UNIT ONE - INTRODUCTION

- **Historical various stages of BO in Eth**
- BO- **grew from a single** individual **to a group** of individuals organized**,**
- **first in some sort of partnerships,**
- ➢ **then in a more refined type of partnership and**
- ✓ **finally to a corporate form**

single individual **group** of individuals
sort of partnerships refined of partnerships corporate form

Subjective Vs **Objective Orientation of the Commercial**

- **1. General Orientation of the 160 or The New Commercial Code of FDRE Proclamation No. 1243/2021**
  - **Subjective** or **Objective**???
- **Subjective**-
- **Subjective** Commercial Code regulates a **community of persons** designated as "**traders**".
- It considers **persons** having the **status of a trader** must take into consideration **profession or activities** which deems to have a **commercial character.**

Objective features

- **Objective** commercial code **regulates acts** known as "**acts of commerce**", as **opposed** to persons.
- The **scope of application** of such commercial code is determined entirely by the **enumeration of these acts.**
- QQ- What is the orientation of our commercial code??
- Is it Subjective or Objective???
  - **Read** Art **5 and 10** and try

Subjective features of the Code

- This can be **gathered** from **Articles 5** and **10** **i.e., the definitional** provisions of **traders** and **commercial business organizations**.
  - Q-What about the **list of acts** (**commercial activities)** under Art 5???
  - It seems Objective feature but it is **secondary**
- **Subjective features** of the Code can also be detected easily from **Books I and II** of the Commercial Code - **the logical organization** of the Law of Trades and Business Organizations which **regulates a**

Civil vs. Commercial law dichotomy

- Article **1** of the Commercial code provides that "**Unless otherwise provided** in this code, the Provisions of the **Civil Code shall apply**
- So. Article 1 provides for the **pre-eminent place of the Civil law** i.e **priority of civil law**
- Hence, the only reason for the

Definition of Trader and **Exclusion** from the Definition of Traders

Definition of Trader see **Art. 5**

- Traders are persons who professionally and for gain carry on activities listed under Art. 5
- Art. 5 has two key elements:- **General condition** and **Special condition**
- **1. General condition** which consists, in the existence of
  - 1. an **enterprise** or business,
  - 2. a **profession**, and
  - 3. the **goal** of realizing **profits**.
- **2. Special condition**= the person carries out any of the **activities enumerated in art. 5** as his/her business object.

The General condition

- According to the **general condition, a** physical **person becomes a trader if and only if:-**
  - **1. Operating a business or an enterprise**,
  - 2. **Profession,** and
  - **3. Goal of realizing profits**

The special condition

- According to the special condition, the **business objects** of such person has to be **carry out one or more of the activities listed in Article 5** of the Commercial Code
- There are **37 enumerations** under Art. 5
- **Q?** Is the 37 enumerations under Art. 5 **illustrative** or **exhaustive**?
- The list in Art. 5 was meant to be **exhaustive**.

Exclusion from the Definition of Traders Art. 6-9

- **Negative Definition of trader:**
- The negative Definition- Art. 6-9 exclude:-
- **Small-Scale Works**,
- **Small-Scale Works,**
- **Agricultural and Forestry Undertakings,**
- **Holding Company** shall **not** be deemed to be traders

- The **old code** under Art. 6-9 exclude Farmers, Fishermen and Artisans.

Rights and Duties of Traders

- **Rights**
- Freedom to carry on Trade Art 21
- **Duties**
- Restrictions specified by law or
- Prohibitions
- Unfair competition ...

Concept and **Definition** of **Business** under Ethiopian Law

- **Definition**:-
- A business is an **incorporeal** movable consisting of **all movable property** brought together and organized for the purpose of carrying out any of the commercial **activities in Article 5** of this Code.
  - See Old Code Art. 124
  - See New Code 106

Elements of business

- There are **Two (2)** main elements of business
  - 1. Incorporeal element
  - 2. Corporeal element
- Business consists of **incorporeal** and **corporeal** movable properties which are assembled together to **attract customers**
- Business = embraces **tangible** and **intangible** assets
- It is **an entity distinct from its constituent elements**, as long as the whole is more valuable than the sum of the constituent parts
- So, it is a *res*, **thing**, or object over which a person can exercise **property rights**, including **ownership, usufruct, and lease**.

1. **Incorporeal element**

- The ultimate essence or quality of any business is its **incorporeality** irrespective of the existence of **corporeal** elements.
- Incorporeal movable refers to intangible movable properties which includes:-
  - Goodwill
  - Trade-name or trade mark
  - Patent, copy rights,
  - Special rights attached to the business
  - Special designation under which the trade is carried on;
  - Right to lease the premises in which the trade is carried on
- See Old Code Art. 127
- See New Code Art. 109

2. **Corporeal element**

- Corporeal elements that make up a business include **equipment** and **goods**.
- The **corporeal** (**tangible**) **elements** that make up a business **include equipments** and **goods i.e tools, raw materials, goods in stock ….**
  - See Old Code Art. 128
  - See New Code Art. 110

Exclusion from the ambit of the definition

- **Immovables** = i.e. the **business premises** and **land on which the premises has been erected**, had been **excluded** from the ambit of the definition of the **elements of a business** even though they are owned by the trader himself

- **Q?** What is the effect of being within/out of Element of a business????

GOODWILL AND ITS PROTECTION

- It is the **reputation** of business in the public eye that attracts customers.
- **Goodwill** results from the **creation and operation** of a business.
- Goodwill is another name for **reputation**, credit, **honesty**, fair name, reliability of a business.

➢ The law protects the goodwill of a business because of its goodwill that a business can have customers.

  - See Old Code Art. 130
  - See New Code Art. 112

Goodwill Protection by Unfair Competition Law

- To protect the goodwill of a business there are **two alternative courses of action**s
  - **1. Unfair competition claim**
  - **2. Legal or contractual prohibitions**

This will be discussed Under Ch 2

- Consumer Protection and Trade Competition