National Educational Assessment and Examinations Agency (NEAEA)

National Exit Examination for LL.B Programme Students of Ethiopian Law Schools Academic Year 2014

Part I: Private Laws

28 October 2014
Time Allowed: 3 (Three) Hours

Instructions:

- This is a closed book exam for all materials except clean copies pertinent Ethiopian Laws which can neither be lent to nor borrowed from other students.
- The Exam has five sections. The grades allotted for each are indicated beside the title of the section.
- Whenever Appropriate buttress your arguments with pertinent legal provisions
- You are expected to allocate your time based on the marks allotted per question.
- Write your answers in the answer sheet provided.
- Switch off your mobile phone.

Please do not turn this page until you are told to do so!

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SECTION I: CHOOSE THE BEST ANSWER (25%, 1% EACH)

1. What is the status of the relationship between the adopted child and his/her the family of origin?
   A. It ceases to exist as soon as an adoption agreement is concluded.
   B. It is not affected by the agreement of adoption.
   C. Its status is to be determined by the terms of the adoption agreement.
   D. Its status is to be determined having regard to the best interest of the child.
   E. Its status is to be determined having regard to the age of the child.

2. For a person to acquire ownership through occupation in Ethiopia:
   A. The object may be ordinary movable or special movable.
   B. The object should not have had a master at any point in time previously.
   C. Movables which are part of public domain are susceptible to occupation.
   D. Farm animals become susceptible of occupation and the owner loses his title one month after they escape his control.
   E. Farm animals like oxen and camels will be property without master when the owner failed to exercise his rights for ten years or when they are abandoned by the owner.

3. Under the 1960 Civil Code of Ethiopia, contracting parties do have full freedom to accomplish any of the following acts **except**:
   A. Determining mode of appropriation of payment.
   B. Determining the quality of fungible things.
   C. Determining the place, time, and manner of performance of the contract.
   D. Giving period of grace to a non-performing party.
   E. Determining the validity requirements of a contract.

4. Which of the following is different among the given alternatives?
   A. Product liability.
   B. Vicarious liability.
   C. Strict liability.
   D. Absence of fault not a defense.
   E. Liability imposed on producers.

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5. Which of the following is correct regarding transfer of ownership of immovable things through contract of sale in Ethiopia?
   A. The contract will not have any effect unless entered in writing, attested by witnesses, authenticated by notary, and registered.
   B. The contract will be binding between the contracting parties as long as it is written (and signed by parties).
   C. The contract will have a binding effect between parties only when it is entered in writing and authenticated.
   D. An owner who has entered in to a written contract (which is also authenticated) to transfer title to one party can enter in to valid contract of sale with second party over same immovable and transfer valid title to such party.
   E. C & D.

6. Which of the following statements is correct among the given alternatives?
   A. The fact that a person is legally declared liable for the act of the tortfeasor, according to the Ethiopian law, is not a bar for a plaintiff to have a claim against the doer of the act.
   B. The Ethiopian Law of strict liability always provides surrender options.
   C. Third party creditors, under Ethiopian law, may claim compensation from a tortfeasor as legal representatives of the victim irrespective of the nature of the damage the plaintiff suffers.
   D. A & B.
   E. A & C.

7. Which one of the following statements is **necessarily** true about the rights of a guarantor as per the Ethiopian Civil Code of 1960?
   A. A guarantor who has paid to the creditor has the right to claim indemnity from the principal debtor under all circumstances.
   B. Generally speaking, the guarantor has the right to set up defenses that could be set up by the principal debtor against the creditor even if the principal debtor declines to raise such defenses.
   C. The guarantor does not have the right to summon the creditor to proceed against the principal debtor before the maturity date of the obligation under all circumstances.
   D. All.
   E. None.

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8. Which of the following statements is correct among the given alternatives?
   A. In the Ethiopian law of extra-contractual liability, unlike the criminal law, the mental element of the defendant is irrelevant to decide whether or not he is at fault.
   B. Remedies in the extra-contractual liability law of Ethiopia are sometimes available when defendant's fault is proved regardless of the fact that an actual or perceived material damage occurs to the plaintiff's interest.
   C. Insanity is not a defense that can exempt a person from liability under the Ethiopian extra-contractual liability law.
   D. All.
   E. Only A & B.

9. Which of the following is **not** part of the right of a joint owner of a thing?
   A. A joint owner can pledge his share without the consent of other co-owners.
   B. A joint owner can avoid liability incurred in relation to jointly owned thing by surrendering his share.
   C. A joint owner can use a jointly owned thing without the permission of co-owners on condition that such use takes due account of the purpose for which the property is acquired and the rights of other co-owners.
   D. A Joint owner can block any collective decision regarding a jointly owned thing.
   E. B & D.

10. Which of the following donations or liberalities is **not** subject to collation?
   A. Any money spent for the education of the heir.
   B. Any money that is given to establish the heir.
   C. Money paid to settle the debts of the heir.
   D. Property or money given to the heir during his marriage in the form of dowry.
   E. None.

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11. Which one of the following statements is **not** true about subrogation under the Ethiopian Law of Contracts?
    A. It is exactly the same as the principle of indemnity in all circumstances.
    B. It is created by the agreements of the contracting parties both in the case of surety and plurality of debtors.
    C. It is applicable by virtue of the law.
    D. It is created by judicial decision in the case of surety.
    E. All.

12. Which one of the following statements is **incorrect** among the given alternatives?
    A. Damage is a necessary and sufficient condition to hold a perpetrator liable under the Ethiopian tort law.
    B. Uncertainty as to the exact amount of damage caused is a defense for a perpetrator to escape liability under the Ethiopian tort law.
    C. Causation is a general precondition for strict liability for damage under the Ethiopian tort law.
    D. A and B.
    E. All.

13. Identify **incorrect** statement (s) regarding possession in Ethiopia.
    A. A possessor can protect his possession by bringing possessory action thereby proving his titles to his property.
    B. A Possessor whose possession is usurped forcefully can restore his possession by applying proportionate force anywhere he meets the usurper.
    C. Possession is understood in Ethiopia in terms of only a physical control a person may have on a thing.
    D. B & C.
    E. All.

14. A contract duly created by the contracting parties:
    A. May establish the value of exchange.
    B. Defines the respective rights and obligations of the contracting parties.
    C. Enables the contracting parties to allocate risks in advance as between themselves.
    D. All.
    E. A and B.

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15. Which of the following statements is **incorrect** among the given alternatives?

A. Compensation by way of money is the only mode of remedy in the Ethiopian tort law.
B. The existence or otherwise of intention, according to the Ethiopian law, is always irrelevant to decide whether or not the defendant is at fault.
C. The Ethiopian Law of strict liability excluded consideration of fault from the side of neither of the parties to tortious litigation.
D. All.
E. None.

16. Which one of the following grounds of extinction of a contract necessarily requires the agreement of both contracting parties?

A. Termination.
B. Novation.
C. Cancellation.
D. Set- off.
E. All.

17. _____ is an **irrelevant** factor in determining the heir's capacity to succeed the estate of the deceased.

A. The manner in which paternity is ascertained.
B. Age.
C. Sex.
D. Nationality.
E. All.

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18. Which one of the following is correct regarding classification of things in the Ethiopian law?
   A. Accessories are movable things by nature destined permanently for economic utilization of only immovable things.
   B. Immovable by destination is an immovable property destined permanently for economic exploitation of another immovable thing.
   C. Movable by anticipation is an immovable thing by nature subject to a transaction that anticipates its removal and the law that governs transactions involving such things is the one that is applicable to movable things.
   D. Accessories are intrinsic elements.
   E. C & D.

19. Which one of the following statements is **not** true about joint and several liabilities of co-debtors under the 1960 Civil Code of Ethiopia?
   A. One of the co-debtors cannot validly refuse performance of the contract though the creditor has the liberty to proceed against the co-debtors.
   B. The creditor does have the right to claim the whole debt from one of the co-debtors irrespective of the amount of share of the co-debtors.
   C. If the consent of any of the co-debtors was vitiated by any vice of consent during the formation of the contract, any of the co-debtors can raise such defense against the creditor.
   D. All the co-debtors shall assume equal obligations towards the creditor where they fail to determine their respective shares of obligations in the contract.
   E. A and C.

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20. Art.1714 (2) of the 1960 Civil Code of Ethiopia stipulates that ***the court may not make a contract under the guise of interpretation [of the contract].*** Which one of the following inferences can validly be made from this legal provision?
   A. Ethiopian courts are prohibited to interpret contractual provisions even if the provisions are vague, ambiguous or contradictory since it is the contracting parties who have the power to determine the contents of the contract.
   B. Ethiopian courts are not prohibited from interpreting contracts where interpretation is genuinely called for because of ambiguity, vagueness or contradiction of contractual provisions.
   C. Contracts should come from interpretation where the parties have not clearly defined their respective contractual rights and obligations.
   D. All.
   E. B and C.

21. The law governing ordinary movable things applies to:
   A. Rights incorporated in all negotiable instruments.
   B. Immovables by destination.
   C. Movables by anticipation.
   D. Rights incorporated in securities to bear.
   E. C& D.

22. Which of the following is **not true** about debt of spouses?
   A. Personal debt of the spouses may be paid from common property.
   B. Personal debt of the spouses should be first recovered from personal property of the indebted spouse.
   C. Debts incurred in the interest of the house hold cannot be paid from personal property of spouses.
   D. Debts incurred in order to fulfill an obligation of maintenance to which one of the spouses is bound can be paid from common property.
   E. A & D.

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23. Which one of the following situations gives rise to judicial appointment of a liquidator?
    A. Where the testator left no heir.
    B. Where all the heirs are unwilling to liquate the succession.
    C. Where all the heirs renounce the succession.
    D. Where the heirs are unknown.
    E. All.

24. Which of the following concepts is unrelated to Ethiopian tort law?
    A. Restitution.
    B. Injunction.
    C. Enforcement of parties' commitment.
    D. Compensation.
    E. None.

25. Which one is correct about Ethiopian property law?
    A. It does not recognize ownership of incorporeal things.
    B. Expropriation is allowed only with respect to immovable things.
    C. Peasants do not have property interest in land.
    D. Limitations to ownership are justified only on public interest considerations.
    E. None.

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SECTION IV: WRITE SHORT ESSAYS FOR THE FOLLOWING QUESTIONS IN NOT MORE THAN 10 LINES (20%)

1. In relation to the difficulty and the importance of making judgment on whether a cause of action in a suit is on contract or tort, an author made the following statements:

> "....The distinction in practice is less clear, as many fact situations could give rise to an action in both contract (if there is a contract in existence) and tort...In such cases, it [ ] becomes necessary to decide whether to sue in contract or in tort.... Circumstances may arise in which it is necessary for a claimant to decide whether to base an action on tort or contract...." [Vivienne Harpwood *Principles of Tort Law* (4th ed. 2000) p. 3]

Comment in light of the above statements whether or not it makes any difference for a plaintiff in the Ethiopian legal system to base his claim on contract law or extra-contractual liability law. (7%)

2. If and when the contract of marriage is concluded during marriage, it shall be approved by the court. Why the law puts this condition for such contract of marriage? Doesn't it contravene the contractual freedom of the spouses? (7%)
3. Briefly explain the difference between patrimony and property. 6%)

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SECTION II: MATCH THE ITEMS UNDER 'A' WITH THOSE UNDER 'B' (10%, 1% EACH)

A	B
1. Absolute impediment	A. Age
2. Testator	B. A situation in which the deceased does not have heirs at all
3. Opposition to marriage	C. A remedial strategy
4. Renunciation	D. Alienation of the thing bequeathed
5. Escheat	E. Arrears of maintenance allowance
6. Relative impediment	F. A person who left no valid will
7. Express revocation	G. Refusal to succeed
8. No accumulation	H. Relation by consanguinity
9. Tacit revocation	I. Willingness to succeed
10. Prohibitory impediment	J. A person who left valid will
	K. A preventive strategy
	L. Common property
	M. Registration of marriage
	N. Making a contradictory will
	O. Period of widowhood

SECTION III: ANSWER THE FOLLOWING QUESTIONS IN NOT MORE THAN 4 LINES (15%)

1. What is the difference between condition precedent and condition subsequent under the Civil Code of Ethiopia? (5%)

2. Briefly explain the difference between will and donation. (5%)

3. Briefly discuss the limitations to ownership right under the Ethiopian law. (5%)

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SECTION IV: WRITE SHORT ESSAYS FOR THE FOLLOWING QUESTIONS IN NOT MORE THAN 10 LINES (20%)

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SECTION V: HYPOTHETICAL CASES (30%)

HYPOTHETICAL CASE I

Ato Dagnachew Bekalu is a resident of Addis Ababa. In the recent past, he engaged in giving tour and travel services to domestic as well as international tourists who would travel to the different regions of Ethiopia. To this end, he bought six Toyota Land Cruiser vehicles in 2010. He has also had a big shop at the heart of Dessie where he sells spare parts and tires. Though his tour and travel business was fairly profitable, he wanted to embark on mechanized agriculture since he had always had the desire to contribute his part towards ensuring food security in Ethiopia. On account of this, he determined to sell all of his vehicles. Accordingly, he sold one of his vehicles to a man called Ato Temtime Gemeda whose principal residence is Ambo.

The contract of sale of the vehicle was made in Addis Ababa, on the 8th of October, 2013. The contract was concluded in writing and was attested by two witnesses. In the contract, it was agreed that the whole price of the vehicle was 1,200,000.00 Birr. It was also agreed that the buyer would pay 50% of the total price of the car upon physical delivery of the car and the remaining half of the price of the car would be paid when transfer of title of ownership would be made from the seller to the buyer. As per this contractual clause, the seller delivered the car and the buyer paid the first half of the payment to the seller. Another contractual clause stipulated that transfer of title of ownership of the car from the seller to the buyer would be made within one month reckoned from the conclusion of the contract. The seller did everything to make the transfer of title of ownership of the car to the buyer and take the remaining amount of money from the latter. As such, the seller informed the buyer repeatedly that it was possible for the seller to transfer the title of ownership of the car to the buyer.

However, the buyer remained involuntary to come to Addis Ababa for the purpose of transfer of title of ownership of the car and take the title of ownership of the car from the seller. He has not also paid the remaining price of the vehicle. To the surprise of Ato Dagnachew, Ato Temtme sent a letter, dated 23 April 2014, to Dagnacew in which the former made it clear that he wanted to buy from the latter tires and spare parts. Ato Temtime told Ato Dagnachew that the latter should respond to the letter until May 10, 2014. However, Ato Dagnachew did not respond anything to

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the letter of Ato Temtime and did not send him the said spare parts and tires. On account of this, Ato Temtime gave a default notice to Ato Dagnachew, on the 28th of July, 2014, saying that unless the latter delivered the afore-mentioned tires and spare parts, he would bring suit against Ato Dagnachew.

Assuming that Ato Temtime has brought suit against Ato Dagnachew Bekalu alleging that the latter has breached his contractual obligation (by failing to deliver the spare parts and the tires indicated by the offer made by Ato Temtime), what defense would you raise in favor of Ato Dagnachew? (15%)

HYPOTHETICAL CASE II

Asres, Bekele, Taye and Alem are four friends who want to do construction business together. They wanted to form a PLC, but were not happy about the disclosure requirements of PLCs. PLCs have to register for VAT, and file so many reports every month. On the other hand, they do not want to set up a partnership as they were afraid of the unlimited liability. Thus, all, four, of them devised a mechanism whereby each of two of them will set up shell PLCs and the two PLCs created will, in turn, form a General Partnership. Hence, Asres and Bekele formed ASBEK Consulting Business PLC, and Taye and Alem created TALEM Consulting Business PLC. As was initially designed, ASBEK PLC and TALEM PLC through their general managers concluded a partnership agreement to form a general partnership with a firm name "ASBEK PLC & TALEM PLC Construction Business General Partnership." Following this, when they went to the Minister of Trade to complete business registration, the registrar told them that their application is unique, and they should come back after ten days to get the Ministry's decision as to whether or not they can proceed.

Meanwhile, the registrar approached you to advise him, whether the application can be accepted and the proposed general partnership can legally be set up between two PLCs.

You are the expert and give the registrar your reasoned advice. (15%)

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