitute common property. They equate pension with wages in that it is part of what a worker earns in the course of married life.⁹² Four percent of the contribution of pension is taken for the salary of the employed spouse.⁹³ Salary is part of a community property. This is to mean that pension has the attributes of common property. The difference lies in that, pension is to be paid in some future time.⁹⁴ There is an argument again that the dissolution of marriage should not take away the right to have a share in a pension right.⁹⁵

From, all indication pension right is likely to fall under the category of the personal property, It is true to our understanding that pension accumulates during the marriage life of the couples constituting a valuable asset particularly, for these who had long years in marriage. Irrespective of any argument to the contrary, the public servant pension proclamation forbids a non public servant spouse from being a beneficiary of the pension unless one of them becomes a widower or a widow As regards damages paid for one's injury a case appealed to the Federal Supreme court indicates that a claim made against a damage paid for a bodily injury to a husband by an insurance

⁹⁰ Id.

⁹¹ Lenore J. Weitzman, *the Divorce Revolution* (1985,p 60)
18 Id.p 114

⁹³ Proc.No.345/2003 Art.5(1) [civil servants {pension procamtion}of FDRE .AA.2003

⁹⁴ Smpth Note 2 pp 113

⁹⁵ Ibid.

company was rejected⁹⁶ on the ground that what ever was paid to the insurance company was made by the employer with a view to securing him, and the damage paid to the employee had nothing to do with the income or effort of the employee. Departing from the reasoning lay down the court considered the damage as personal property. Such cases seem to be controversial in classifying damages as personal or common property.

Comparative studies conducted on other countries in regard to personal or common property vary from case to case,⁹⁷ The ruling much depended on the characteristic, of the property meaning the compensation for injury on personal property will be a personal property.⁹⁸ And that on common property will be a community property.⁹⁹ The supplementary writing on French law maintains the idea above and categorizes damage for personal injuries as personal property.¹⁰⁰

One area that the RFC has a measurable aspect is in the way property is divided at divorce; the RFC abolishes the fault based divorce and introduced no fault divorce system. In many jurisdictions, the no fault divorce laws instruct the courts to divide the common assets and liability equally.

3.3. DIVISION OF COMMON PROPERTY.

⁹⁶ P. Charmoty, S. Daggest., Comparative studies in Community property, Luisiana State university press, Baton Rouge, 1960

⁹⁷ P.charmoty,S,Daggest, Comparative studies in community property, Luisiona stere univint pren Batom Rouge
1960

⁹⁸ Supra note 6 pp.258

⁹⁹ Ibid.

¹⁰⁰ Ibid.

When the time comes for common property to be divided in two methods applied for the division. One of the methods is dividing the community property equally between the spouses.¹⁰¹ This method is not readily accepted and is therefore criticized by scholars; they maintain that equity can not be achieved by a mere equal division rule. Such idea has been put down like this

“The conduct of equal division of matrimonial property is not enough to acquire parties, There should be a mechanism to reimburse a spouse who is economically and Psychologically affected by the relation”¹⁰²

Research summary made on post divorce maintenance in Ethiopia reflects the facts mentioned above. “The dissolution of marriage presently leaves women with out any access to the family income.¹⁰³ According to the writers view the present equal division law is affecting women who usually take the custody of children and left the home with out having a determined income source, Different counties use different mechanisms to solve these post divorce economic crisis of the women, so far, no solution has come forward to resolve the problem in this country.

The other method of dividing matrimonial property is the equitable division rule.¹⁰⁴ Before deciding for equitable division rule, judges need to take in to account different considerations. For instance, the USA has statutory criteria which help judges to pass equitable division of matrimonial property.¹⁰⁵ Some of these are, the income of the parties, earning capacity, financial needs, obligations, the duration of the marriage, physical or mental disability, and the conduct of each parties.¹⁰⁶ These considerations are used as instruments to limit the discretionary powers of the judges on the division of matrimonial property,. Usually equitable division rule ends up in non equal division of common property. Some countries supplement property division (equal or

¹⁰¹ Ibid.

¹⁰² Id.pp .225

¹⁰³ RFL Art 90

¹⁰⁴ Tilahn Teshom, Quoted by kidist Bahru, questionnaire response for a study paper(unpublished) 2007

¹⁰⁵ Lenore, J.,The divorce revolution (1985, p60).

¹⁰⁶ Herbrt Jacob, Silent Revolntion, The transformation of divorce Law tn the Us University of chicag Press, 1988

equitable) by divorce maintenance. Post divorce maintenance is different from apportionment of matrimonial property. It is a periodical payment paid by one spouse who has benefited more from the relation, to support the weaker spouse's post dissolution life.

The fundamental reason behind post-divorce maintenance is summarized by the Ethiopian Women Lawyers Association as follows

“Spousal support payment is generally the most logical and equitable way to address the economic imbalance that has resulted from the matrimonial relationship or the break down of the marital relation ship”¹⁰⁷

He says that dissolution of marriage is the result of disagreement of the parties concerned. Nevertheless, marriage is the premise from which a society emerges and a social institution, it shall not lead to dissolution just like that. He argues that, prior to the enactment of the revised code; dissolution of marriage was not something that was achieved so easily. Questions were posed as to what the reasons for the break of marriage were. But as the revised family code came to force, the way to the dissolution of marriage was simplified as is also the case when marriage contract is concluded between the respective parties. This however, has brought about a number of difficulties as regards property management; the security of children is negatively affected as well as many unforeseen difficulties with respect to question of shelters and the upbringing of children.

He went on to affirm that, as marriage is an act brought to effect on the agreement of the parties involved, dissolution if it should, has to be effected in a shorter span of time as of right when the road that leads to resolving the problem helps no more. At the time when it is the agreement of the parties to dissolve the marriage, its speedy execution shall be something very important and worth noting. Because of the delay

¹⁰⁷ Supra Note 20 p 16

in the execution of dissolution unexpected things are likely to occur. Property may be lost, care to be extended to children will suffer difficult times.

Moreover, marriage that comes in to existence as a direct effect of the agreement of the spouses, shall also come to a close, where there is no hope of reconciliation, on the agreement of both parties, without taking so much time. There are situations

Where a party in whose control is laid property, may resort to lavish expenditure of money, hiding away of property, sometimes even was resorting to physical confrontation as a way of venting grievances when delays outlive more than the time tolerable to one's feeling.

As the interview we went on to address my questions, he further maintained that the dragging of the act of property division indefinitely will not benefit the party in whose custody is the common property until the difficult road to peaceful settlement is crossed. On the other hand the party who does not control any property will remain devoid of the benefits which are due to him. There are a number of possibilities for the property to be spoiled or rendered useless.

The respondent in this regard suggested a few points that may partially solve the difficulties of property management. He said; until such time that the dissolution and division of common property is resolved, ways of equitable use of property has to be devised. Further, any fruit that may result from the custody and use of the property has to be used equally by both parties, or as a better mechanism of solution, he pouted to a way that the property be administered by a third party nominated and appointed by the parties or by the court so that the custodian in whose care stays the property, shall collect, and disburse the benefits to the spouses. Such measure he says will bring about a measurable change.

In my pursuit for more elaborate explanations to the problem of property division in the event of dissolution of marriage, I have talked to learned judges, concerned lawyers whenever and wherever possible. In one of my interviews, one of my interviewee responded to me like this: It is clearly stated in the revised family code that the common property of the spouses shall be administered, used, disposed off or

alienated on the wishes and agreements of the parties in question. Nevertheless, the reality is that properties of the spouses are administered and controlled by the man and on many instances it has been found that most, supposedly common property of the spouses, are registered in the name of the husband. Although registration of property is subject to inquiry when it comes to property division in the case of dissolution of marriage, the difficulty that the spouse who does not control such property, faces is considerable.

My interviewee went on to maintain that, in Ethiopia, where the psychological makeup is such that, dissolution of marriage for the woman is seen as a great loss, societal shame and degradation, it has also been observed on many occasions that women do not want to separate from their children, because that renders them weak, socially and economically. Not only this, but the question of maintenance where the husband happens to be reluctant to give or gives a meager amount good enough to barely sustain life, further worsens the position of women at a time when marriage breaks and processional dissolution talks place.

The respondent further went to tell me that, if that was to take place according to wishes, in the event of dissolution of marriage - women shall not be pushed out of their dwellings, but rather; this weaker party has to be extended a helping hand in that she keeps and give proper care to children who usually choose to be with and allowed the house, in which the spouses were living, to be controlled and administered by the woman until the dust settles and all lawful mechanism are applied to terminate the union.

If this does not take place, says the interviewee, the woman will abandon all her rights to freely disengage from the marital union and falls victim of avoidable circumstances. The woman, without her real intent succumbs to the manipulations of arbitration and mediation in the fear of numerous difficulties she is likely to face. My respondent does not only air the feelings in this regard but is also suggestive of some would be solutions.

It is appropriate in my respondents' opinion that the common property is put under the custody of a third party who diligently administers the property in the interest of both the spouses, which shall be ordered by the court. As an alternative, if such court order was difficult to secure, the spouse in whose custody lies the property shall extend sums of money that is to be accounted for at the time of the dissolution; and if this alternative does not seem to be viable, the property of common denomination shall be barred from benefiting anyone of the parties as a last resort, and speedily process the dissolution so that the benefits will be equally distributed to the parties.

In my search for a profound settlement of problems of dissolution of marriage and division of property, I have exerted a considerable energy and time to secure the opinions of people very close and also far apart with the question at hand. I have only recorded those that gave acceptable standard of suggestions and opinions. Most as I have put down above fall within such category of people that opt for a speedy and fair settlement of the problems so that the parties to the conflict separate with a feeling of friendliness devoid of enmity.

The economic imbalance takes place because of the fact that some benefits which are gained by one spouse are too difficult to divide on the occasion of the process of liquidation. Some of the benefits worth mentioning here are those of , earning capacity and other potential benefits that can be actualized after the dissolution of the marriage. One can therefore say that post-divorce maintenance has the ability to solve the economic imbalance by allowing the benefiting spouse to maintain the one that is a non-benefiting.¹⁰⁸ Post divorce maintenance also opens the way to reimburse the women for her house hold activities.¹⁰⁹

¹⁰⁸ Ibid

¹⁰⁹ Lenore J. Weitzman *The Divorce Revolution, the unexpected social and economic consequences for women and children in America*, Free prss, MacMillan Inc, Newyork, 1985

Post divorce maintenance, like the equitable division rule, gives additional discretionary power to the court. With the view to limiting this power, different countries use different considerations which the court has to see before passing decision on the amount of maintenance. For example, in the Nigerian practice, courts are required to take notice of the income, earning capacity, and Conduct of the parties to the marriage, before deciding on the account of maintenance.¹¹⁰ Such considerations assist incumbent judges in being fair at the time of determining the amount.

¹¹⁰ Ibid p.2

CONCLUSION AND RECOMMENDATION

CONCLUSION

According to the 1960 civil code, the whole situation is marriage was based on gender inequality, the husband as the head of his family and the wife and children considered his property.

The notion of no fault divorce which is an evolutionary change of the society both morally and economically towards liberalizing divorce morally and economically towards the modern society, as that which was prior to the coming into force of RFC was rigorous time consuming and unfair to the parties or one of them. The RFC operation was believed to play important role in reducing endless litigation and dispute between the parties to make one of the parties imputable to the dissolution of the marriage and also it relieves parties from these difficulties of proving fault.

In the pursuit of avoiding prolonged litigation and unnecessary cost incurred by the spouses, the court in family cases is expected to give speedy trial since it is considered as competent organ to deal with such matte

RECOMMENDATION

Common property in marriage requires a more elaborate definition. The legal presumption of common property doesn't give clear understanding are a profound definition is regard to pension allowance and damages fringing.

Any previous researches conducted on pension allowances must be revisited by the legislative. There seem, in my opinion, to exist the need for the pension law framing so that awarding a non public servant spouse part of the contribution to the pension's accumulation.

There is need to establish equity by way of considering all economic benefits realized during marriage. The benefits may be indicated as career assets and earning capacity considering these benefits at the time of division of property is important

The amount of time spent in the division of common property at liquidation of pecuniary relations can be minimized by:

Multiplying the number of judges involved in divorce proceeding

Giving sufficient counselling training to judges

Limiting the time span to stay in the process of liquidation beyond which might hold one responsible

Knowledge acquired by the respective personal concerned with marriage affairs particularly in the area of division of property must be increased or ways and means shall be looked after in that regard. There are indications that spouses usually lose their personal property not knowing that the law requires them to prove that property. Most spouses don't preserve evidence that helps them in proving property commonly owned.

Divorces cases should be held in camera courts since parties to divorce litigation don't feel comfortable discussing their family matters publicly.

BIBLIOGRAPHY

I BOOKS

American Jurisprudence, Corpus Juris Secundum; Jurisprudence Publishers Inc., Arizona, 1968

Ancel, Marc. Matrimonial Property Law in France, Toronto, Caswell Co. Ltd., 1955.

Association of American Law Schools (ed.). Selected Essays on Family Law, the Foundation Press, New York, 1950.

Balaba, The Role of Women in National Development, Addis Ababa, 1969.

Black, Henry Campbell, Black's Law Dictionary (6th ed) New York 1998,

Bromely, P.M., Family Law (7th ed.) Oxford, Clarendon Press, 1987

Caleb Root, Robert J. Levy, et al. Cases and Materials on Family Law (2nd ed.) Little Brown and Co, Boston, 1976

Charmoty P., Daggest S.; Comparative Study in Community Property, Baton Rouge, Louisiana State University Press, 1960.

Herbert Jacob, Silent Revolution: The Transformation of Divorce Law in the US. University of Chicago Press, 1988.

Kings David, Levine Kerea, The Best Way in the World to Make Money, Warner Book Inc. New York, 1979

Lasok, Dominik, Polish Family Law, Sijthoff-Leyden, 1968

Lenore J. Weitzman, The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children. Free Press, New York, 1985.

Lyons John D. Development of Community Property Law in Arizona, Baton Rouge
Luisiana state university press, 1955.

Raydon and Jackson's Law and Practice in Divorce and Family Matters: Finance and
property, Butter worth's, London, 1997.

II LAWS

FDRE, constitution Federal Negarit Gazetta No 1./94 Addis Ababa, 1994.

FDRE, Public Servants Pension Proclamation, Federal Negarit Gazetta Proclamation No.
342/2003, Addis Ababa, 2003.

FDRE, Revised Family Code Proclamation of 2000, Federal Negarit Gazetta
Extraordinary issue No. 1/2000 Addis Ababa,

III INTERVIEWS

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Ato Yohsafe Aiymero
Federal High Court Judge

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