National Educational Assessment and Examinations Agency (NEAEA)

National Exit Examination for LL.B Programme Students of Ethiopian Law Schoo ls

Academic Year 2011/2012

Part III: Procedural Laws and Skills Courses

21 March 2012
Time allowed: 3 (Three) Hours

Instructions:

- This is a closed book exam for all materials except clean copies of the Civil Procedure Code and the Criminal Procedure Code (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.

- 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!

Section 1- Multiple choice questions (25 points)

There are 25 multiple choice questions in this exam, each carrying *1 point*. Choose the best answer and write the letter of your choice on a separate answer sheet appended to this exam booklet.

1. Assuming that the evidence presented by the Public Prosecutor proves theft rather than robbery, the court shall render one of the following decisions:

   A) The case would be dismissed and an amended charge would be filed. B) The court would immediately convict the defendant of a new charge. C) The court may convict the defendant, if the latter consents.

   D) The case would be dismissed and the prosecutor is barred from instituting another charge afresh.

   E) None.

2. Identify the **correct** chain in Ethiopian criminal proceedings:

   A) Intake – investigation- charge – trial – defence - case for prosecution – sentence

   B) Investigation – charge – intake – trial –case for prosecution –conviction – sentence

   C) investigation –intake- charge –trial –no case motion – defence – acquittal

   D) Intake – investigation –charge –trial – no case motion – defence – conviction- sentence

   E) None.

3. A case is said to have involved a private international law matter: A) when it involves any foreign element

   B) if the transaction is of a private or public nature

   C) when the transaction is of a private nature and involves more than a single legal system.

   D) There is no hard and fast rule for that and must be decided on a case –by- case basis.

   E)

None.

4. A Court which gives emphasis to the sovereignty of its legal system will opt one of the following solutions whenever the problem of *renvoi* arises :

A) will totally dismiss the case

B) will apply the foreign substantive law in preference to domestic law

C) will prefer to apply domestic law to foreign law

D) will reject the *renvoi* and apply the law of the country as indicated by its conflict of laws rule.

E) will ensure first that such a problem never arises in its forum.

5. The legal method:
   A) only involves retrieval of the relevant facts and laws that are relevant to the issue/s in the case;
   B) only Involves critical analysis, interpretation and application of the relevant laws that are applicable to a given fact situation;
   C) refers to the method which lawyers use to find the law, interpret the law and explain the law as applied to issues and a given fact situation;
   D) only involves oral and/or written communication skills;
   E) can vary depending upon what the lawyer likes to do.

6. The pretrial task of formulating the client-attorney relationship includes:
   A) identification of the terms regarding the representation;
   B) determination of mutual obligations including fee arrangements;
   C) stating the details of the lawyering services to be provided;
   D) identifying the general profile of the evidence expected from the client;
   E) All of the above.

7. The settlement of disputes through negotiation can be efficient and cost effective because:
   A) Negotiation saves time and avoids the cost involved in litigation.
   B) Negotiation reduces the case load of courts thereby enabling them to devote more time to other cases under litigation.
   C) The concessions on both sides enable each party to gain some benefit. D) Negotiation retains the relationship between the parties involved.
   E) All of the above.

8. The potential outcomes of an appellate review are:
   A) confirmation of the lower court's decision on issues of law and facts; B) reversal of the lower court's decision;
   C) variation of the lower court's decision; D) Answers "a" to "c";
   E) Referral to the cassation bench if it has basic errors in law.

9. Appellate review means:
   A) a request that a judgment is not clear;
   B) an appeal to a higher court so that the case be remanded to lower court for review;

C) a request that more time be provided to the appellant in the execution of the judgment;
D) a request lodged solely against basic errors in law made by the lower court;
E) None of the above.

10. Indicate the statement to which you disagree:
    A) Identifying issues, preparation of the appellate brief and oral arguments are the key components of appellate advocacy.
    B) Persuasion is not among the core targets in appellate advocacy because facts and laws are themselves adequate to persuade the appellate court towards the appropriate decision.
    C) Mere focus on persuasion skills (style) without equal attention to the communication of facts and laws (substance) is futile.
    D) Knowledge about the court, the law, watching the bench, focus on substance and citing authority with care are among the key skills in appellate advocacy.
    E) Preparation, presentation and effective response to questions are the key elements in appellate oral arguments.

11. Identify the best answer among the following with regard to facts that can be raised during appellate litigation:
    A) In principle, no new facts can be raised in appellate litigation other than the ones that were raised at the lower court.
    B) New facts can be admissible for appellate litigation if they were raised but unduly rejected during trial at the lower court.
    C) The appellate court may take the initiative to admit new evidence. D) All of the above (a to c).
    E) None of the above.

12. In appellate advocacy, *the harmless error doctrine* means:
    A) The appellate court would allow minor errors of fact during the appellate litigation.
    B) The errors of law and fact made by the appellant and the respondent will always be classified by the appellate court as 'harmful' and 'harmless' for the purpose of analysis and decision.
    C) Errors of the lower court that do not alter the outcome of the case shall not bring about the reversal or variation of the lower court's decision.
    D) All errors made by lower courts are harmless as long as they are discovered by the appellate court.
    E) Errors made by litigating parties during the trial are harmless because they can be rectified during the appellate

litigation.

13. If Ato X is the resident of the State of Tigray and Ato Y is the resident of the State of Amhara, which one of the following statements is true about a civil dispute between X and Y?

A) Federal courts have exclusive jurisdiction over the dispute.

B) The law of the State of Tigray or that of the State of Amhara, as opposed to a federal law, may be applied by a federal court hearing the dispute.

C) The courts of the State of Tigray or that of the State of Amhara are competent to hear the dispute, but they must apply federal law to resolve the substance of the dispute.

D) Appeal does not lie to the Federal Supreme Court if the decision of a High

Court in Tigray is reversed by the Tigray

Supreme Court. E) B and D only.

14. The Ethiopian law of *res judicata* is

A) only an issue precluding device

B) applicable only if the former decision was given by a court of competent jurisdiction

C) an absolute bar to matters formerly decided between same parties litigating in the same capacities.

D) A non-waivable defense

E) None of the above.

15. A formal source of the Ethiopian law of civil procedure does not include: A) the FDRE Constitution

B) state laws and constitutions establishing state courts

C) federal laws establishing federal courts

D) the decisions of the Federal Cassation Bench of the Federal Supreme Court handed down by five judges.

E) None of the above.

16. Which of the following is correct about rules governing local jurisdiction under the Civil Procedure Code of Ethiopia?

A) The rules are helpful only to allocate judicial business between courts of a given judicial system exercising similar jurisdiction.

B) The rules help determine the allocation of judicial power between federal and state courts.

C) They go to the inherent power of the court and, as such the court's decree shall remain invalid if the rules are not complied with.

D) They are non-waivable. E) All but D.

17. One of the following propositions is correct about Ethiopia's federalism as it pertains to the judiciary:

A) The judicial power of states is limited to cases falling within the legislative competence of their respective governments.

B) Judicial power is the exclusive domain of regular courts.

C) The FDRE Constitution guarantees federal review of state matters through appellate process.

D) Parties to a dispute cannot agree to federalize a case.

E) The FDRE Constitution delegates to the legislative organs of the federal and the state governments the power to establish all the regular courts within their respective jurisdictions.

18. Civil procedure law is an adjective law.

This means: A) It is less important than substantive rules.

B) It does not have its own independent existence and relevance outside substantive rules.

C) Its interpretation and application should be guided by the end of substantive rules.

D) It should help a judge reach the same outcome as contemplated by the law maker on the merit of a dispute.

E) All but A.

19. The rules of joinder under Ethiopian law are:

A) Jurisdictional in nature in that non-compliance affects the validity of the decision of a court.

B) Procedural in nature in that the decision of a court remains valid despite non-compliance.

C) Procedural in nature but require the court to have local and material jurisdictions on each claim and party joined.

D) In principle limitative on the nature of claims and the number of parties to be joined.

E) B and C only.

20. Which one of the following is objectionable under Ethiopian procedural law?

A) Confronting the witness of an opponent with a document that is not appended to ones pleading

B) Leading a hostile witness of ones own

C) Standing as witness in own case

D) Refreshing the memory of own witness

E) Cross-examining a witness to obtain a testimony that proves own allegation.

21. If a pleading before a court of first instance is to serve its purpose, it must: A) Focus on the brief material facts of the case

B) contain summary of witness depositions

C) provide for an articulated analysis of the substantive rules governing the merit of the case

D) be amended if a party wants to introduce a newly discovered evidence

E) All of the above.

22. According to the principle of civil trial in Ethiopia:

A) Courts decide only those issues which the parties ask them to decide. B) Courts do have the function of discovering the ultimate truth.

C) Courts order additional evidence because they have the affirmative duty of assisting weaker parties.

D) Courts take centre stage in the examination

of witnesses. E) All of the above.

23. The court of rendition may be able to review its own decision if any one of the following grounds is present:

A) Failure to give due weight to an evidence

B) Failure to correctly apply a substantive law

C) A new evidence on the merit of the case is discovered

D) The previous judge of the bench gave an order to hear evidence on the merit even if preliminary objections are not ruled on

E) All of the above.

24. Which one of the following is wrong about **"issues"** in a civil proceeding?

A) Every point of disagreement between a plaintiff and a defendant constitutes a distinct issue

B) The major goal of first-hearing is to check whether parties are at issue

C) A judge is not always bound to determine all the issues he framed

D) Parties have the right to exclude the power of the judge over the framing of issues

E) The court must rule first on preliminary objections, if any, before it frames issues on the substance of the dispute.

25. The correct statement about Ethiopia's law of judgment and decree is that: A) The judge is not bound to state reasons for his decision.

B) A judgment can be given orally.

C) A decree may provide for terms of payment of money contrary to the express agreement of the parties.

D) Only the judge who gave a decree is authorized to sign it, otherwise the decree is null and void.

E) All except C are correct.

Section 2- Matching (10 points)

Match the items under Column "A" with their best corresponding items under

Column "B".

Column A

1. Cross-examination
2. Appellate court
3. Remand
4. Public prosecutor
5. Direct examination
6. Interlocutory orders
7. Release on own recognizance
8. Re-direct examination
9. Cassation Division
10. Pauper

Column B

A. Judicial officer delegated with some powers on evidence gathering

B. Third party practice

C. Referring case to court of rendition for new trial

D. Court fee

E. Summary procedure

F. Petty offences

G. Leading questions are prohibited

H. Non-appealable

I. Leading questions are allowed

J. Criminal charge

K. Accelerated procedure

L. Questions allowed only on issues raised during cross-examination

M. Appellate brief

N. Joinder of persons defending a common interest

O. The sequence in which evidence is produced at trial

P. Petition

Section 3- Short Answers
(15 points)

Give a short answer to the following questions

1. State the difference between direct evidence and circumstantial evidence. (4 points)
2. "A search warrant may not authorize seizure of self-incriminating evidence." Do you agree? Why or why not? (4 points)
3. What does a lawyer intend to prove to the court during cross-examination? (4 points)
4. An accused has the right to be tried within a reasonable period of time. State the factors on which the determination of 'reasonable period of time' can depend upon. (3 points)

Section 4- Essay Type Questions
(20 points)

1. Explain real evidence (including examples), and comment on the level of reliability of documentary evidence and the factors thereof (10 points)

2. Answer the following: (10 points)

   Ethiopia is on the verge of adopting plea bargaining. Whilst the system of plea bargaining offers significant advantages in terms of reducing caseloads, it has its own demerits. Explain at least two challenges the system may cause to the Ethiopian criminal justice system and state your suggestions regarding the means of addressing them.

Section 5- Case Problems (30 points)

Read the following hypothetical cases and answer the questions that follow.

1. Case Problem 1 (10 Points)

Solomon, an Ethiopian national, is a semi-pastoralist who has about 500 hundred heads of cattle. He cultivates rented land around Alatish National Park, the second national park in North Gondar situated between Quara Woreda and North Sudan. He crossed the Ethio-Sudanese border with his cattle and met She'Hadin, a Sudanese landlord. He rented 100 hectares of land from She'Hadin (based on a contract), who had already rented the adjacent land of 200 hectares to a Nigerian named Mbute.

Both Solomon and Mbute use their land holdings for the cultivation of Sorghum. Last week, Solomon's cattle were unattended and went to Mbute's holding, and entirely destroyed the sorghum plantation. Mbute has decided to bring a legal action based on tort liability against Solomon before the State Supreme Court in Bahir Dar.

Private International Law of Sudan provides that the law of place of the tortuous act (*lex loci delicti*) shall govern tort matters. On the other hand, the laws of Nigeria, allow the law of domicile of the defendant to govern such matters. Assume that the conflict of laws of Ethiopia provides that contractual matters shall be governed by the place of formation of the contract and extra-contractual liability claims shall be resolved by applying the law of place of the tortuous act. A foreign law, is defined by the laws of the Sudan and Nigeria to include the conflict of laws of a state. Ethiopia, however, rejects *renvoi.*

Based on the foregoing hypothetical case, attempt the following questions:

A) Determine if the State Supreme Court of Amhara Region can

assume judicial jurisdiction. **[5 points]**

B) Assuming the case was seen and decided by a Sudanese Court in Mbute's favor, would it be possible for Mbute to ask the relevant Ethiopian Court for the enforcement of judgment? **[5 points]**

2. Case Problem 2 (20 Points)

Ato **A** is a trader. He borrowed 10 million Birr from Ato **B** on the surety of Ato **C.** Ato A had planned to use the loan for expanding his business. **Ato C** agreed to stand surety without the knowledge and consent of his wife W/ro **D** because **A** and **B** thought that **D** would not object the loan as she is the younger sister of **A**. **A,** instead of investing the money on his business, spent it in gambling. **B** has sued **A** and **C** jointly.

Answer the following questions based on the facts and the relevant legal provisions

1. **C** received a statement of claim, annexes thereof and court summons instructing him to file his statement of defense and appear for a hearing. **C** is not interested to amicably settle the dispute through negotiation or arbitration. Nor does he want to abandon his claims against **A**. He wants your advice on how to avoid future and separate litigation with **A** on this matter if the court is going to hold them jointly and severally liable to pay the money to **B. [5 points]**.

2. **D** wants to know whether there is any procedural device that she can invoke to protect her interest
   a) during the proceeding between A, B and C **[5 points]**
   b) after the proceeding is concluded. **[5 points].**

3. When **A** became aware of the fact that his dearest friend **B** has sued him in court, he got frustrated and immediately started selling his house and donating his cars to his relatives. What procedural remedy do you think should **B** seek from the court to protect his interest pending the conclusion of the proceeding? **[5 points]**

Good
Luck

Answer Sheet Cover Page
Part III, LL.B Exit Exam

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DIRECTIONS:

Please read the following directions carefully before starting to work on the examination.

1. Write your first name, father's name (patronymic) and grandfather's name (surname) in BLOCK letters in the spaces provided below.
2. Write the Name of your University and your Registration Number on the spaces provided below in BLOCK letters.
3. Do not write your Name, Registration number or any other information regarding yourself inside the answer sheet from pages 15 to 20.
4. Code Number is for use by the National Agency for Examinations (NEAEA). Therefore nothing should be written on it.

LL.B EXIT EXAM PART III, NEAEA 2012
(2004 E.C.)

PROCEDURAL LAWS AND SKILLS COURSES

First Name **Father's Name**
Grandfather's Name

Registration Number _____

University _____

Code Number *(To be filled by NEAEA)* _____

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Answer Sheet for Part III, LL.B Exit Exam

CODE NO._____

SECTION 1: CHOOSE THE BEST ANSWER (25 points)

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SECTION 2: MATCHING (10 points)

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SECTION 3: SHORT ANSWERS (15 points)

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SECTION 4: SHORT ESSAY, QUESTION 1 (10 points)

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SECTION 4: SHORT ESSAY, QUESTION 2 (10 points)

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SECTION 5: CASE PROBLEM 1 (10 points)

SECTION 5: CASE PROBLEM 2 (20 points)