NATIONAL EDUCATIONAL ASSESSMENT AND EXAMINATIONS AGENCY (NEAEA)

NATIONAL EXIT RE-EXAMINATION FOR LL.B PROGRAMME STUDENTS OF ETHIOPIAN LAW SCHOOLS
2017/2018 ACADEMIC YEAR

November 07, 2017
Time Allowed: 3 Hours.

PART I: PRIVATE LAWS

GENERAL DIRECTIONS

1. ATTEMPT EACH SECTION ON THE BASIS OF SPECIFIC INSTRUCTIONS INDICATED IN EACH SECTION.
2. THIS IS A CLOSED BOOK EXAM EXCEPT PERTINENT ETHIOPIAN LAWS.
3. SUPPORT YOUR ARGUMENTS WITH PERTINENT LEGAL PROVISIONS WHENEVER APPROPRIATE.
4. PUT YOUR ANSWERS IN A SEPARATE ANSWER SHEET ATTACHED TO THE EXAM.
5. YOU MAY ASSUME FACTS WHERE NECESSARY.
6. WRITE LEGIBLY.
7. SWITCH OFF YOUR MOBILE PHONE.

DO NOT TURN THIS PAGE UNTIL YOU ARE ALLOWED TO DO SO.

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CTION I: CHOOSE THE BEST ANSWER (30%)

CHOOSE THE BEST ANSWER AND WRITE THE LETTER OF YOUR CHOICE ON THE SEPARATE ANSWER SHEET APPENDED TO THIS EXAM BOOKLET.

1. Which one of the following **is true** about opening of succession?

   A. It shall open after the closure of liquidation.
   B. It shall open just forty days following the death of the deceased.
   C. It shall open at the main residence of the deceased at the time of making a will.
   D. It shall open at the main residence of the legatees and heirs.
   E. It shall open at the moment of death.

2. One of the following statements is **not** true about the applicability of the Civil Code on the status and activities of traders:

   A. The Civil Code provisions of general contract law apply to the formation of contracts between traders.
   B. Where there is conflict between the Civil Code and the Commercial Code, the later prevails.
   C. The Commercial Code is a self-contained law on traders, and there is no need for the application of the Civil Code on traders.
   D. The applicability of the Civil Code on traders can be excluded if otherwise provided in the Commercial code.
   E. The Civil Code provisions other than the general contract law can also apply to traders.

3. Under the Civil Code of Ethiopia, a contract may be invalidated where:

   A. The object of the contract is not sufficiently defined.
   B. One or both of the contracting parties are below 25 years of age.
   C. One of the contracting parties fails to perform the contract in accordance with the terms and conditions of the contract.
   D. One of the contracting parties becomes incapable after the formation of the contract.
   E. One of the contracting parties dies after the formation of the contract.

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4. One of the following persons **cannot** be both the agent of a trader and a trader itself at the same time:

A. Commercial manager.
B. Commercial agent.
C. Commercial broker.
D. Commission agent.
E. Broker.

5. Identify property that does **not** qualify as movable in the Ethiopian legal system.

A. Trailers.
B. Materials to be used for building construction.
C. Materials taken from demolished buildings.
D. Business.
E. Toilet fixture in a room.

6. Identify the correct statement regarding things classified as public domain under the Ethiopian law.

A. Public domain is subject to acquisitive prescription.
B. Public domain is subject to usucaption.
C. A property classified by law as public domain cannot be declassified by law.
D. Even though the public has direct access to public domain, the state may impose fees to cover administrative expenses.
E. Everything owned by the state is public domain.

7. One of the following is **not** required for getting a business license under Ethiopian law for sole proprietorships:

A. Commercial registration.
B. Trade name.
C. Minimum capital.
D. Tax registration.
E. Address confirmation.

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8. One of the following is **not** a characteristic feature of a partnership agreement:

A. Undertaking to share loses.
B. Undertaking to share profits.
C. Undertaking to contribute some valuable thing.
D. Undertaking to cooperate.
E. Undertaking to carry out any activity.

9. Title to immovable things granted by state authorities may **not** grant valid ownership title in all of the following cases except:

A. Where contract based on which title is granted is invalid on account of lack of capacity of one party.
B. Where the title was issued by an authority that has no jurisdiction.
C. Where the title was issued as a result of corruption.
D. Where others have subsequently acquired title to the immovable.
E. Where the owner publicly declares that he no longer owns the immovable.

10. Which one of the following is correct about things lost under the Ethiopian law?

A. A thing cannot be said to be lost if an owner parts possession due to his negligence.
B. A person whose lost property is found by others has not obligation to reward the finder.
C. The amount of reward to the finder depends on the financial positions of the parties and the likelihood that the owner would find the thing on his own.
D. The amount of reward in no case can be lesser than one-fourth of the value of the thing found.
E. The finder is entitled to ownership of movables he found by prescription if he manages to conceal and keep possession for a period of ten years.

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11. Which of the following does **not** constitute private property under the FDRE Constitution?

A. Property acquired by one's physical labor.
B. Things that do not have any value, economic, sentimental, etc
C. Works of the mind.
D. Things obtained by capital investment.
E. Things acquired by chance and donation.

12. Which of the following aspects typically characterizes a joint venture form of business organization under Ethiopian law?

A. It is not required to be registered.
B. It can be a commercial or non-commercial business organization.
C. It is managed by one partner.
D. It is useful especially for wealthy people who want to do business remaining discreet.
E. If its existence is disclosed, it is regarded as a general partnership.

13. Which of the following is different among the given alternatives?

A. Strict Liability.
B. Liability without fault.
C. Product Liability.
D. Vicarious Liability.
E. Liability for damage caused due to operation of motor vehicles.

14. Identify the one different from the rest.

A. Usufruct.
B. Servitude.
C. Rights in personam.
D. Right of recovery.
E. Promise of sale.

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15. The law does **not** step in to govern the personal and pecuniary effects of marriage where:

A. There is no contract of marriage at all.
B. The contract of marriage is invalid.
C. The contracting spouses lack capacity to enter into such contract.
D. The contract of marriage is consistent with mandatory provisions of the law.
E. The contract of marriage concluded after marriage is not approved by court.

16. One of the following matters is **not** required by the Commercial Code to be indicated by the Memorandum of Association:

A. The capital of the company.
B. The general manager of the company.
C. The business purpose of the company.
D. The head office of the company.
E. The name of the Company.

17. In contractual relations, good faith of the contracting parties should be seriously considered by a court of law or an arbitral tribunal in relation to one of the following except:

A. The fulfillment of a conditional contract.
B. Interpretation of contracts.
C. Cancellation of contracts.
D. Novation of a contract.
E. Variation of contracts.

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18. Which one of the following situations does **not** bring about extra-contractual liability for the author of an act even though his act causes material damage?

A. A person intentionally fails to perform his contractual obligation.
B. A person diverted to his own benefit a power entrusted to him for the benefit of the public.
C. A doctor negligently misdiagnoses the plaintiff's illness.
D. A driver negligently caused accident on the Plaintiff.
E. A person trespassed the property of the plaintiff.

19. A shareholders' general meeting **cannot** be chaired by:

A. A directors of the company.
B. Auditors of the company.
C. The chairman of the board of directors.
D. Secretary of the company.
E. An officer of the court who calls the meeting.

20. Which one of the following statements **is** true about obligations in general?

A. The source of every obligation is the law everywhere in the world.
B. The source of an obligation is a contract everywhere in the world.
C. In contractual obligations, entry into obligation is consensual while legal obligations may be assumed against the will of the **obligor**.
D. Legal obligations are imposed only on legal persons while contractual obligations may be assumed both by legal persons and physical persons.
E. Obligations cannot in any case be extinguished once they are created in accordance with the requirements of the law.

21. In case of doubt, a contract is expected to be interpreted against the party who stipulates an obligation and in favor of the debtor in the case of:

A. All commutative contracts.
B. Adhesive contracts.
C. Aleatory contracts.
D. Synallagmatic contracts.
E. Conditional contracts.

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22. If compensation is associated with non-performance of contract, invalidation is associated with:

A. Termination of a contract.
B. Defect in the formation of a contract.
C. Privity of contract.
D. Non-retroactivity of contract.
E. Novation of contract.

23. Which of the following statements is true about private limited companies (PLCs)?

A. In Ethiopia PLCs can be used to undertake any business activity.
B. In Ethiopia PLCs exhibit the characteristics of share companies and partnerships.
C. The law regulating PLCs is unnecessarily detailed and complicated.
D. There is no separate law regulating PLCs, and the law is scattered everywhere.
E. PLCs are non-liability limited partnerships in company form.

24. Which one of the following **cannot** be embraced by the expression "vice of consent" under the Ethiopian Law of Contracts?

A. Mistake.
B. Fraud.
C. Duress.
D. False statement.
E. Immorality of object of contract.

25. One of the following *is* **not** attribute of *rights in rem* under the Ethiopian law:

A. Rights in rem consist of usus, fructus and abusus.
B. *Rights in rem* are not absolute.
C. *Rights in rem* are invoked only against a specific person or group of persons.
D. *Rights in rem* are enforceable before court of law.
E. *Rights in rem* can be obtained in an original or derivative means.

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26. Which of the following does **not** constitute object of (private) property under the current Ethiopian legal order?

A. Corporeal things of value.
B. Incorporeal things of value.
C. Land and natural resources.
D. Use right over natural resources.
E. Intellectual creations.

27. Which of the following statements **is** correct among the given alternatives?

A. A person, who suffers from damage due to a traffic accident, and who is entitled to compensation, will always have a cause of action in tort under the Ethiopian law.
B. Equity does not play any role in the assessment of compensation under the Ethiopian extra-contractual liability law.
C. Uncertainty as to the existence of damage is a defense for a perpetrator to escape liability under the Ethiopian tort law.
D. For a statement to be defamatory, it is necessary that it has to be broadcasted on electronic media.
E. A person who causes damage to the claimant is always relieved from liability if the act is ordered by his superior.

28. Identify the wrong statement about accessory things under the Ethiopian **law**?

A. The owner of a thing may put an end to the character of accessory of such a thing.
B. In principle, all transactions relating to things shall apply to accessories.
C. There is no accessory-principal relation if a thing is destined for economic use of another for a brief period of time.
D. There cannot be principal accessory relation between immovable and moveable properties.
E. The rights third parties have on a thing do not automatically come to an end by the mere fact of the thing being destined for economic use of another.

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29. Which one of the following is correct about immovable things in Ethiopia?

A. Only buildings and land are regarded immovable things.
B. A structure is classified as building as long as it serves as a house irrespective of whether or not it is affixed to land.
C. A structure should be affixed to or placed on land in a manner permanent in nature but its foundation does not need to be integrated with soil to be regarded as a building.
D. Whether a structure is classified as a building depends on the materials from which it is made.
E. The classification of land as immovable thing in the Civil Code has lost any merit due to the constitutional change of the land tenure system.

30. One of the following is **not** a valid ground of dissolution of companies:

A. Expiry of the period for which the company is established.
B. Prohibition by law of the business activities for which the company is established.
C. Death of both shareholders in a two member private limited company.
D. Loss of all the capital of the company.
E. Institution of bankruptcy proceedings against the company.

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SECTION II: MATCHING (10%)

MATCH EACH ITEM UNDER COLUMN 'A' WITH ITS BEST CORRESPONDING ITEM UNDER COLUMN 'B'

A	B
1. Strict Liability	A. Two years
2. Act or Omission	B. A remedy that the court may orders in order to convey the message that the defendant is at fault
3. Non-performance of a contractual obligation	C. Professional fault
4. Normal period of limitation for claims under the Ethiopian extra-contractual liability law	D. Diversion of power
5. Unfair Competition	E. A remedy which the court may order in order to cause the cessation of wrongful/tortious act
6. Nominal Damage	F. Defendant's fault unnecessary
7. Punitive damage	G. Standard of good conduct
8. Injunction	H. Necessary condition to establish the defendant's fault
9. Defamation	I. The Defendant in bad faith disseminates a false information to discredit the product of a company
10. An act done with firm order of the superior under strict military exigency situation	J. Ten years
	K. Defense under Ethiopian extra-contractual liability law
	L. A tortious act against the honor or reputation of the plaintiff
	M. An amount of compensation which the court may order in excess of the actual material damage that the plaintiff suffered due to the act of the defendant
	N. Outside of the scope of Ethiopian extra-contractual liability law

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SECTION III: SHORT ANSWER (10%)

GIVE SHORT ANSWERS TO THE FOLLOWING QUESTIONS

3.1. What is the importance of mandatory provisions of a law of contract? (5%)

3.2. Enumerate vices of possession under the Ethiopian law. (5%)

SECTION IV: ESSAYS (20%)

WRITE SHORT ESSAYS FOR THE FOLLOWING QUESTIONS

4.1. Discuss the procedures and requirements for removing a member of the board of directors of a share company. (10%)

4.2. Evaluate the validity of the following statement: "The testator has an absolute right to exclude his heirs other than his descendants under Ethiopian law." (10%)

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SECTION V: HYPOTHETICAL CASES (30%)

READ THE FOLLOWING HYPOTHETICAL CASES VERY CAREFULLY AND ANSWER THE QUESTIONS THAT FOLLOW.

5.1. HYPOTHETICAL CASE I (15%)

Omega University is a state owned university in Ethiopia. Mr. Tamiru is the president of the university assigned by the Government. Last year, the president concluded a contract for the construction of the fence of the university with Mr. Gedecho who was the friend of Mr.Tamiru from early childhood. Because of this intimate relationship, the contract was concluded orally. The contractor took 2,500,000.00 Birr (two million five hundred thousand Birr) in the form of advance payment at the time of the making of the contract. Following the conclusion of the construction agreement, the president of the University asked Mr. Gedecho to produce a guarantee that would guarantee the due performance of the contract of construction of the said fence. Accordingly, Mr. Gedecho requested Mr. Adecho to be his guarantor. Mr. Adecho accepted the request. Therefore, a contract of guarantee was concluded in writing between the University and Mr. Adecho. The contract of guarantee was also attested by four witnesses. Despite his commitment, Mr. Gedecho did not start constructing the fence alleging that he was not healthy. Nor did he return the money he took as an advance payment. Because of this, the University has sued both Mr. Gedecho and Mr. Adecho.

Assuming that you are the advocate of Mr. Adecho, what legal defense would you raise in favor of your client? (15%)

5.2. HYPOTHETICAL CASE II (15%)

Ararsa and Birtukan are a husband and wife. They have an enjoyable marriage for the last five years. The only problem they faced during their marital life is their inability to give birth to children. Medical evidence attested that the problem is attributable to both. While Birtukan is not naturally able to carry fetus, Ararsa, owing to permanent deformity on the outer part of his sexual organ in the aftermath of a car accident he endured, is not capable of engaging in sexual intercourse.

Realizing their defects, Ararsa and Birtukan planned to have a child through artificial insemination. To execute their plan, Ararsa and Birtukan agreed for the

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extraction of the sperm from Ararsa and inject into Birtukan's womb and, once fertilization took place, the transfer of a fertilized egg from Birtukan's womb to another lady called Tihitina. Both Tihitina and her husband, Habtamu, have agreed for the transfer of the fertilized egg in exchange of a large sum of money they received. According to the agreement, the fertilized egg was transferred to the womb of Tihitina. Then she became pregnant and a boy called Tariku was born. In this case,

5.2.1. Who should be considered to be the mother of the child as per the Revised Family Code? Why? (7%)

5.2.2. Who is the father of the child as per the Revised Family Code? Why? (8%)

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National Educational Assessment and Examinations Agency (NEAEA)

Law Exit Re-Examination (Nov. 2017)

Answer Keys and Model Answers

Part I : Private Laws

SECTION I: CHOOSE THE BEST ANSWER (30%)

1. E
2. C
3. A
4. A
5. E
6. D
7. C
8. E
9. E
10. C
11. B
12. A
13. D
14. C
15. D
16. B
17. D
18. A
19. D
20. C
21. B
22. B
23. B
24. E
25. C
26. C
27. C
28. D
29. C
30. C

SECTION II: MATCHING (10%)

1. F
2. H
3. N
4. A
5. I
6. B
7. M
8. E
9. L
10. K

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SECTION III: SHORT ANSWER (10%)

3.1. Legal provisions dealing with contract are of two types. These are mandatory provisions and permissive provisions. Mandatory provisions are found in the law of contract though this law is a private law. Such provisions are important to give meaning to public policy issues and concerns that would be useful for the society at large. For instance, mandatory provisions of the law stipulate that a valid contract cannot be established unless the contracting parties, among other things, are capable. Capacity is required by law because incapable persons (for instance minors, judicially interdicted persons and the like) cannot enter into a valid contract by giving their full and sustainable consent having understood the effects of their commitments. In this case, mandatory provisions of the law of contract are meant to protect these people who deserve protection by the state and the society. Mandatory provisions pertaining to form and object of contract, period of limitation and other matters of contract play their own roles in realizing public policy issues. (5%)

3.2. Violence, secrecy, discontinuity, ambiguity. (5%)

SECTION IV: WRITE SHORT ESSAYS (20%)

4.1. The procedures and requirements of removing board members of a share company are two. First, like any company matter board members of a share company can be removed if the general meeting resolves for one or more of the board members to be removed as provided under Article 354 of the Commercial Code. Even if the removal of a director is not in the agenda, any shareholder can raise at any meeting the issue of director removal and the meeting can discuss and resolve on the agenda, as provided under Article 297 of the Commercial Code. Secondly, a director would be removed when a

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general meeting votes on director liability. In such a case, if the resolution is adopted; or even if the resolution is not adopted, if shareholders representing 20% of the shares vote in favor of prosecuting the director, the concerned director would be removed. (10%)

4.2. The assertion is valid. Under Ethiopian law, the power of the testator to disinherit his heirs other than descendants is absolute and incontestable. He may exclude them by express declaration without giving any reason that would justify this dishersion (article 937 of the Civil Code). He has also the right to disinherit his heirs other than his descendants by appointing a legatee by universal title (article 939 of the Civil Code). (10%)

SECTION V: HYPOTHETICAL CASE (30%)

5.1. HYPOTHETICAL CASE I

From the given case, it is understood that the main (the principal) contract was concluded with a government agency since the University is a state owned university. Such contract cannot be valid unless it is made in writing and attested by two witnesses as we can understand from the reading of Arts.1724 and 1727 of the Civil Code of Ethiopia. However, the contract between the University and the contractor was concluded orally. This means that the principal contract is invalid. If the principal contract is invalid, the contract of guarantee, which is accessory to the main contract, is invalid as provided under Art.1923(1) of the Civil Code which states that a guarantee may not be given except in respect of a valid obligation. Therefore, as the obligation which gave rise to the contract of guarantee is not

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valid, the contract of guarantee cannot be valid and the guarantor can raise this defense if suit is brought against him by the University. (15%)

5.2. HYPOTHETICAL CASE-II

5.2.1. As it is possible to gather from Art.125 of the RFC, the mother of the child is the one who gave birth to the child. The one who bore the child (Tihitina) is the one who should be considered to be the mother. The contributor of the ovum (Birtukan) may not be considered to have given birth to a child. In the absence of the fact of birth, she cannot possibly be a mother of such child delivered from the "hostess" even if it is her own ovum that was actually fertilized. The agreement concluded between the twos to consider the contributor of the ovum the mother is an agreement which does not seem to be acceptable. The rules on the establishment of filiation cannot be avoided by the agreement of the parties unless there is an express provision authorizing such an agreement. As provided in Art.123 of the RFC, there is no provision that permits an agreement in derogation to the provisions on the establishment of maternal filiation. (7%)

5.2.2. Habtamu is the father. This is because of the legal presumption under article 126 and 127 of the Revised Family Code. He was Tihitina's husband at the time when she gave birth to a child (8%)

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