# 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 09, 2017**

**Time allowed: 3 Hours**

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## PART III: PROCEDURAL LAWS AND SKILLS COURSES

## GENERAL DIRECTIONS

1. ATTEMPT EACH SECTIONS ON THE BASIS OF SPECIFIC INSTRUCTIONS INDICATED IN EACH SECTION.
2. THIS IS A CLOSED BOOK EXAM FOR ALL MATERIALS EXCEPT **CLEAN COPIES OF THE CIVIL PROCEDURE CODE, THE CRIMINAL PROCEDURE CODE AND THE FEDERAL COURTS ESTABLISHMENT PROCLAMATION** WHICH CANNOT BE LENT TO OR BORROWED FROM OTHER STUDENTS.
3. SUPPORT YOUR ARGUMENTS WITH PERTINENT LEGAL PROVISIONS WHEREVER APPROPRIATE.
4. PUT YOUR ANSWERS IN A SEPARAT E ANSWER SHEET ATTACHED TO THE EXAM.
5. YOU MAY ASSUME FACTS WHERE NECESSARY.
6. WRITE LEGIBLY.
7. SWITCH YOUR MOBILE PHONE.

**PLEASE DO NOT TURN THIS PAGE UNTIL YOU ARE TOLD TO DO SO!**

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## SECTION I: MULTIPLE CHOICE (30 %)

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

1. Which one of the following is **correct** about taxation of bill of costs of litigation under the Ethiopian Civil Procedure Code?

   A. The unsuccessful party must always pay
   B. The court has discretion to determine whether the unsuccessful party will have to pay
   C. Each party must always bear its own cost
   D. Decision on cost of litigation is final
   E. Compensatory cost is always equivalent to actual damage sustained.

2. The **WRONG** statement about review of judgment by court of rendition is that

   A. Any new evidence discovered after judgment is admissible
   B. The newly discovered evidence must implicate either party or his witness for some kind of impropriety
   C. The court may set aside its former judgment and retry the case
   D. Appeal is not an absolute bar to application for review
   E. Decision of the court on application for review is final.

3. When execution of a decree involves the sale of an immovable property through auction:

   A. The court commits procedural irregularity if it suspends the auction and allows the judgment-debtor to raise money by mortgaging or renting the immovable
   B. The bid of the joint owner of the immovable is deemed the winner if it is equal to the highest bid of another person
   C. The court can compel or force the highest bidder to pay the full price within 15 days of the sale of the immovable
   D. No irregularity in publishing or conducting the sale shall vitiate the sale
   E. There is no difference in the mode of delivery of the immovable in occupancy of the judgment-debtor and in occupancy of a tenant

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4. The **incorrect** statement about appeal under Ethiopian Civil Procedure Code is

   A. Finality is not always a requirement
   B. Non-parties affected by the decision of a lower court can also take appeal
   C. It is not a *de novo*
   D. Principally it is review of lower court's records
   E. It is adversarial.

5. Which one of the following propositions is **WRONG** about the courts system in Ethiopia?

   A. Courts have exclusive jurisdiction over all justiciable matters
   B. State courts have exclusive jurisdiction over all state matters
   C. Federal courts have no exclusive jurisdiction over all federal matters
   D. State first instance courts may have jurisdiction over cases arising under federal law
   E. State cassation power does not extend to federal matters

6. Which one of the following **is prohibited** under Ethiopian law of pleading?

   A. Pleading new facts without obtaining leave to amend from the court
   B. Pleading facts which constitute a cause of action
   C. Evasive denial of facts alleged by one's opponent
   D. Pleading time
   E. Pleading place

7. What can you possibly do as an appellate judge when a newly opened appellate file is put on your table before calling upon the respondent?
   A. Reverse the judgment of the lower court if the judgment is affected by error
   B. Order additional evidence if the lower court erroneously refused to admit it
   C. Dismiss the appeal if there is no error committed by the lower court
   D. Request the trial judge to explain matters
   E. Remand the case to the lower court if it has failed to address certain issues



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8. Which one of the following **IS NOT** a ground to discontinue the trial of a civil suit?

A. The death of a party
B. Compromise
C. Withdrawal
D. Payment into court
E. Extinction of the cause of action

9. Identify one that is **at odds** with the rest

A. Interim sale
B. Habeas corpus
C. Attachment before judgment
D. Temporary injunction
E. Arrest before judgment

10. The Ethiopian Civil Procedure Code is said to have adopted a very liberal approach on joinder of causes of action. This is to mean that

A. Federal and state causes of action can be joined in a single suit and may be litigated before federal court
B. Causes of action arising from different transactions can be joined in a single suit
C. The court must have local jurisdiction over all the causes of action joined in a single suit
D. The court does not need to have subject-matter jurisdiction over all the causes of action joined in a single suit
E. The court's pecuniary jurisdiction is in principle determined by the value of one of the causes of action

11. The **least effective** mode of service of summons in rural Ethiopia is

A. Posting summons on defendant's house
B. Newspaper
C. Serving on adult member of defendant's family
D. Personal service
E. Serving through the help of local *kebele* officials



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12. The **incorrect** statement about civil proceeding in Ethiopia is

A. Appellate court may order additional evidence
B. Trial court may order additional evidence
C. No evidence is admissible at the cassation level
D. Federal courts do not apply state laws when they consider state matters
E. Federal courts do not have appellate power over state matters

13. The procedural device of "opposition" under Article 358 of the Civil Procedure Code is

A. A corollary of intervention under Article 41 of the Civil Procedure Code
B. Meant to protect the interest of a defendant against whom *ex-parte* decree is passed
C. Useful for a third party whose property has been wrongly attached and sold in an execution of a decree
D. Similar with the procedural device called Impleader
E. Available at appellate court level

14. Which one of the following **is not** among the **goals** of Ethiopian criminal procedure?

A. Promoting the purpose of substantive criminal law
B. Ascertaining the truth
C. Ensuring fairness
D. Rule making about criminal offences
E. Ensuring public interest

15. It is better for 10 guilty persons go free than a single innocent person be convicted wrongfully. This statement reflects:

A. The punitive victims' rights model
B. The due process model
C. The crime control model
D. The non-punitive victims' rights model
E. The conventional model

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16. A suspect cannot be punished or held in contempt of court for failing to answer questions or provide documents to a prosecuting authority. This kind of protection represents:

A. The principle against double jeopardy
B. The principle of equality of arms
C. The privilege against self-incrimination
D. Forced confession
E. The principle of immediacy

17. Assuming that police officer P obtains search warrant to search the premise of Ms Q in want of some material evidence related to a crime of forgery. One of the following is **true**:

A. P can only search Q `s premise after securing Q`s consent.
B. P may not seize materials which are not listed in the search warrant.
C. P may search the premise any time so long as it is convenient for him/her.
D. Ms Q`s premise can only be searched by a female police officer.
E. P has no duty to show the search warrant to Q.

18. The main objective of introducing evidence at trial is to

A. ascertain the truth as between conflicting versions of facts by disputing parties
B. find the relevant and most appropriate governing law that helps resolving the dispute in law arising between litigating parties.
C. identify the most appropriate and governing precedent that helps resolving disputes bearing similar issues.
D. ascertain the party that bears burden of persuasion.
E. determine the party that bears the evidential burden



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19. Of the following identify the **INCORRECT** statement.

A. Some irrelevant items of evidence are admissible at trial in civil and criminal proceedings.
B. Evidence which is not relevant to a fact in issue or another relevant fact or to a collateral fact is not admissible.
C. All admissible evidence is not necessarily true or genuine.
D. All competent witnesses are not necessarily compellable witnesses.
E. All hearsay evidence is not necessarily inadmissible.

20. Which one of the following **may have** the effect of relieving a party to a dispute of the obligation to adduce evidence in respect of a particular fact in issue?

A. The operation of a legal presumption.
B. Presumption of innocence.
C. Oath.
D. Compurgation.
E. The operation of exclusionary rule.

21. Which of the following statements **is true** about rules of conflict of laws in Ethiopia?

A. Rules of conflict of laws are developed by the Federal Supreme Court of Ethiopia.
B. Rules of conflict of laws are enacted by the Office of the Prime Minister.
C. Rules of conflict of laws are best in the country that can solve problems on the area.
D. Rules of conflict of laws are yet draft laws in Ethiopia.
E. Rules of conflict of laws that are in force are directly sourced from France as other rules of the country.

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22. What is the essence of *lex fori*?

A. Where there are sufficient rules to solve the case at hand, foreign law applies.
B. Foreign law applies where the judge feels important to apply the rules.
C. Foreign law applies where the necessity arises to fill the gap of the local law.
D. Foreign law applies where the disputants agree for the application of the law.
E. Foreign law applies always regardless of the existence of local law.

23. When does the issue of conflict of laws come to scene?

A. The issue of conflict of laws comes into being where the local law element exists in a given case.
B. The issue of conflict of laws comes into being where the substantive and procedural rules of a given nation contradict each other.
C. The issue of conflict of laws come into being where different provisions of a given local law contradict each other.
D. The issue of conflict of laws arises only when the parties to the dispute feel that the law of a country is sufficient to solve the case at hand.
E. The issue of conflict of laws arises when foreign element exists in the case.

24. The theory of judicial jurisdiction that asserts that a forum state should try the case where it is convenient, fair and just to the parties is -------- theory.

A. equitable
B. subjective
C. fairness
D. minimum contact
E. civil law



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25. A and B agreed that State Z will try their case. This means that,

A. States other than Z are excluded to try the case.
B. any State of the forum can try the case.
C. States except Z can try the case
D. State of B only can try the case.
E. State of A only can try the case

26. In Ethiopia, one of the requirements to execute foreign judgment is where Ethiopian judgments are allowed to be executed in the country where the judgment to be executed is given. This is known as:

A. locality
B. exchange
C. reciprocity
D. due establishment
E. legality

27. The Federal Draft Conflict of laws of Ethiopia provides that in case of non-contractual liability, _____ is applicable.

A. the federal law
B. the Regional State law
C. the law of the place where the act (that has caused damage) occurred
D. the law of the victim
E. the law of wrong doer

28. According to _____, the debts must be governed by the law of the place in which the creditor is domiciled.

A. the theory of *lex situs*
B. the doctrine of foreign law
C. the secondary doctrine
D. the *lex loci domicili* of the debtor
E. the *lex loci domicili* of the creditor

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29. Under the conflict of laws, the formal validity of marriage is regulated by:

A. the law of the place where the ceremony of the marriage takes place
B. the law of the place where the husband resides
C. the law of place where the wife resides
D. the law of the place where the parents of the wife reside
E. the law of the more developed nation.

30. Where the agent and the principal do not choose effective law to govern their rights and obligations, _____ will apply.

A. public international law
B. the law that favours the principal
C. the law that favours the agent
D. the law of the state where performance by the agent is to take place
E. the law of the state of the principal.

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## SECTION II: MATCHING (10 %)

**MATCH EACH ITEM UNDER COLUMN "A" WITH ITS BEST CORRESPONDING ITEM UNDER COLUMN "B".**

| Column A | Column B |
|---|---|
| 1. Pre-trial discovery tool | A. Variance |
| 2. A single judgment on two or more suits | B. Damages due to a defendant |
| 3. Joinder | C. Appellant |
| 4. Transfer of suit | D. Request to admit a document |
| 5. Issue preclusion | E. Hearing a witness before departure |
| 6. Order of proceeding | F. Consolidation of suits |
| 7. Claim preclusion | G. Class action |
| 8. Cross-appeal | H. Change of venue |
| 9. Compensatory costs | I. Splitting a cause of action |
| 10. Departure from pleading | J. Res judicata |
| | K. Adversarial system |
| | L. Respondent |
| | M. Damages due to a plaintiff |
| | N. Inquisitorial system |
| | O. Ex-parte proceeding |



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## SECTION III: SHORT ANSWERS (10 %)

## GIVE A SHORT ANSWER TO THE FOLLOWING QUESTIONS

3.1. Explain the principle of equality of arms. (5 %)

3.2. Written pleadings of parties are the only sources from which a court should frame issues. Do you agree with this? Why/why not? (5 %)

## SECTION IV: ESSAY TYPE QUESTIONS (20 %)

## WRITE SHORT ESSAYS TO THE FOLLOWING QUESTIONS

4.1. Civil procedure is a means to an end; it is not the end by itself because the purpose of civil procedure law is to enforce substantive right using court litigation as a dispute resolution process. Explain how civil procedure can help to enforce substantive rights before the courts. (12 %)

4.2. Sometimes defendants swallow objects which implicate them of crimes. For example, drug dealers swallow drugs; thieves swallow stolen valuables. In such cases, surgery could be an option to search the person and seize the object. Which interests are at stake here? Which factors are relevant to determine whether surgery should be applied or not? (8 %)



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## SECTION V: HYPOTHETICAL CASE PROBLEMS (30 %)

### 5.1. Hypothetical Case I (18 %)

Plaintiff "A" claims that defendant "B" acted in bad faith while buying his stolen movable property from "T" and requests the court to order the recovery of his property from "B". Defendant "B" on his part averred that he bought the movable property in question from "T" in good faith assuming that the latter is the owner of the property. He asked the court to dismiss "A"'s claim as an unacceptable.

5.1.1. What is/are the fact(s) in issue in this case? (6%)

5.1.2. Who bears evidential and legal burdens of proof in respect of the fact(s) in issue in this case? Why? (12%)

(NB- The analysis should indicate the relevant and applicable laws.)

### 5.2. Hypothetical Case II (12 %)

Alemu and Kedija were married before the civil status officer in Addis Ababa three years ago. They are currently living and working in Hawassa. Recently, the wife, Kedija started to question the acts of her husband, and she found out that Alemu has extramarital love affairs with a young woman working with him in office. Kedija wants to lodge a case before a court. However, she is not sure which law should be the basis for her claim. Advise her.



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# National Educational Assessment and Examinations Agency (NEAEA)

Law Exit Re-Examination (Nov. 2017)
Answer Keys and Model Answers

## Part III: Procedural Laws and Skills Courses

### Section I: Multiple Choices (30 %)

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

### Section II: Matching (10%)

1. D
2. F
3. G
4. H
5. J
6. K
7. I
8. L
9. B
10. A



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## Section III: Sample Short Answers (10%)

**3.1. Explain the principle of equality of arms. (5 points)**

Equality of arms is a fundamental principle of fair trial. It involves giving each party a reasonable opportunity to present and defend its case, in those conditions that will not put this party in disadvantage against its opponent. This could relate to access to evidence and the right to review adversary evidence, opportunity to examine witnesses, time to prepare for defense, legal representation, among others.

**3. 2. Written pleadings of parties are the only sources from which a court should frame issues. Do you agree with this? Why/why not? (5 %)**

No. According to Article 248 of the Civil Procedure Code, courts can also frame issues from other sources such as documents produced by parties, and from allegations made by parties or their pleaders during examination of parties at first hearing.

## SECTION IV: ESSAY TYPE QUESTIONS (20%)

**4.1. Civil procedure is a means to an end; it is not the end by itself because the purpose of civil procedure law is to help us enforce our substantive right using court litigation as a dispute resolution process. Explain how civil procedure can help us enforce our substantive rights before the courts.** (12%)

Civil procedure of law helps us enforce our substantive rights before the courts using litigation as a medium of dispute resolution process because of the subject-matter it deals with. We can invoke the following points to support our view:

1. It tells us the court of competent jurisdiction which can hear and decide our dispute;
2. It tells us how we need to prepare and structure our pleadings which contain our claims and our defences;
3. It tells us when and how to produce our evidence to support our claim and defense and convince the judge in our favour;



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## Section III: Sample Short Answers (10%)

**3.1. Explain the principle of equality of arms. (5 points)**

Equality of arms is a fundamental principle of fair trial. It involves giving each party a reasonable opportunity to present and defend its case, in those conditions that will not put this party in disadvantage against its opponent. This could relate to access to evidence and the right to review adversary evidence, opportunity to examine witnesses, time to prepare for defense, legal representation, among others.

**3. 2. Written pleadings of parties are the only sources from which a court should frame issues. Do you agree with this? Why/why not? (5 %)**

No. According to Article 248 of the Civil Procedure Code, courts can also frame issues from other sources such as documents produced by parties, and from allegations made by parties or their pleaders during examination of parties at first hearing.

## SECTION IV: ESSAY TYPE QUESTIONS (20%)

**4.1. Civil procedure is a means to an end; it is not the end by itself because the purpose of civil procedure law is to help us enforce our substantive right using court litigation as a dispute resolution process. Explain how civil procedure can help us enforce our substantive rights before the courts.** (12%)

Civil procedure of law helps us enforce our substantive rights before the courts using litigation as a medium of dispute resolution process because of the subject-matter it deals with. We can invoke the following points to support our view:

1. It tells us the court of competent jurisdiction which can hear and decide our dispute;
2. It tells us how we need to prepare and structure our pleadings which contain our claims and our defences;
3. It tells us when and how to produce our evidence to support our claim and defense and convince the judge in our favour;



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4. It tells us the appeal and review processes by which we challenge the decision of the lower court if it is not in our favour;
5. It tells us the process by which decrees granted in our favor will be executed using the assistance of the court.

**4.2. Sometimes defendants swallow objects which implicate them of crimes. For example, drug dealers swallow drugs; thieves swallow stolen valuables. In such cases, surgery could be an option to search the person and seize the object. What are the interests at stake here? Which factors are relevant to determine whether surgery should be applied or not? (8 %)**

Under such cases, the society`s need to obtain evidence and convict the criminal on the one hand; and the defendants' right to privacy and right life, on the other hand, are in conflict. This needs to be balanced among others, having regard to the following factors:

- the extent to which the procedure threatens the safety and health of the individual;
- the need for evidence and its relevance;
- the availability of other options;
- the seriousness of the crime;
- the likelihood of producing the object / evidence.



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## Section V: Hypothetical Case Problems (30%)

**Hypothetical Case 1**

Plaintiff "A" claims that defendant "B" acted in bad faith while buying his stolen movable property from "T" and requests the court to order the recovery of his property from "B". Defendant "B" on his part averred that he bought the movable property in question from "T" in good faith assuming that the latter is the owner of the property. He asked the court to dismiss "A"'s claim as an unacceptable.

A. What is/are the fact(s) in issue in this case? (6%)

B. Who bears evidential and legal burdens of proof in respect of the fact(s) in issue in this case? Why? (12%)

(NB- The analysis should indicate the relevant and applicable laws.)

**Model Analysis for Case 1** (18%)

**A.**

According to Art 247(1) of the Civil Procedure Code, "Issues arise when a material proposition of fact or of law is affirmed by one party and denied by the other." In this case "A" alleged bad faith. But B denied this saying that he acted in good faith. Thus the issue will be: Whether "B" acted in bad faith while buying A's movable property from "T"? (6 %).

**B.**

According to Art. 1162 (2) of the Civil Code, the good faith of the acquirer/buyer of a movable thing shall be presumed saving evidence to the contrary. B is presumed to have acquired the movable thing in good faith assuming that the seller (T) is the owner. As "A" averred bad faith -

Arts 258(1) & 259(1) Civil Procedure Code- and as "B" is the beneficiary of the legal presumption under Art 1162(2) of the Civil Code, the plaintiff "A" bears both evidential and legal burdens of proof to establish that the buyer (B) did act in bad faith. (12%).

N.B- As this hypothetical case relates to evidence, students are not required to raise arguments related with Article 1165 of the Civil Code according to which good faith cannot be a defence with regard to stolen property. Such analysis can be accepted if a student argues that good faith is not relevant in this case as long as the seller "T" had stolen the property, and if the plaintiff's reclaim of property is not barred by the period of limitation stated under Article 1165(2).



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**Hypothetical Case 2**

Alemu and Kedija were married before the civil status officer in Addis Ababa three years ago. They are currently living and working in Hawassa. Recently, the wife, Kedija started to question the acts of her husband, and she found out that Alemu has extramarital love affairs with a young woman working with him in an office. Now, Kedija wants to lodge a case before a court. However, she is not sure which law should be the basis for her claim. Advise her.

**Elements of analysis expected in Case 2** (12 points)

In the case of Alemu and Kedija, the law of the federal Revised Family Code is applicable regarding their marriage ceremony which was concluded in Addis Ababa. However, they are currently living in Hawassa. According to the conflict of laws principle, the law of their domicile governs their relations.

Therefore, Kedija should base her claim on the law of Southern Nations, Nationalities, and People

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