



Facility of law L.L.B Thesis

Title

The legal Effects of irregular union

By Getahneh Nigussie

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Advisor:-Ato Aklilu Tesfaye

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I here by declare that this paper is my original worn and I take full responsibility for any failure to observe the conventional rules of citation

Getaneh Nigussie

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Introduction

Marriage was an institution of society founded up on consent and contract of the parties. Marriaze contracts differ from ordinary contracts because the rights duties and obligation of the parties rest not up on their agreement but upon the general common or statutory law of the state.

Marriage socially recognized and approved union between individuals, who commit to one another with the expectation of a stable and lasting intimate relation ship. It begins with a ceremony known as a wedding, which formally unites the marriage pertness. It is a well established fact that marriage is the very old institution. Every human society has been and is interested in the legal regulation and control I marriage for it is the foundation of the family and society. However, despite is long history and the value that it has for society.

Historically parents have played a major role in choosing marriage partners for their children and the custom condones in the world's developing countries today. Parental influence is greatest when the parents have a large stake in whom this child marries. In many traditional societies, marriage picaaly involved transfers of property from the parents to their marrying children or from one set of parents to the other. These customs persist in some places today and are part of the tradition of arranged marriages. Marriage couldn't continue as the only form of life style and legal institution... Due to various reasons and reasons and motivations, another form of life style closely similar to the institution of marriage emerged and become an acceptable social behavior. This form of life style is referred to as irregular union. It is a union created by a man and woman to live together as husband and wife with out concluding a female marriage husband and wife in law relationship between a name and a woman established by the marriage contract and resulting in the creation of certain rights and obligations between the spouses. A valid marriage is a special type of contract that can be terminated only in a court of law through divorce on annulment. Many countries recognized and extended legal protection to it like the laws of other countries the 1960 civil code of Ethiopia

Recognized and extended a certain degree of protection to the institution of irregular union . But now irregular union was given better protection under the relished family code which comes in to force in July 2000.

This paper is discussing the legal effects of irregular union under the revise family code.

Chapter one general consideration of marriage family irregular union chapter two is devoted deal with legal effects of irregular union under Revised family code and the rules on proof and termination of irregular union. Treated in chapter three finally the paper is wound up by a short conclusion and recommendation.

CHAPTER ONE

1.1 THE GENERAL CONSIDERATION OF MARRIAGE

Marriage is a socially recognized and approved union between individuals. 1 who commit to one noted with the expectation of a stable and lasting intimate relationship 1. it begins with a ceremony known as a weeding which family unites the marriage partners.2

Marriage is one of society's most important and basic institutions. Marriage and family serve as' tools for ensuring social reproduction. 3 social reproduction includes providing food, clothing and shelter for family members raising and socializing children and caring for the sick and elderly. In families and societies in which wealth, property, or a hereditary title is to be passed on from one generation to the next, inheritance and the production of legitimate heirs are prime concern in marriage.4

When two people decide to marry, they are voluntarily seeking to enter in to member of relations involving personal, economy, social, religious and legal consideration. It is often said that marriage is a contract, and to an extent that is true but it is unlike other civil contracts because of the extent of governmental regulation. 5

Marriage is regulated by the state and each state determines 'who may marry the duties and obligations of marriage and how marriages are terminated. Although eligibility requirements for marriage differ from state to state they generally include minimum age thresholds prohibitions. 6

Some states recognize privately created, informal marriages by agreement that dispense with licenses and solemnization ceremonies. There are called common law marriages. Although each state that recognizes common law marriages has its own particular requirements, states generally requires the parties to be *of* age and unmarried, most important the parties must have established the relationship of husband and wife live together as a marred couple and present together jointly owning property and having a child are insufficient acts, in themselves to establish a common law marriage.7 Some states have statues protecting the validity of such marriages others recognize their validity by court decisions and many refuse to recognize theme at all. Nevertheless, the courts of a state that does not permit common law marriage will recognize persons as married who were parties to a valid common law marriage in some other states.8

The concept of marriage began to evolve into a social institution during the period of roman domination of Europe, However, even during this period in history, marriages were viewed as private matters and there is little evidence indicating that there was significant concern or control by government authorities over it.9

During the fourth and fifth centuries a system a tie theology of marriage began to emerge as the church of room provided a shape for it under church doctrine marriage was characterized as a sacrament and when properly contracted. The sixteenth century reformation had a significant impact on how marriage was viewed. The reformers dramatically rejected the churches view that marriage was a sacrament even though the concept of the indissoluble marriage had to some extent been mitigated by the law of annulment. 10

Marriage persists in many cultures to day as modernization proceeds and many areas become part *of* the global economy, parental inferences on marriage continue to decline young people who work for wages rather than on the families land no longer depend as highly on their parents resources. As western popular culture including motton pictures television, music and fashion spreads around the world many young people are drawn to western notions of love, romance, and individual chice.11

A common law marriage is the express agreement of the parties without ceremony and often without a witness. It is on agreement in words uttered with a view. and for the purpose of establishing the relationship of husband and wife no specific from of words are needed and all that is essential is proof of an agreement to enter into the legal relationship of marriage at the present time.12 The three elements of a common law marriage are typically said to be an agreement of marriage in present. Made by parties competent to contract, accompanied and followed by cohabitation out to those with whom the parties normally come in defeated if all persons in the community with in which the parties reside are not a ware of the marital arrangement. The burden to prove that the marriage existed is on the party alleging the relationship and it is generally described as *if* heavy burden government in the united states, the individual states regulate marriage virtually all states require that individuals must be 18 years of age before they can marry parental permission many states also require a 'waiting period of are to five days between the issuing of the license and the wedding ceremony. The marriage must be formalized before a qualified official in ether a religious ceremony or a civil wedding. The couple must register a marriage certificate with government after the wedding ceremony. 14

1.2 OVERVIEW OF FAMILY

The word "family" is more *of* sociological than legal you might have encountered disorient meanings to the word family. 15 Family is divide in two types the nuclear family and the extended family for the nuclear family is the one which comprises the husband, the wife and the children. We ford such kind *of* family usually in civilized societies and urban areas. The extended family, on the other hand consists *of* persons in addition to those who are included in the nuclear family such as grand parents, aunts, uncles and the like. These kind *of* family are common in primitive societies and rural areas. 16

The sources are three in number marriage, filiations and adoption the different statuses that a person may have in a family are also three in number two mellbers of the same family' may be spouses relatives in blood or by marriage. But these three different statues do not correspond respectively to the three constitutive factors of the family. Marriage creates the status of spouse, filiations and a' Dolton both create the status of family relationship. 17 The adoptive parent being an imitation of the natural parent. As to relationship by marriage, it is a combination of the effects of marriage and relationship.18

Blood relationship is the tie which exists between two persons such as the son and father, the grand son and the grand father, or those who descend from a common ancestor such as two brothers or two cousins beside this true blood. relationship which is a natural fact and which derives from birth. 19 Relative through marriage are persons who are not relatives but which come to gain the family by means of a marriage. In colloquial language they are usually called relatives by alliance clearly this definition is not correct to give it its correct name it should be said there are members of the family by alliance. 20 The alliance is the combination of marriage and of blood relationship but often it is not well understood too much weight has been attributed to it when marriage takes place the "alliance is established between each spouse and the relatives of the other. 21

Relationship by alliance springs from marriage, cohabitation does not engender any relationship at least not in the civil law. Consequently, a marriage is possible between two person although one of them may have had illicit relation with the attendant the other and even though children were born from such relations. 22

1.3 THE CONCEPT OF IRREGULAR UNION

-Over the past-several hundred years, social, economic religious and cultural changes have dramatically altered the institution 0 marriage, especially the roles of husband and wife, in Western Societies, many factors contribute to the transformation including the shift from a rural and agricultural society to an urban industrial economy, the increasing emphasis on individual freedom following the 18th century age of enlightenment and changes in population characteristics such as the decline of mortality (death) rates and the increase in average life expectancy.23

Scholars have identified two primary themes that influence marital change; first the trend both in society and within marriage has been towards an increase inequality between men and women. Second individuals have placed greater emphasis on love as the motivation for and basis of marriage 24 historically the roles of men and women with in marriage have reflected roles within society law and customs have traditionally restricted women's opportunities, limited their legal right, and required them to be under the protection and control of a man. 25 The transition from traditional to modern society has increased society's emphasis on love as the basis for marriage. The concept of romantic love exits in all cultures but is usually not linked to marriage love is often portrayed as a dangerous emotion that can and in tragedy. Historically many people in western societies have also been suspicious of marriages based on love despite the worship of love in songs and stories passion and romance would quickly fade, many people believed, leaving the couple with a lifetime of regret. 26 Although marriage in contemporary industrialized societies usually requires religious or legal recognition or both some couples may live together as if they are married and pot sack formal approval of their union. During the last four decades of the . twentieth century a revolution occurred in the united states regarding

the formation of a family and the roles its members played. The social stigma of bearing children out of wedlock was eliminated along with the shame associated with couples living together without marriage the number of persons living. together without marriage has dramatically increased.

There are several reasons presently given for cohabiting without first some view a period of cohabitation as a testing ground for marriage couples can take "test run" of the relationship before making it permanent second it may avoid the difficult and costly consequences associated with divorce, third for some it offers freedom from what they view as a marriage system dominated by male value, finally when there has been a divorce or when a person is receiving welfare assistant cohabitation does not necessarily mean the end of these benefits while marriage may do so.

The common law look a dim view of contracts made between unmarried person who were living together out of wedlock much like a husband and wife under the common law, oral or written a agreements between of the consideration for them involved the illicit relationship itself. Common law courts objected to the parties disregard of tradition moral values and were concerned that enforcement of any oral or written agreements might make meretricious relationships more attractive than marriage. The common law it was said should not allow man to trade sexual services as consideration for contractual promises or make a woman's virtue on article of merchandise. 27

In recent years, living together as an unmarried couple, known as cohabitation has becomes a widespread practice in the united states roughly half of all newlyweds have lived together before marriage some jurisdictions legally recognize common law marriage laws in such places consider couples married if they have together for a certain length of time. 28 When people live together much like husband and wife but without the benefit of marriage and their relationship to formation of a family and the roles its member played relationship between a man and woman established by the marriage contract and resulting in the creation of certain rights and obliquities

between the spouses. A valid marriage is a special type of contract that can be terminated only in a court of law through divorce or annulment.

The concept of irregular union has been traditionally understood as a situation in which a man and a woman live together and hold themselves out to the public as husband and wife without fulfilling the formalities required by the law for lawful marriage it differs from a ceremonial marriage in that it is one which has not been celebrated in any particular form being based only up on the mutual agreement of a parties.

1.3.1 CAPACITY

It is an fact no one can deny that the parties to a formal marriage have to meet the statutory age requirement in order to conclude a valid marriage. They would be husband .and wife have to be legally competent to contract a marriage. 34 The same applies to an irregular union parties to an irregular union are required to meet the tests for competency to enter into a ceremonial marriage. An irregular union can not be entered by persons below the statutory age of concluding a formal marriage. 35

1.3.2 **CONSENT**

It is an absolute requirement of any marriage whatsoever that the parties must mutually consent to take each other as husband and wife. For an irregular union to be validly established, the parties have to consent to take each other as husband and wife. Consent is the threshold by which the status of an irregular union is reached. 36 Generally consent may be given expressly or implicitly. Implied consent is established by the conduct demeanor and habits of the parties. In case of express agreement the consent has to be unequivocal, free from any reservation and be given for the full marital relationship. 37

1.3.3 COHABITATION

Cohabitation is generally required as an element in the formation of a valid irregular union. The man and the woman in an irregular union must live or dwell together in the same place sharing the same roof as husband and wife. Such cohabitation, however, should not be limited to having sexual intercourse and living together. There must in addition be an association consciously and openly as husband and wife together. 38

It is by its forms and by its characteristic that marriage is to distinguished from concubine. The latter is a mere fact it is not a contract. It has no definite forms and it does not produce any juridical effects it remains entirely outside of the law. 39 All that may be said about it is licit, unless it constitutes adultery or abduction of a minor. He who lives in a state of concubine may end it by his own free will at any time he so chooses and the person with whom he lives can not save for damages on account of the breaking of relations. 40

In their own conscience the concubines may have duties as married people have any union between a man and a woman engenders some obligations because it may result in the birth of a child and in fact may found a family. 41 The difference is that the spouses recognize these obligations and bind themselves to fulfill them wile the concubines do not bind themselves to them and reserve to themselves the possibility of a voiding them. 42 That which renders the concubine out side the law is not a simple omission. The absence of form but it is the fact that due to the irregularity the concubines can retain their freedom and remove from the social powers any means of coercion society has a supreme interest in the duration of unions which create families. 43

1.4 ACCEPTANCE OF PUBLIC HUSBAND WIFE

The man and woman have to be able to acquire a reputation as husband and wife. The reputation in this sense means the understanding among the neighbor hood and acquaintances with whom the man and the woman associate in their day to day life that they are dwelling together as husband and wife. 44 moreover it has been said that the reputation should be acquired in the community in which the parties cohabit and the community in this context consist of persons who have had the opportunity through social or business contacts to form an opinion of the relationship of the man and the woman. 45 A woman's introduction of a man as her husband to two or her intimate fiends and telling three others that she was married to him constitutes no evidence that the parties were living together as husband and wife and held themselves out to the public as husband and wife. 46 In short the reputation should not be confined. to a few persons and need also reflect the opinion of all people or even of a great number of people through out a large area. 47

Why do people cohabit?

Formal marriage is the instrument through which couples usually enter into a life lone commitment of taking each other as husband and wife. However, this type of commitment may be entered in an informal way like an irregular union. But why do people prefer irregular union to marriage? 48 There are many reasons why couples choose to live as husband and wife without going through a regally recognized marriage ceremony. One of this reasons is some couples feel that the commitments and burdens of marriage out weigh its advantages and therefore engage in an irregular union. 49 The other important attraction of a non-marital union is that no costly legal procedures are required to terminate the relationship and the financial consequences of divorce are absent. Termination of unmarried cohabitation of a men' and woman is extremely easier compared to the termination of a ceremonial marriage. 50 The cohabitants may be mutual consent or unlawfully and their relationship without resorting to divorce proceeding. This is one clear advantage to the cohabite.

For the more sophisticated couples and de factor relationship gives the opportunity to define and spicily the terms of their relationship individually. They can define the terms of their personal and property relations freely irrespective of the entail rights and duties deemed inherent and mandatory in formal marriage this is an advantage which the cohabitation may lose in cases of marriage. 51

For some women an irregular union grants freedom from the age old gender based oppression through traditional dominance in marriage. Hence, they prefer cohabitation to concluding a marriage.

Here are also some other reasons to enter in to a irregular union. Some times there is a economic~ reason for instance the pension or other benefits that a widow may get would be terminated up on her remarriage so in order to avoid the termination of such benefits she resorts to unmarried cohabitation. 52 It may also happen that the parties decline to go through a marriage ceremony to demonstrate their protest against the religious ceremony practiced in there area or the parties simply do not worry about formal marriage because they attach no importance to the ceremony. As a result they simply agree to live together without any ceremony or formally. 53

1.6 The need to recognize irregular unions

Marriage is a very old legal institution it was even said that the institution of marriage as a union of man and woman uniquely involving the procreation and rearing of children within a family. 54 Marriage in contemporary industrialized society's usually religious or

legal recognition or both some couples may live together as if they are married and -not sack formal approval of their union. 55 In recent years living together as on married couple known as cohabitation has become a widespread practice in the united states of American roughly half of all newly weds have lived together before marriage. Some jurisdiction legally recognizes common law marriage laws in such places consider couples married if they have lived together for a certain length 0 time. 56

Human society in the past and through out the world has been interested in the regulation and control of the institution of marriage accordingly as soon as. the contract to marry is executed by marriage a relation between the parties is created which they can not change other contracts may be varied restricted or completely released up on the agreement of the parties.

This is not the case' with marriage. 57 Once the relation is created the law governs the entire relationship of the parties in some what detail manner. This regulation is done due to the fact that marriage is an institution in the maintenance of which society at large is deeply interested. It has to be regulated because it is the foundation of the family and of society without which civilization or progress is unthinkable. This is the idea behind the age old legal regulation of the institution of marriage. 58

Coming to irregular union is legal regulation is of recent phenomenon compassed to the institution of marriage. Despite its long history the unmarried opposite sex conjugal relationship of a man and woman has not been the subject or legal regulation for a long time this was mainly due to society's negative attitude to wards this kind of relationship unmarried cohabitation was considered sin and outside of the low by society. 59

Society encouraged adults to express the sexual desires only in marriage it was feared that the recognition of alternative living arrangements like on irregular union would endgames the sanctity of marriage it was thought that the recognition of such kind of relationship outside wedlock depreciate the honor and value of the institution of marriage for which society is highly concerned for its stability and soundness. As a result many jurisdictions in the past declined to give legal recognition to the non marital relationship of a man and a woman. 60

an irregular union creates a family. There are children a husband and wife like a formal marriage from an economies social and psychological perspective irregular unions are functionally identical to marriage. Whatever happens in the family created by marriage happens in the family created by on irregular union. 61 This is the visible social reality hence, failing to legally recognize such relationship is unfair. Hardships and injustice would result unless the law intervenes and regulate such relationships to the extent necessary. Reasons of ~quite like the protection of children born in a de fact union or the protection of the weather party in the union justice the recognition of a de factor relationship, failing to recognize such relationships may, for instance impose unfair-burdens on those who are most vulnerable or who have contributed more to the relationship. 62 One can imagine the justice that would occur in the absence of legal regulation of irregular unions. Think of the following situations lacking legal regulation of irregular union, no community of property is created between the man and woman. 63 The man who has been liking in a defector relationship may and the relationship by his own free will at any time he chooses denying the woman any share from the common property they both accumulated during their cohabitation. 64 Her contribution to the welfare of the family her labor in the home her child care responsibility her entitlement to maintenance when she is disabled from earning because of child care and her night to maintenance when her ability to earn is adversely affected by the relationship created between the man and woman will not be recognized in the absence of legal recognition of irregular union. This

is a clear case of the injustice that will occur is irregular union is not regulated by the law. 65

As can be gathered from the a fore-mentioned facts given the prevalence of de facto unions and the injustice that would occur in the absence of legal intervention there is undoubtedly a need to recognize and regulate irregular unions to the extent necessary. 66

Nowadays the need to give legal recognition to. such unions has been felt every where and many jurisdictions have recognized it. Its legal recognition is no more a problem. However, there is a concern with regaled to the extent of its legal regulation. 67 The extent is a subject of concern because of its grave consequences. It is protected and regulated by the law in a way have no value and irregular union will be one family conducing a marriage will have no value and irregular union will be one formal marriage pointless. 68 To avoid such unpleasant consequence irregular

unions should be regulated by the law in such away that it avoids the injustice that usually occurs in the absence of legal recognition. 69 What is more, formal marriages are by an~ irregular union should be maintained and this is done when legal regulation of the factor relationship is done to the extent of avoiding injustice and great harm to the parties. 70

The effect of regular union is discussed in chapter two /2/.....

Chapter two Effects of irregular union 2.1 Irregular Union Under

The Civic Code

The 1960 civil code of Ethiopia recognized the institution of irregular union under Art 708 defining it as the state of fact which is created when a man and a woman to live together as husband and wife without legal marriage 1 if a man and a woman live in such manner it is said that they keep up on irregular union with each other. However without living together under the same roof if a man and a woman exercised sexual relation repeatedly in a manner that is known to other person but do not live together under the same roof the relationship between them doesn't. constitute an irregular union. To constitute can irregular union the way these person live must be analogous (similar and comparable) to that of married person. 2

Supply of maintenance and community property doesn't exist when two persons were living like husband and wife. 3 whatever each party earns belongs to her/him of course the parents could have joint ownership over. properties purchased by contribution of both. Provided such contribution was proved each may get a share from the property at the time of termination of the relationship. 4

The proof of irregular union is by possession of status the possession of status means in the civil code the party of the man and the woman behaving in the same' way as married persons and being considered as married couple by their families and their neighbors only. What about his/her friends and other societies? in principle proof and contestation of possessing status shall be made by producing reliable witnesses. The civil code recognized to some extent protection to the institution but in the revised family law it is better protected as it will be discussed later. 5

2.2. IRREGULAR UNION UNDER THE REVISED FAMILY LAW

The recognition of irregular union may appropriate if seen from the point of view of the protection of the family under article 34/3/ of the FDRE constitution which provided that family is the natural and fundamental unit of society and is entitled to protection by society and the state. And it is true that a family is created either through marriage or irregular union. As far as the constitution is concerned.

a family whatever its origin may be is entitled to protection. Therefore, from. the stand point of protecting the family and since irregular is one way of founding a family it should be recognized by the law.6

Irregular union is one way of creating relationship between a man and a woman. It create special relationship even through it is different from marriage despite the difference it has with marriage they also have similar it with marriage in their effects arid manner of proof. Irregular union is generally dealt with under articles'98-107 of the revised family code.7

The man and the woman shall proportionately contribute to their common expenses that property shall be considered as common as long as the relationship in the form of irregular union has lasted three years and above.8

The revised family code has successfully rectified the problems of the civil code with regard to the community of property. As mentioned before the civil code does not recognize community of property in any irregular union, and in addition to creating common property, has previsions that deal with the administration and liquidation of the common property.¹¹ Rules dealing with payment of debts and duty to contribute to the common expense are also incorporated for payment of indemnity to the woman in case of termination of the union by the man. As per article 716 and 717 of the civil code if an irregular union is terminated by the woman. She is not liable to pay any indemnity. However if it is the man that ended the relationship the is required to pay indemnity to the woman. The revised family code and the other hard provided that the union may be terminated by either party and the party that terminates the union is not liable unless he commits a fult.12

The remised family code has repealed article 711 and 713 of the civil code which are concerned with the obligation for maintenance and right of succession between partners in an irregular union respectively. Article 711 of the civil code provided that no obligation of supply maintenance between the man and the woman is existent. This provision has not been included In article 713 an irregular union shall not create any right of succession between the man and the woman engaged in such union this was not included the revised family code for not equal status with marriage.

2.3. DEFINITION OF IRREGULAR UNION UNDER THE REVISED FAMILY CODE.

The institution of irregular union has been recognized and accorded better protection by the revised family code, irregular union is defined as The state of fact which is created when a man and a woman live together as husband and wife without having concluded a valid marriage. 15

from this definition irregular union is a state of fact created without concluding a valid marriage. This is to mean that the union is one that which is created without any celebration solemnization and registration what's ever. It is a simple union of a man and woman without under going the formalities required by the law in the cases of lawful marriage.16

The parties to the union have to love together on a day to day basis sharing the same roof in the same houses considering themselves as married. Irregular union is not created just because the man and woman kept sexual relation repeatedly or notoriously.17Art 99/3/ they have to live together intimately as between husband and wife in addition to keeping the normal sexual relationship.

As pointed out above, " living together" is on important element of irregular union but what does this living together exactly mean under the revised family code? In other words should it be interpreted as saying that the partners must love together continuously with out a break. If however, the man and the woman live a part after the start of the union for a certain period of time due to well founded reasons () when are of them is in education in a foreign country and resume the union this has to be tolerated. But how longer should the duration of the separation be? should the separation last for a month, three months a year or what? The revises family code doesn't answer this question. But the writer believers that that the duration of the separation should not be a long time. Because if the break lasts for a long time say three years, it will be doubtful whether the union is really still an irregular union. It defeats the whole concept of living together as husband and wife.

The other point that has to be noted is that for how long should the man and the woman live together so that one can safely say that there is and irregular union does the living together of a man and a woman for one month, two month or six months produce an irregular union? The revised family code does not answer this question unlike the laws of other countries.I8 States of the united states for instance a man and a woman may cohabit for seven years after which their union is legally a recognized marital relation ship.19 The community and their families do not arrive at the conclusion that the man and the woman live as husband and wife just because the couples lived together for a month or two. They need a long time to entertain the idea that the man and the woman are really living together as husband and wife it is in consideration of their conduct or behavior through time that the community recognize the partners as married people. Therefore under the revised family code the living together of a man and a woman for a very short period of time does not constitute irregular union. The parties have to live together for such reasonably time that creates on impression to the community as well as the families of the partners that they live as husband and wife.

The element of holding out to the community as husband and wife which is required to be fulfilled to constitute an irregular union is some jurisdiction is not a requirement under the revised family code to article 99/2/ the partners in the union are not required to represent themselves to third parties as married. All that is required is that the behavior of the partners be analogous to that of married people.21

If it can be shown that the conduct of the cohabiters in the union is similar to that of the man and the woman in marriage this by itself is sufficient to constitute irregular union. 22Even though it has not been specifically addressed by the revised family code a valid irregular union is not created if either of the partners or both are bound by marriage with another person for this constitutes adultery which is an offence punishable under article 652 of the criminal code of 1996.23

2.4. COMMUNITY PROPERTY OF IRREGULAR UNION

in the family law of 1960 the concept of community property doesn't exist when two persons were living like husband and wife. 21 but in under Article 102 of the revised family law property acquired during and irregular union shall be common property provided that the relation has lasted for not less than three years, As regards burden of proof there is a reputable presumption that properties the irregular union partners have during their cohabitation are acquired during such relation.22 The man and the woman however are at liberty to agree as to the administration of the common property. A union less than three years there fore doesn't create common property and the parties can terminate the union without any dispute relating to common property. Unlike the case of marriage community of property shall no being at the first date of this relation the provision f community of property of spouse shall apply to the man and the woman who live in an irregular union.

2.4.1. ADMINISTRATION OF THE COMMON PROPERTY

As a rule, the common property of the man and the woman in an irregular union is administered Jointly.32None the less, the above rule will not be applicable where it is agreed by the partners that one of them administer the whole jointly owned properly or just a part of it33 Nor is it applicable where one of the partners is declared incapable, deprived of his right of property management or incapable of administering the common property for any other valid reason.34In such cases it is the partner who is empowered administer by a cement or not declared incapable or not deprived of his right of property management that takes the responsibility of administering the common property. However in doing so he/she

has to account to the other when requested.35All actions for sale exchange, rent out, pledge, mortgage or alienation in any other way of the common property need the consent of both the man and the woman in the union.36The same consent is also required for similar actions in relation to a common movable property and securities registered in the name of both partners the value of which exceeds 500 Ethiopian birr.37 Neither the partners are allowed to borrow or 1 and money exceeding the above amount of money or stand surety for a debt of 500 birr nor is it possible for them to transfer a common property the value of which is greater than 100birr or money greater than such sum by way of donation lacking common consent 38

Non observance of the above mules by one of the partners gives the other partner the right to bring an action for nullity of the obligations. Entered within six Months after he/she became aware of such obligations or in any case with in two Years after such obligations have been entered.39

2.4.2. DIVISION OF THE COMMON PROPERTY

When the union of the man and the woman ends it is a must that the Common property has to be divided if there is any, In this regard the revised family code provided that the division of the common property in irregular union will be effected in accordance with the agreement entered for this purpose by the parties.40 In default of such agreement which is usually the case between parties in such union it is the provisions of the revised family code on liquidation of pecuniary relation of spouses in marriage that apply to the division of the jointly owned property of cohabitants.41

Before establishing the share of the man and the woman in the common property, there are certain procedures that have to be complied with.42 In the first place, the cohabiters take back their personal property by proving that it belongs to them.43 They have to prove this fact because, unless proved, it will be taken as common property as per article 102/2/and hence no right of retaking. According to this article, any property which exists during the union is deemed to have been acquired within the union and hence constitutes common property unless it is proved to the contrary. Hence, a cohabite can take back his property by proving that such property belonged to him prior to the beginning of the union. Secondly, where the personal property of a cohabite has been alienated and its price has fallen in to the common property, he/she is entitled to recover it from the common property.44 A cohabite is also entitled to indemnity if it is found out that the personal property of the other or the common property has been enriched to the prejudice of his property.45 Damage may also be demanded before the physical division of the common property takes place by either of the cohabitants where the other partner having been empowered to administer . the jointly owned property performs acts which adversely affect his partner or such acts are done without mandate, or constitute acts of bad administration or have been performed in fraud of the right of the partner making the claim.46In such cases, the aggrieved partner can not request the court to grant him damage if the above acts occur five years before the termination of the union.47 Debts of the cohabitants have to be also paid before the partition of the common property.48This is to protect creditors Who may be in a precarious condition if they are to recover debt after partition. As mentioned before, partition has to be done only after all the procedures discussed above (i.e. retaking, withdrawal indemnity and payment of debts) have bee completed. Once this has been done, the common property will be divided equally between the cohabitates. Equal partition is realized, however, only on the condition that no contrary agreement exists between the cohabitants.49 It is true that the manner

of division can be determined by the cohabitants themselves where they conclude a division contract.

As a rule, partition takes place in kind in such a way that each cohabite takes some property from the common property.50Where it is impossible to divide the jointly owned property equally, the inequality in kind should be compensated by payment of money.51It should be noted that things which are most useful to a cohabitant should as far as possible be assigned to his share.52For instance, if a certain property is relevant to the business or occupation of a cohabitant, it should be given to him.

It may happen that a certain property is difficult or impossible to be divided because, for instance, the property in question cannot be taken apart by its nature or taking it apart would prevent it functioning or devalue it and the partners may not be in accord as to who will have this property, in this case the property is sold and the money received is shared by the partners.53 In default of agreement on the condition of sale, the property will be sold by auction.54

2.5. DEBTS OFTHE MAN AND THE WOMAN IN IRREGULAR UNION

During the union, the man and the woman may transact with third parties and incur debts. Such debts may be incurred either for the interest of both parties or for personal purposes.

If a debt is contracted either by the man or the woman for their maintenance and of their children, it becomes a common debt and creditors will have a recourse against one or both.55 In other words, such debts may be recovered from the personal property of each cohabite and/or from the common property. Under article 714 of the civil code, it has been provided that if a debt is contracted by the man for the maintenance of the children

and of the woman and the man, the woman will not be held jointly and severally liable with the man, If, however, it is the woman who contracted the debt, the man will be held jointly and severally liable with the woman. Obviously, the RFC did not draw such distinctions.

If a common debt of the man and the woman is due after the termination of the union and the division of the common property, each of them is liable to pay the debt in proportion to his share. 56

Debts due by one of the partners for personal purposes to a third party are recovered on his personal property and when the personal property is not sufficient to cover the debt, the creditor will have recourse against the common property.57 Under the civil code since no community property exists between unmarried cohabitants, such right of recourse by the creditors against the common property was absent.

2.6. Absence of bond of Affinity

It is a relationship between a man and a woman created due to marriage. This kind of relationship may also be of direct or collateral. Direct a final relation ship exists between the husband and the ascendants or descendants of his wife and the vice versa. Collateral affinity relationship, on the other hand exists between the husband and brothers or sisters if his wife and the vice versa.

Marriage between persons who are affinity related as pointed out above is prohibited. 41

Absence of affinity relationship is a per condition for a valid marriage Accordingly marriage concluded between affinity relatives may be ordered to be dissolved upon the application of any interested party or the public prosecutor. This is stated under article 32 of the revised family code.42

In irregular union it does not create a bond of affinity between the man and the relatives of the woman and between the woman and the relatives of the man. The woman can not engage in an in irregular union with a man who is the relative of the man with whom she had been previously engaged in such union. 43

2.7. Consanguine Relationship

Consanguinity is a blood relationship between persons. Consanguine relationship may be direct or collateral direct consanguine relationship exists between ascendants and descendants. Marriage Between there persons is absolutely prohibited.

Collateral consanguine relationship on the other hand exists between persons who descend from a common ancestor, only In this case a man cannot marry his sister and aunt only A woman cannot also marry her brother and her uncle only. Absence of consanguine relationship is a precondition for a valid marriage. Accordingly, marriage concluded between consanguine may be ordered to be dissolved up on the application of any interested party or the public prosecutor. Under article 32 of revised family code. 44

In irregular union does not specific absence of consanguine relationship in the revised family code.

the partners) and step relationships the number of states prohibiting marriage between parties related by affmity is decreasing most . states prohibit marriage between persons related by adoption.58

Affinity prohibitions refer to a relationship that exists between two people

because of the. marriage of one them to a blood relative of the other. Marriages between persons related through marriage by step relationship are prohibited under most state affinity statutes.59

Affinity relationship will be created as a result of marriage persons who are related by affinity may be considered as members of a family. Although the strength of relationship is relatively lesser in the case of affinity in comparison to consanguinity relationship.60

The Ethiopian law does not specifically indicate as to how the degree of relationship is calculated in the consanguinity relationship in the direct line. In European countries however, the degree of relationship is computed simply by counting the number of generations is equal to the number of degree of relationship. There is one generation between a father and a son or two generations between after and a grand son.61

In irregular union a bond of affinity is created neither between the man and the relatives of the woman nor between the woman and the relatives of the man.62

However the legal impediments to a lawful marriage in the case of affinity are applicable to it.63

In Articles 100/1/ and 100/2/ are contradictory as far as the law is concerned to say that there is no band of affinity in irregular union on the one hand and prohibit marriage between the man and the relative of the woman or marriage between the woman and the relatives of the man on the other hand?

For the revised family code consanguinity can not engage in and irregular union for it amounts to the crime as per article 653 of the criminal code in 1996 performance of sexual act between brother and sister or between on ascendant and a descendent or between the party but whose marriage is prohibited by the law is perishable.64

2.7. FILIATION

This deals with the issue of who is the father or the mother of the baby. The mother of the' child can be easily determined as a child can only have one mother at a time but the problem his with the determination of who the father is due to this problem the revised family code provides rules to govern the determination of the father of the child. There provisions that deal with the determination of the father of the child are dealt with under chapter nine of the revised family code.65 Here it has to be mentioned that the rules laid down to ascertain the mother and father of a child can' not be derogated by the agreement of the parties unless the law allows so as provided under article 123 of the revised family code. This is a mandatory provision of the law which can not be deviated from by agreement.66 Filiations which could be of maternal or paternal is proved by the record of birth of the child as provided under Article 154 of the revised family code in case where there is no record of birth, possession of status is a means to prove filiations. A child is said to have possessed status when the community treats him/her as being the child of such manor woman, if such

possession of status is proved the court takes the presumption that the child is born of such manor woman. The presumption taken by the court may, however, be rebutted by proving that the child could not be born of such man or woman.67

2.7.1. MATERNITY

Maternal filiations first of all is ascertainment of the mother of the child. As it is clearly stated under Art. 124 of the revised family code. Maternal filiations is ascertained solely by the more feet of her having given birth to a child this means that a woman is taken to be the mother of the child when she conceives and gives birth.68

2.7.2. PATERNITY

Paternal filiations results from the maternal filiations when a relation provided for the law it result acknowledgement or judicial declaration.69 The general presumption of paternity in case of irregular union is that a child born or conceived in such union is presumed to have the man in this union as his father.70 This presumption is applicable irrespective of the manner of the establishment of the maternal filiation.71It also applies in the event that the record of birth of the child does not indicate the man as father of the child or indicates the name of another man.72

If a child is born more than 150 days after the commencement of irregular union or with in 300 days following the termination of the union he is presumed to have been conceived in such union.73This is a very force full presumption and if the man engaged in the union claims not to be the father of the child it is through the action of disavowal that the may contest it.74

Chapter three

Proof and termination of irregular union

3.1 Proof of irregular union

A man and a woman engage in an irregular union without a written agreement that evidences the fact of their union. It is a simple union to which it is hard to find a reliable documentary evidence to prove the fact of the union. Hence, out of practical consideration proof by possession of status in case of irregular union is the best way to solve the issue of proof. 1 Proof of marriage by, possession of status entirely differs from the first mode of proof of marriage. According to Art 96 of the revised family code celebration of marriage is not indicated as one of the requirements to prove marriage by possession of status because of this distinction there appears confusion as to what we mean the celebration. Alternatively is it to mean proving not the celebration but the agreement between the parties to mutually consider and treat themselves to be husband and wife 2

The different between marriage and irregular union in the process of proving

them by possession of status. Hence to solve this problem we should better apply Art 96 and 98 cumulatively whenever there is a question of proof of marriage or irregular union, by possession of status. An irregular union is defined under ART 98 is created when a man and a woman live together as husband and wife without having concluded a valid marriage under irregular union the man and the woman have not conceded a valid marriage even if they like together like husband and wife in ART 96 revised family code differentiate the relationship of a man and a woman whether it is that of marriage or irregular union in marriage relationship the man and the woman are expected to mutually consider.

themselves and live as spouses. In other words marriage relationship the man and the woman do not only like together in the same house but they also call each other as husband and wife they also introduce themselves as such to the community this friends relatives generally is provide by records of marriage certificates of marriage and exceptionally through the aid of possession of status.

Possession of status is the usual mode of proof of irregular union and in the light of its practical significant once it has been said that it is 0 considerable importance but what exactly is meant by possession of status? Possession of status / may be defined as the fact of bearing the name that designated the status and being treated and recognized as having such status by the community in general and by family members friends and other in particular. 3

The revised family code under article 106 provided that irregular union is to be proved by way of possession of status and defined possession of status of persons living in an irregular union as the state of affairs in which the man and the woman, through not married, behave as married people and as a result of this they are recognized as such by their families and the community as well.

As can be understood from the definition to constitute of status of persons living in an irregular union three facts have to be proved which are the fact that the man and the woman behaved as married people the fact that they are considered as married people by their families and the fact that both are considered as married persons by the community.

In the first place, the witnesses called up on to prove the possession of status of persons living in an irregular union have to testify to the effect that the persons behaved like married people. They have to assure the court that the man and the woman conducted themselves and lived together like married people sharing the Same house and exchanging love, loyalty and respect to each other. They must show to the court that the man and the woman perform acts which are analogous to those acts which are usually done by married couples.

Secondly, to constitute possession of status in case of irregular union, the witnesses are expected to show that the man and the woman are recognized and treated as married by their families and relatives. Being recognized as married by one of the families of the partners only is not sufficient to prove the possession of status of persons living in an irregular union. The fact that both the families and relatives of the man and the woman recognize the partners as married should be proved by the witnesses. This may be accomplished, for instance, when the witnesses testify they have seen the families of the partners visit them during holidays and in times of problem.

Finally, the witnesses should convince the court that an irregular union existed between the partners by showing that the parties lived together so openly like husband and wife that the community within which they live recognize and treat them as married. They have to be able to establish the fact that their neighborhood, acquaintances and other persons who come in to contact with the man and the woman consider them as married people. It should be noted here that the witnesses have to make it clear that the opinion of the community towards the relationship of the man and the woman is undivided and uniform. If there is a division of opinion in the community towards the relationship of status of persons living in an irregular union. Every body in the community should recognize and treat them as married without any division of opinion.

So far we have seen the way irregular union is proved by possession of status under the RFC. Let us see then how the existence of marriage is proved by possession of status so that we can have a clear picture of the distinction made by the RFC when both marriage and irregular union are to be proved by possession of status.

3.2 Possession of Status of Spouses and persons Living in Irregular Union

The RFC is concerned, possession of status of spouses is distinguished from possession of status of persons living in an irregular union in two ways. The first distinctive feature is that in the case of possession of statues of persons living in an irregular union, it is not a requirement that the man and the woman should mutually consider and treat each other as husband and wife. Therefore, the witnesses called upon to prove the state of fact of irregular union are not required to prove the fact that the parties have lived together mutually considering themselves as married people. However, this is a requirement when it comes to possession of status of spouses. The fact that the man and the woman mutually consider themselves as married should be proved to establish possession of status of spouses. This distinguishing factor, however, is not that important practically. This distinction is present even under the civil code but it did not serve its purpose for it has no practical significance. This is because, mostly the circumstances under which a man and woman introduce themselves to third parties that they are husband and wife are rare particularly in our society. Unless they are asked so or other situations dictate them so, usually a man and woman do not explain to the community that they are married.

The reality on the ground is that the people around them consider and recognize them as married by simple consideration of their behavior towards one another and in consideration of their joint life. The chance of overhearing the parties that they consider themselves as husband and wife is very much rare. Therefore, this distinction is a distinction that exists as far as the law is concerned. It does not serve its purpose to a layman witness who testifies on the basis of the overt conduct of the parties. Hence, practically, this distinction does not make a difference between proof of irregular union by possession of status and proof of marriage by possession of status though it exists as a distinguishing factor as far as the law is concerned.

Though not specifically provided as in the case of the first distinctive feature, the second distinctive feature is one that which is capable of creating a real dichotomy between the two concepts (i.e., possession of status of spouses and possession of status of persons living in an irregular union) which, as discussed before, were a subject of debate prior to the coming in to force of the RFC. It is to be recalled that under the civil code because of the lack of clarity on the part of the law, it was difficult to know the intention of the legislative regarding the interpretation of possession of status of spouses and as a result of this, some judges took possession of status of spouses as identical with possession of status of persons living in an irregular union while others treated the two concepts as different. Under the RFC, however, attempt has been made to avoid the confusion that was created by the civil code. 5 With a view to avoiding the above confusion, the RFC has given a clue by which the intention of the legislature may be known for interpreting possession of status of spouses 16. Even though it Is not clear from the English version of the title of chapter six of the RFC which is entitled "proof of marriage" in the same way as the civil code, the title of the Amharic version of this chapter gives a clue about the intention of the legislature in relation to the meaning of possession of status of spouseS.6 Chapter six of the Amharic version of the RFC is titled UBÒ lmfiñ Sl,qRB ¥Sr© As can be understood from this title, a proof of marriage is a proof that which is adduced to establish the conclusion of marriage. The Amharic version of the civil code, on the other hand, gave the following title UBÒ \$Sr© This title, unlike the title of the Amharic version of the RFC, does not communication any additional message except that a proof of marriage is one that which is adduced to prove marriage. Nothing more, nothing less. Hence, as it can be understood from the title given to proof of marriage by the Amharic version of the RFC which is the official version, any mode of proof (including possession of status) of marriage whatsoever should prove, inter alias, the fact that the marriage had been celebrated (concluded) in either of the three forms of marriage sometime in the past. 7

Accordingly, proof of marriage by possession of status of spouses is not limited to establishing the fact that the man and the woman mutually consider themselves as married and as a result of this, their families as well as the community consider and treat them as spouses as stipulated by article 96. The fact of the celebration of the marriage in one of the forms of marriage (i.e., civil, religious and customary) should also be proved as an additional requirement of article 96. This additional requirement obviously distinguishes proof of marriage by possession of status of spouses and proof of irregular union by possession of status of persons living in an irregular union for what has to be proved in case of irregular union for what has to be proved in. case of irregular union is that the man and the woman behaved as married people and are regarded as such by their families and the community. Nothing more is required. The problem with this additional requirement however is that it is totally absent in the English version and also that it is not specifically and clearly provided in the Amharic version. as shown above, it is by way of interpretation that one can arrive at the additional requirement that that fact of the celebration of the marriage has to be proved to establish possession of status of spouses. Hence, it is very difficult to say that the RFC has effectively and successfully avoided the

confusion with regard to possession of status of it has failed to specifically provide for the additional requirement that we discussed above.

In the case wi 0 Abebawork Getaneh V.W10 Wagaye Haile. The case is begin in the federal first instance court petitiones W/ 0 Abebawork Getanech W/o Abebawork and the man who passed away got married in the traditional way and had two children, while problems got into them and they couldn't reach agreement so they divorced on 23/11/76even if they didn't divide their properties among them selves. After four months they got together again. wi 0 Abebawork requested the court to give her the recognition as a wife for the man who late Ato Amare Yelma. The court called for witnesses and decided that wlo Abebawork is the wife for Ato Amare. w/O Wagay objected the decision given by the court. They said that the decision violates the rights of the children the court given divorce bin Ato Amare and wlo Abebawork so wlo Abebawork hasn't lived with the late as husband and wife based on this the court should council the recognition of the woman as a wife.

Respondent said that married is divorced by court but after four month to live together like husband and wife and also after the divorce they hadn't share their properties among themselves. After the court heard the two witness in the RFC ART 97/2 the legal presumption could be disproof so the care rejected the present respondents claim.8

W/o Abebawork appealed in high court based on the decision made by the first instance court. In the RFC does not provided after divorce the marriage the two parties to be lived together in the previous position, the rules and regulations of translating law states than, other laws should be considered so using rules of legal interpretation based on our social reality and practice there is no proper way which a man and a woman lived together after their

divorce to get back together they will reach agreement in traditional aspects so the court of appeal reversed the decision of the first instance court.9

The case again appealed and the supreme court reversed the decision of the high court and affirmed that of the lower court. 10 This final petition was lodged to the cassation bench of the supreme court in opposition to this decision of the regular bench of the supreme court decision of the supreme court reversed and that of the high court affirmed. So it is so difficult to prove irregular union the judge to deferent view of perspective. 11

3.3. Termination of Union under the RFC

As per article 105 (1), the man and the woman are at liberty to end their union at any time they wish. Accordingly, an irregular union under the RFC may be terminated unilaterally or by mutual consent in addition to the clear instance of termination of the union by death. Though not clearly provided, an irregular union may also be dissolved by a court order when a man and woman previously engaged in an irregular union begin to live in an irregular union with the sister or brother of one another up on the application of any interested person or the public prosecutor. 12 It is worth noting that a man or woman who were previously engaged in an irregular union can not marry or live in an irregular union with the brother or sister of the other as it is prohibited under article 100 (2). This legal effect of irregular union subsists even after the break up of the parties.

3.3.1 Effect of Termination of Union Under the RFC

As mentioned before, under the civil code when an irregular union is terminated unilaterally by the woman, there is no obligation on the part of the woman to pay indemnity for doing so. However, if it is the man that terminated the union unilaterally, he may be held liable to pay indemnity to the woman. Under the RFC, however, no such obligation to pay indemnity is imposed exclusively on the man. According to art. 105 (2), unless the party that ended the union commits a fault, no liability to pay damage is imposed by the law.

The other effect of termination of irregular union is that of the division of the common property if there is any. As discussed in chapter two, if the union lasts for three years, the law presumes that property acquired during the union is common property. Hence, when the union is ended either through the initiation the man or the woman or by mutual consent, the fact of the termination results in the division of the jointly owned property between the parties.

If the death of a party ends an irregular union, the surviving partner is not entitled to inherit the property of the deceased unless the deceased provided for this right be way of a will in accordance with the rules of testate succession 31.

All the survivor gets is what is provided for him or her in the will of the deceased partner if there is any. It is to be noted that no right of succession exists even between spouses in a lawful marriage. Hence, termination of union by death results is partition of the common property between the surviving partner and a person considered as the deceased's heir by law.

Conclusion and recommendation

Irregular union is one way of creating relationship between a man and a woman. It creates special relationship even though it is different from marriage. Despite the difference it has with marriage, they also have similarities in their effects and manner of proof.

An irregular union creates a family there are children a husband social and psychological perspective irregular unions are functionally identical to marriage whatever happens in the family created by marriage happens . in the family created by an irregular union this is the visible social reality hence failing to legally recognize such relationship is unfair hard ships and injustice would result unless the law intervenes and regulate such relationships to the extent necessary.

The legal recognition and protection of the institution of irregular union In Ethiopian is not a recent phenomenon. It dates back to 1960 with the coming of civil code. The civil code granted certain degree of protection to the institution. However, the protection extended to it was unsatisfactory.

The revised family code which came in to force in July 2000 accorded better protection institution of irregular union. It rectified the problems of the civil code in relation to irregular union particularly with respect to community property the concept of community property doesn't exist when two persons were living like husband and wife whatever each party earns belongs to her/him of course the partners could have joint ownership over properties purchased by contribution of both. Provided such contribution was provide each may get a share from the property at the time of termination of the relationship. But since most women are not employed out of the house or properties are purchased in the same of the male partner and the contribution of the female partner could not be proved the male partner keeps whatever was gained during the relationship. Under revised family code property acquired during an irregular union should be common

property provided that the relation has lasted for not less than three years. As regards burden of proof there is a reputable presumption. That properties the irregular union partners have during their cohabitation are acquired during such relation.

The revised family code not only created community property in irregular union but also devoted its provisions to deal with the administration and division of the common property created in a irregular union in a way similar to marriage. More over rules on payment of debts and the duty to contribute to the common expense of the parties which actually were not adverse by the civil code been incorporated by the revised family code. The revised family code are not only as regards the partners in the union but also in relation to them arid the children born in the union. The filiations of children born in an irregular union is established in the same way as the establishment of filiations of children born in marriage. A woman is taken to be the mother of the child when she conceals and gives birth and does not muster whether the woman giving birth to the child is married or not the revised family code provided that a child born in on irregular union is presumed to have the man in the union as his father. The partners by begetting the children have parental powers and duties as regards their children born in the union.

When it comes to proof of irregular union the only and primary mode of proof is that of possession of status. The possession of status of persons living in an irregular union when they are recognized as married people by their families and the community as well when one of these persons proves the existence of on irregular union by producing witnesses the court simply presumes that such man and woman live in an irregular union. however this presumption can be rebutted by producing any reliable proof.

A relationship of irregular union can be terminated at any time by the man and woman./ in this case unless the man and the woman used the debt for their own maintenance or the maintenance of their children where in such cases they are liable jointly and severally.

One of the problems to be discussed in this senior research paper is an irregular union's created when the man and the woman live together as husband and wife. But what frequency of cohabitation in required for the union of a man and woman to constitute an irregular union? Can a union of a man and a woman lasting for six months, One year or two year be considered as irregular union upon proof of by witnesses to the effect that they and other people on the community know them as married people? When irregular union is begin? The three years time limit provided under the creation of community property in an irregular union even is not of any help us to what duration of cohabitation is required to produce an irregular

union under revised family code. All that it says is that if the union lasts for three years? How long should the union of the man and the woman last to quality for valid irregular union under the revised family code.

The second problem in direct consanguinity relationship exists between ascendants and descendants marriage between these persons is a absolutely prohibited and collateral consanguinity relationship on the other hand exists between persons who decanal from an common ancestor only in this case a man can not marry his sister and aunt only. A woman cannot also marry her brother and her uncle only but what about in irregular union? The revised family code does not6 specifically provided consanguinity in irregular union. Absence of consanguinity is a precondition for a valid marriage it is similar to irregular union? Marriage concluded between consanguinity relatives may be ordered to be dissolved upon the application of any interested party or the public prosecutor in article 32 of a revised family code it can to for irregular union? the haw is silent.

The third problem both marriage and irregular union are to be proved by possession of status. It is distinguished the possession of status of spouses and from possession of status of persons living in an irregular union. In practice the judges used to confuse possession of status of spouses with possession of status of person living in an irregular union some man and the woman consider themselves as married and the families of the partners as well as the community know them as married which as mentioned before will have the effect of equaling the institution of marriage with that of irregular union some other judges however did not take the above fact as sufficient to prove demanded witness.

to prove the fact of the celebration of the marriage, in are 96 as sufficient to prove marriage by possession of status ignoring the additional element because to revised family code does not specifically and clearly says so.

The Writer recommends the following the first problem. The time limit . of a valid irregular union is not specifically provided in the revised family code.

The three years time limit provided under the creation of community property in an irregular union even is not of any help. If a family member and community to proved a man and a woman living together for sex month one years or two years is a valid irregular union or not?

The absence of a time limit for the duration of irregular union. So the writer recommends that a specific provision to provided the time limit this time limit is important to proof of irregular union.

The second problem consanguinity is a blood relationship between persons it is a direct and collateral line for direct line consanguinity relationship exists between ascendants and descendants marriage between these persons is a absolute prohibited and collateral consanguinity relationship an the other hand exists between persons who descend from a common an castor only in this case a man/woman can not marry his/her sister\/brother and aunt/uncle only the writer recommends to specific provision consanguinity in irregular union the haw is silent it provided love marriage a blood relationship between persons it is direct and collateral line is prohibited for irregular union.

The third problem both marriage and irregular union are to be proved by possession of status. In practice the judges used to confuse possession of status of a spouses with possession of status of person living in an irregular union. Proof of marriage is one that establish one of the three forms of marriage (civil, religious and customary) if the certificate of marriage is not issued or lost is proved by possession of status and in irregular. Union is proved the only way is possession of status. The writer recommends for proving the possession of status in marriage to specifically the witness to prove by which kinds of marriage celebrated and it prove the date and place and in irregular union the witnesses to prove the fact of the man and woman behaving in the same way as married and being considered as married couple by their family and the community but it brings additional eve dens love the registration of kebele residents and dir member to easily proof.

END NOTES

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