NATIONAL EDUCATIONAL ASSESSMENT AND EXAMINATIONS AGENCY (NEAEA) NATIONAL EXIT EXAMINATION FOR LL.B PROGRAMME STUDENTS OF ETHIOPIAN LAW SCHOOLS 2016/17 ACADEMIC YEAR

April 05, 2017 Time Allowed: 3 Hours

PART II: PUBLIC LAWS GENERAL

DIRECTIONS

1. ATTEMPT ALL QUESTIONS ON THE BASIS OF SPECIFIC INSTRUCTIONS INDICATED IN EACH SECTION.
2. **LAWS THAT CAN BE BROUGHT TO THE EXAM ROOM ARE: THE FDRE CONSTITUTION, THE CRIMINAL CODE, THE COMMERCIAL CODE, INCOME TAX PROCLATION, VAT PROCLAMATION, AND ENVIRONMENTAL IMPACT ASSESSMENT PROCLATION**
3. WHENEVER APPROPRIATE, SUPPORT YOU ARGUMENTS WITH PERTINENT LEGAL PROVISIONS.
4. PUT YOUR ANSWERS IN THE SEPARATE ANSWER SHEET.
5. PUT YOUR MOBILE PHONE OFF.

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

SECTION I: MULTIPLE CHOICES (25%)

CHOOSE THE BEST ANSWER FOR EACH QUESTION FROM THE ALTERNATIVES GIVEN.

1. Which one of the following statements is **correct?**
   A. The FDRE is an example of a state in which there is a complete separation of powers.
   B. A constitution is called rigid where no special process is required for its amendment.
   C. The British Constitution is an unwritten Constitution.
   D. In a federal state, federal organs of government are subordinate to regional organs.
   E. There is only one way of creating a federal state.

2. Which one of the following is a key feature of the constitution of a unitary state?
   A. The powers of government are divided between a government for the whole country and regional and local authorities in such a way that each region is constitutionally independent within its own sphere.
   B. The central government exercises its powers with substantial control from the regional governments.
   C. All governmental powers are centralized and although legislative and executive power may be given to regional and local organs of government these remain subordinate to the central legislature and may be overridden by it.
   D. The Head of State is an elected president.
   E. The constitution of a unitary state does not create the three branches of a government.

3. Which one of the following statements is **correct** concerning the key characteristics of the FDRE Constitution?
   A. The Constitution makes the Prime Minister the head of the state.
   B. The Constitution is a fundamental law of the nation.
   C. The Constitution is subordinate to the legislature.
   D. The Constitution is flexible.
   E. Laws of the parliament are superior to the Constitution.

4. According to the FDRE Constitution, the power to conclude international agreements is conferred upon:

A. the House of the Federation subject to ratification by the House of Peoples' Representatives.
B. the Judiciary subject to ratification by the House of the Federation.
C. the executive subject to ratification by the House of Peoples' Representatives.
D. the executive subject to ratification by the House of the Federation.
E. the regional councils subject to ratification by the House of Peoples'Representatives.

5. Which one of the following can best be used as a guideline to interpret the human rights provisions under the FDRE Constitution? *. .
A. Universal Declaration of Human rights.
B. Cases of the Supreme Court of the FDRE.
C. Federal government powers under the constitution.
D. Regional states interest.
E. General comments of the human rights committee.

6. Which one of the following theories is not related to the determination of the liability of a subordinate who executes an unlawful order of his superior?
A. Theory of blind obedience.
B. Theory of passive obedience.
C. Theory of intelligent infantry.
D. Theory of irresistible impulse.
E. Theory of manifest illegality.

7. Which one of the following sentences is not correct about the rule of *strict construction (interpretation)* of criminal law?
A. The rule requires narrow interpretation of criminal law at all times.
B. The rule is used when the provision of a criminal law is equivocal.
C. It applies only after the other rules of interpretation fail to solve the issue of interpretation.
D. As a last resort, the rule requires interpreting the provision of a criminal law in a way that favors the accused.
E. The rule is not explicitly recognized under the Criminal Code of Ethiopia.

8. Except one, all of the following choices express-the different ways in which a retroactive criminal law manifests itself. Identify the exception.
A. A criminal law that makes prior acts illegal.
B. A criminal law that increases punishment for a crime committed before its enactment.

C. A criminal law that increases the severity of a crime after the crime was committed:

D. A criminal law that changes procedural rules to increase accused's chance of conviction.

E. A criminal law that allows application of repealed laws to crimes committed under their regimes.

9. The following article is a modified version of art. 13 (1) (a) of Ethiopia's new Corruption Crimes Proclamation No.881/2015. Read the article and answer the question that follows. "Any public servant who, with intent to obtain for himself an undue advantage, and by using his power, improperly takes, by concluding a contract, an advantage in a business shall be punishable with simple imprisonment." What is the specific moral element that is required to apply this article?

A. Direct intention. ..

B. Indirect intention.

C. Advertent negligence.

D. Inadvertent negligence.

E. Intention in general.

10. One of the following categories of individuals is absolutely free from the provisions of the criminal law of Ethiopia. Who are they?

A. Insane persons.

B. Intoxicated persons.

C. Persons under the age of nine.

D. Young persons.

E. Coerced persons.

11. A procedure for evaluating the likely impact of a proposed activity on the environment and providing decision-makers with information about possible environmental effects a proposed action before decision is made as:

A. Environmental auditing.

B. Environmental Impact Assessment.

C. Process standards.

D. Prior informed consent.

E. Environmental monitoring.

12. Which one of the following choices represents a policy guideline or set of quality or process

conditions that are adhered to or maintained for a particular environmental component and function and, regulates the effect of human activity upon the environment?

A. Environmental monitoring.
B. Land Use Regulation.
C. Product standards.
D. Prior informed consent.
E. Environmental Standards.

13. One of the following documents is believed to be a Soft Source of environmental law. Which is it?

A. UN Declaration on Environment and Development.
B. Kyoto Protocol on Climate Change.
C. Vienna Convention of Ozone Depleting Substances.
D. Arbitral Award of the Trail Smelters Case
E. Stockholm Convention on Persistent Organic Pollutants.

14. Identify the item that is **not** included in the definition and elements of environment.

A. Characteristic aspects of the landscape.
B. Aesthetics.
C. Weather and climate.
D. Property which forms part of the cultural heritage.
E. Geographical boundaries.

15. From the options given below, identify the one that is true about Ethiopia's Environmental Impact Assessment (EIA) Proclamation.

A. Approval of EIA report exonerates proponents from future environmental liability for damage.
B. Environmental agency is legally obliged to make the EIA report public before evaluating it and making its own decision;
C. Once EIA is unconditionally approved, no circumstance can justify requiring proponents to do additional EIA.
D. The cost of undertaking an EIA shall be shared by the project proponent and government.
E. Project proponent can conduct the EIA him/herself if he/she meets the expertise requirement set by the agency.

16. International Bill of Human Rights **does not consists** of:

A. The International Covenant on Civil and Political Rights.
B. The International Covenant of Economic, Social and Cultural Rights.
C. The United Nations Charter.
D. The Universal Declaration of Human Rights.
E. Optional Protocol to the International Covenant on Civil and Political Rights.

17. Which of the following list of rights can be considered absolute rights under the FDRE Constitution?

A. Right to life, the right to hold opinion, the right to protection against bodily harm.

B. .. .The right to protection against bodily harm, the right to protection against slavery, the right to protection against inhuman treatment.

C. The right to protection against forced labour, the right to a public hearing, the right to protection against servitude.

D. The right of access to information, the right to life, the right to privacy.

E. The right to freedom of association, the right to freedom of conscience, the right to freedom of religion.

18. One of the following cannot be considered a guiding principle of the Convention on the Rights of the Child. Which **one is it?**

A. Affirmative Action.

B. The best interest of the Child.

C. Respect for the views of the child.

D. The right to life, survival and development.

E. The principle of non-discrimination.

19. From the choices listed below, choose a condition that may entail rejection of communications by the African Commission on Human and Peoples' Rights.

A. Compatibility with the African Charter on Human and Peoples' Rights.

B. Use of disparaging language directed against the state concerned.

C. Submitting communications after exhausting local remedies,

D. Submitting communications within a reasonable period after local remedies are exhausted.

E. Communications not exclusively founded on reports from the media.

20. Which one of the following is **not** a cardinal principle of international law as contained in the Charter of the United Nations (UN)?

A. Promotion of Human Rights.

B. Peaceful Settlement of Disputes.

C. Prohibition of the Threat or Use of Force.

D. The Prohibition of acquisition of the territory of States by force.

E. The sanctity of absolute sovereignty and exclusive domestic jurisdiction of states.

21. Which one of the following is a "subsidiary" source of international law by virtue of Article 38 of the Statute of the International Court of Justice?

A. International Custom.

B. Treaties.

C. General Principles of Law recognized by most nations.

D. Judicial Decisions.

E. Conventions.

22. According to the Constitutive Doctrine of Recognition, a new state is created by virtue of

A. Effective control.

B. A particular factual situation.

C. Its own efforts and circumstances without the need for recognition by other states.

D. The will and consent of already existing states.

E. The process whereby it obtained independence.

23. One of the following items is **excluded** from gross income during taxation of "Schedule A" taxpayers?

A. Overtime payments.

B. Fringe benefits.

C. Hardship allowances.

D. Payment in-kind by the employer to employees.

E. Back payments.

24. Identify the true statement regarding the difference between Zero rated transactions and Exempted transactions in VAT?

A. In exemption no VAT is collected but in zero rating VAT is collected but only from exports.

B. Persons dealing with exempted transactions are required to register for VAT whereas traders dealing with zero rating are not.

C. Zero rated transactions are inside the VAT system whereas exempted transactions are outside the VAT system.

D. Both are multistage VAT systems.

E. Exported items are exempted from VAT whereas as imported items are zero rated.

25. Which of the following is correct about Ethiopian tax jurisdiction?

A. Residents are required to pay income tax from incomes they receive in Ethiopia only.

B. Non-residents are required to pay tax from their worldwide income.

C. Residents of Ethiopia pay tax from worldwide income.

D. All Ethiopians are required to pay tax to Ethiopian government wherever they reside.

E. Foreigners are required to pay tax from incomes they generate in Ethiopia only.

SECTION II: MATCHING (10%)

CHOOSE THE BEST MATCH FOR THE ITEMS UNDER A FROM THE ITEMS UNDER B.

A.	B.
1. Recall of elected representatives	t A. Reservation
2 Right-wrong test	P'. Causation
3 Paris Agreement (2015)	C. Attribution
4 Exclusion of legal obligation/legal effect	jp. Margin of appreciation
^ 5. Discretion for human rights application	E. Common heritage of mankind
6 Liability for the actions of one's agents	F^, Government Accountability
7 Resources incapable of national appropriation	Gi Impeachment
8 Income from royalty	H. Sentencing
9 *Sine quo non* theory	I. Insanity
1 0 . Trail Smelters Case (1941)	J. House of the Federation

K^Climate Change *y* Schedule "D"

My The Right of Hot Pursuit

N. Duty not to cause extra-territorial harm

O. Non-taxable income

R. Defense of justification

SECTION III: SHORT ANSWERS (15%)

GIVE SHORT ANSWERS TO THE FOLLOWING QUESTIONS.

3.1. Mention three important roles environmental impact assessment (EIA) plays in environmental governance. (9%)

3.2. Define the concept *asymmetric federalism.* (6%)

SECTION IV: ESSAY TYPE (20%)

4.1. Write an essay that explains the difference between human rights and other rights such as
legal rights! (10%)

4.2. Write an essay that explains the nature and root causes of statelessness and the legal response to the problem of statelessness. (10%)

SECTION V: HYPOTHETICAL CASES (30%)

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

5.1. Case I (15%)

Last week, Kibrom gave Yisak a check which is worth 100,000 birr. The check was to be cashed at Mercury Bank in Mekelle. Unfortunately, when the check was presented for payment two days later, the Bank refused to pay claiming that the date on which the check was drawn is not written or indicated. The bank explained to Yisak that, based on article 828 of the Commercial Code, a check with no drawing date is an ordinary document, not a check, and hence it does not entitle him to any payment. Annoyed by what happened, Yisak reported the case to the local police. Although its drawing date was not written, the police investigated the check and found out that it was actually issued without cover. Then, based on the result of the investigation, the concerned prosecutor charged Kibrom for violating art. 693(1) of the criminal code. However, Kibrom's lawyer objected to the charged claiming that *since the check does not fulfill all the requirements for a valid check, it doesn't entail violation of article 693(1).* In effect, the lawyer is trying to show that the legal element of the alleged crime is missing by arguing that Kibrom's act is not prohibited by the criminal code (art.693(l). Moreover, the lawyer's objection is based on the decision of the Cassation Bench of the Federal Supreme Court which allows raising such objection to a criminal charge under art. 130(2) of the criminal procedure code. On his part, the prosecutor responded to the lawyer's objection by saying "as long as the check is issued without cover, there should exist no difference between a check on which the date of issuance is **written** and a check on which the date of issuance is **not written."** The judge accepted the prosecutor's argument, rejected the

lawyer's objection, and ordered the proceeding to continue under article 693(1) of the Code. Now, Kibrom's lawyer believes that the *order* of the court might have violated an element of the principle of legality but he is not sure which.

Which element of the principle of legality do you think is probably violated by the judge's order? (15%)

5.2. Case II (15%)

Mr. A is an owner of a building and a VAT registered person. XLY Pic (a VAT registered business), has started negotiation with Mr. A to open its new office in the building. After long and tedious negotiation, representatives of Mr. A and XLY Pic agreed on the terms and conditions for the rent. XLY Pic agreed to pay 1,000,000 (One Million) birr per year for the building.

Sadly, no one raised tax issues of during the negotiation process. The issue attracted the attention (or, more appropriately, came to the minds) of the parties only after the lease contract was signed.

If the parties approach you for legal advice on the following two issues, what would your advice be?

5.2.1. What is (are) the type(s) of tax(es) that must be collected from this particular transaction?(8%)

5.2.2. Who is responsible for the payment of the tax(es)?(7%)