

What is LAW?

- Defining the term 'law' is **not an easy task** because
- The term **changes** from time to time and
- **Different** scholars define the term variously.
- Definition of the term may **vary** due to the different types of **purposes** sought to be achieved.

Cont...

- There are so many different definitions given to the term 'LAW'
- Jurists have defined law differently from different point of views.
- It has been called **Dhama** in Hindu, and "**Hukum**" in Islamic system.
- **Romans** called it **jus** and in **Germany** and **France**, it is called as **Recht** and **Droit** respectively.

Black's Law Dictionary
defines law as:-

“**Rules** of action
issued by an **authority**
and have **binding** force
followed by **Sanction**,

Cont...

- American jurist, **Benjamin
Nation Cordazo** defines law as
 - “a principle or rule of conduct so established as to justify a production with **reasonable** certainty that it will be **enforced** by the **courts** if its authority is challenged.”

Cont...

- ✓ For **Holmes** “Law is the prophecies of what the **courts will do** in fact, and nothing more pretentious, are what I mean by the law”.

According to him **courts play great role** in **applying** as well as **creating** the law.

Cont...

✓ Max Weber (Sociologist)

argues that law has **three** features that **distinguish** it from other normative orders such as **custom** or convention:-

- 1). There must be a **pressure** that comes from **external** in the form of **actions** or **threats** of action by others regardless of the person wants to obey the law or not;

Cont...

- 2) These external actions or threats of action always involve coercion or force;
- 3) Individuals whose official role is to enforce the law must enforce the coercive action.

1.2. BASIC FEATURES OF LAW

- Analyzing the **features** and nature **common** to all laws would **help** us to **understand** the concept of law.
- ❖ The common features and natures of law, **include**:-
 - **Generality,**
 - **Normativity** and
 - **Sanction.**

I) GENERALITY

- Law is a **general rule** of human conduct.
- It does **not specify** the **names** of specific persons or **behaviors**.
- Hence, its generality is **both** in terms of the **individuals** governed and in terms of the social **behavior** controlled.

Example

- “Every one has the right to life, liberty and the security of a person.”
- [Art 3, UNDHR; 1948]and
- Art 14 of FDRE Constitution.

Purposes of Generality

- ❖ Generality nature of the law **serve two purposes.**
 - **1st**, it promotes **uniformity** and **equality** before the law.
 - **2nd**, it gives **relative permanence** to the law.

II) NORMATIVITY

- Law is created with the **intention to create some norms** in the society.
- Law creates norms by:-
 - **Allowing,**
 - **Ordering** or
 - **Prohibiting** the social behavior.

Cont...

- Based on this feature, law can be classified as:-
- **Permissive,**
- **Directive or**
- **Prohibitive.**

III) Sanction

- Where there is violation the law sanction would follow.
- Sanction is a penalty or coercive measure that results from failure to comply a law.

1.3 . MAJOR THEORIES OF LAW

- There are **different** theories with regard to the concept of law.
- Considering those theories would **help us to understand the concept of law**.
- Thus, we will consider some of these theories.

1.3.1. NATURAL LAW THEORY

- Natural law theory is the **earliest** of all theories developed in **Greece** by philosophers
- These philosophers in their studies of the **relation** between **nature** and **society** have concluded that there are **two types of law** that govern

1. Positive laws

- . **Positive laws** any law **made by person** to control the **relations within a society** and so it may **vary** from **society** to society and also from **time** to time within a society.

2. Natural laws

- **Natural** laws, a law that is **not made by person** but controls **all human beings of the world** and **do not vary** from **place** to place and from **time** to time.

Such laws are used to **control** or **weigh** the laws made by human beings

Cont...

- This “Natural law” is given different names based on its characteristics.
- such as:-
 - Law of reason,
 - Eternal law,
 - Rational law, and
 - Principles of natural justice

Contribution of Natural law theory

- Natural law theory has served different societies in many ways:-
 - The Romans used it to develop their laws as jus civile, and jus gentium, laws governing roman citizens, and their colonies and foreigners respectively.
 - The Catholic Pope become dictator due to the teachings of St. Thomas Aquinas that natural law is the law of God to the people and that the pope was the representative of God on earth

Cont...

- Locke, Montesque and others taught that person is created free, equal and independent by taking the concept of Natural law.
- Rousseau's teachings of individual's right to equality, life, liberty, and security were based on natural law.
- The English Revolution of 1888,
- The American Declaration of Independence.
- French Revolution of 1789 were also results of the Natural law theory.

The Shortcoming of Natural Law

- No scholar could provide the precise contents of the natural law.
- As a result, it was subjected to criticisms of scholars like John Austin who rejected this theory and latter developed the imperative called positive law theory.

1.3.2. POSITIVE LAW THEORY

- This theory is also called, **imperative** or **analysts** law theory.
- According to this theory, law is the rule **made** and enforced by the **sovereign** body of the state

Cont...

- Rules made by the sovereign are laws irrespective of any other considerations.
- There is no need to use reason, morality, or justice to determine the validity of law.
- These laws, vary from place to place and from time to time.

Cont...

- According to this theory, law is a **command** of the **sovereign** to his/her subjects.
- There are **three elements** in it:-
 - 1. Command;
 - 2. Sovereign; and
 - 3. Sanction.
- The followers of this theory include **Austin**, **Bentham** and H.L.A **Hart**.

Criticism to this theory

- There are Criticism on three /3/ points:-
- 1. Defining law in relation to sovereignty or state because
 - ✓ Law is older than the state historically and this shows that
 - ✓ Law exists in the absence of state.

Cont...

- 2. The observance of many rules is secured by the promise of reward rather than imposing a sanction.
- Law is obeyed because of its acceptance by the community.

Cont...

- 3. It is **superficial** to regard the **command** of the **sovereign** as the **real source** of the **validity** of law.
- Many regard law as **valid** because it is the **expression** of **natural justice** or the embodiment of the **spirit of people**

1.3.3. MARXIST LAW THEORY

- Marxists believe that private property is the basis for the coming into existence of law and state.
- They argue that those who have exploit those who do not have these means by making laws to protect the private property.

Cont...

- The theory has the assumption that people can attain a perfect equality at the communism stage in which there would be:-
 - no private property,
 - no state and
 - no law.

Criticism to this theory

- Perfect equality and communism not attained yet.
- This theory is challenged and the theory of private property triumphs.

1.3.4. REALIST THEORY OF LAW

- This theory of law is interested in the **actual working** definitions **of the law** rather than its traditional definitions.
- It provides that **law is what the judge decides in court.**

Cont...

- This theory believes that the **lawmaker** is the **judge** and **not** the **legislative** body.
- As per this theory, rules not put to use to solve **practical** cases are **not** laws but **merely existing as dead words**.

Cont...

- This **theory** has its basis in the **common law** legal system in which the decision previously given by a court is considered as a **precedent** to be used as a law to decide **future similar** case.

Criticism to this theory

- This theory has been criticized by scholars and countries following civil legal system for the only laws of their legal system are legislation but not precedents.

1.4. FUNCTIONS OF LAW

- Why we need law?
- What functions does law have in your localities?
- As the issue of definition of law, there is **no agreement** among scholars as to the functions of law.

Cont....

- As law is a **dynamic concept**, it keeps on **changing** with **time** and **place**.
- In the modern sense, law is considered **not** as an end in itself, but is a **means to an end**.
- The **end** is securing of **social**

The different views of Jurists on purpose and function of law

- **Salmond** pointed out,
- “law is a **body of principles** recognized and applied by the State in the **administration of justice.**”

Cont...

- Hobbes and Locke said
- “the end of law is not to abolish or restrain but to preserve or enlarge freedom and liberty.”

Cont...

- For **Kant**, the aim of law is the adjustment of one's freedom to those of other members of the community.

Cont...

- Bentham gave a very **practical** version of the purpose of law, which according to him, is **maximization** of the **happiness** of the **greatest** number of the members of the community.

Cont....

- According to **Holland**, the **function** of law is to **ensure the well-being** of the society.
- Thus it is something **more** than an **institution** for the **protection** of individuals' rights.

Cont...

- **Roscoe Pound** attributed **four** major functions of law, namely:-
 - (1) maintenance of law and order in society;
 - (2) to maintain status quo in society;
 - (3) to ensure maximum freedom of individuals; and
 - (4) to satisfy the basic needs of the people.
- He treats law as a species of social engineering.

The object of law

- The object of law is to ensure justice.
- The justice may be either distributive or corrective.
- Distributive justice seeks to ensure fair distribution of social benefits and burden among the members of the community.
- Corrective justice, on the other hand, seeks to remedy the

Law and Justice

- Justice alone is **not** the only goal of law.
- The notion of law represents a basic **conflict** between **two different needs**, namely, the need for **uniformity** and the need for **flexibility**.
- **Uniformity** is needed to provide **certainty** and **predictability**.

Cont...

- That is, where laws are **fixed** and **generalized**, the citizen can **plan** his/her activities with a measure of **certainty** and **predict** the legal consequence of his/her conducts.
- **Uniformity** and **certainty** of rules of law also bring

Cont...

- **Flexibility** of law provides some measure of **discretion** in law to make it adaptable to social conditions.
- If law is **rigid** and unalterable, it may **not respond** to **changes** it may lead to resentment and dissatisfaction among the subjects and may even result into **violence or revolution**.
- Therefore, some amount of **flexibility** is inevitable in law

Today's functions of law

- **A) Social control** – law is used to control behaviors inculcate **socially acceptable** social norms among the members of the society
- **Lawrence M. Freedman** explains the following **two ways** in which law plays important role in social control:-
 - **1st** , law clearly **specifies** rules and norms that are essential for the society and **punishes** deviant behavior.
 - **2nd** , the legal system carries out many rules of social **control**.
- **Police** arrest burglars, **prosecutors** prosecute them, **courts** sentence them, **prison** guards watch them, and **parole** broads release

Cont...

- **B) Dispute settlement**:-
Disputes are unavoidable in the life of society
- Disagreements are resolved by law in court or out of court using alternative dispute settlement mechanisms

Cont...

- **C) Social change**:- Law in modern society as instrument to social change.
- Law enables us to have purposive, planned, and directed social change.
- **Flexibility** of law provides some measure of discretion in law to make it adaptable to social conditions.

1.5. RELATIONSHIP BETWEEN LAW AND STATE

- There are **three** main legal theories with regard to the relationship between law and state.
- They are:-
 - 1 The state is **superior** to and **creates** law;
 - 2. Law **precedes** the state and **binds** it when it comes into existence; and
 - 3. Law and the state are **the same** thing looked at from different points of view.

1. The state is **superior** to and **creates** law

- This idea emanates from the **theory of sovereignty**
- **Austin** explains that state is superior to and creates law when he defines law as the **command of the sovereign**.

Cont...

- According to Austin, there must be a political society and within this community, the **superior** has a **sovereign power** to lay down the law.
- The **sovereign** is **above the law**, but a member of the legislature is **individually bound** by the law.

Cont...

- Some writers of this theory **justify** sovereignty as a **moral necessity**.
- For example, **Hegelianism** treats the state as a **supreme moral end**.
- They hold that the State is:-
 - **Value in itself;**
 - **Is not bound** by the rules of

Cont....

- This theory 'grants to **state absolutism** the virtue of **moral truth**' **divine idea** exists on earth'.
- This theory has been carried farther by the **Naizi** and **Fascist** conceptions, which regard **law as the will of the Leader**.

Cont...

- These doctrines treat law as:-
 - an instrument of executive action,
 - not as a check upon it:
 - weapon to achieve the ends of state policy,
 - not a chain to hamper the executive.

2. Law precedes the state and binds it

- According to this theory, the **sovereign** has absolute power over positive law, but is **bound** by ***ius naturale***.
- **They** hold that law in the full sense was achieved **only** when it **bound both ruler and ruled**.

Cont...

- **Ihering** argues that the **state voluntarily** submits to the law it has created.
- **Jellinek** develops this doctrine into a theory of **auto limitation**-the State is the **creator** of law, but **voluntarily submits** to it.

Cont...

- Some **deny** the position the State **creates** law holding that law is created by a **source other than** the State.
- ❖ **Krabbe**, holds the source of law is the subjective **sense of right** in the community.

Cont...

- Krabbe asserts any statute, which is **opposed** to sense of right, is **not law**.
 - The legislature, executive, and the judiciary are **subordinate instruments** through which the **community expresses** its **sense of values**.

3. Law and the state are really the same

- This theory holds that Law and the state are the **same** if looked at from **different points** of view.
- ❖ In **abstract** law is the **institutions**, which create it, the **State**.
- So, **state** is **legal order** looked at from another point of view.

Cont...

- Law cannot exist without a legal order that order may take forms other than that of the state.
- Hence, the theory is wider, and therefore more acceptable, than that of Austin.

1.6 LEGAL NORMS AND NON-LEGAL NORMS

- Norm connotes a **standard** accepted by society to **judge** someone or something as
 - **Right** or
 - **Wrong**.
- One of the **natures** of **law** is that it is a **Norm**.
- **Q** What is their difference??????

Legal norms

- Legal norms are **binding**.
- Legal norms **differ from the other social norms** mainly by:-
 - ✓ the **number** of persons they address,
 - ✓ the **nature** of the **sanctions** they apply.
 - ✓ Their **Structure** **formally** structured
 - ✓ Every legal norm has **three formal elements** as:-
 1. the **premise** (hypothesis),
 2. the **disposition** and
 3. the **sanction**.

The relations between Legal and Non-Legal Norms

- Both legal and non-legal norms are **normatives**, as both need to **create** and develop human behaviors.
- **Ethics** is one of the main forms of non-legal norm
 - Let us see it

Law and Ethics

• Distinction

- Law tends to prescribe what is considered necessary for the given time and place.
- Ethics concentrates on the individual rather than upon society;

Cont...

- Law is concerned with the **social relationships** of the society rather than the **individual** characters and conduct.
- A person is **free** to **accept** or **reject** the obligations of ethics, **but**
- Legal duties may imposed on the individual **without** his/her **consent**.

Cont..

- Ethics deals with the absolute ideal / state of mind/,
- but positive morality (like law), emphasizes on conduct rather than the state of mind.

Cont...

- Another important difference between law and ethics is that
- Law creates both duties and rights
- Ethics can create only duties.

Interconnected

- Nevertheless, Law and ethics/morality/ are also interconnected.
- There is no immutable boundary to the area of the operation of law.

Similarities between Law and Morality

- Their similarities, according to Hart are:
 - 1) they are binding regardless of the consent of individuals
 - 2. Both has a contribution to social life
 - enable society to live together.
 - 3) Both include rules that are essential for life
 - Prohibition to violence

The differences between Law and Morality

- 1st, rule of law is imposed by the State but not for morality;
- 2nd, a sanction behind the rules of positive morality, is not applied by state machinery,

- 3rd, their content is different in object, and scope,
- 4th, Morality lack precision,
- Law are expressed in technical and precise language.

Overlapping

- However, Law, positive morality, and ethics are overlapping circles,
- eg Ethics condemns murder, because it is once accepted by both positive morality and law.

UNIT TWO: SOURCES OF LAW

- This unit is meant to discuss the sources of laws in **general** focusing on:-
- The **concept** of the term sources of laws,
- The **material** sources of laws,
- The **formal** sources of laws.

2.1. MEANING OF THE TERM 'SOURCE'

- In **jurisprudence** the problem of 'sources' relates to the question: -
 - From **where** does **the judge obtain** the rules by which to decide cases?

In this sense, the sources of law will be:

- ✓ statutes;
- ✓ judicial precedents;
- ✓ custom;
- ✓ the opinion of experts;
- ✓ morality; and
- ✓ equity.

Cont...

- However the concern here is **broader** sense than is used in the literature of jurisprudence.
- From whence does **the law generally** draw not only its **content** but its **force** in person's lives?"
- This question directs to the **source** of law.

Sources of law for Legal Research

- In the context of legal **research**, the term 'sources of law' can refer to **three** different **concepts**:-
- 1, the **origins** of legal **concepts** and ideas ...
- 2, Governmental **institutions** that **formulate** legal rules.
- 3, **Published** **manifestations** of the law.

The **three** ways to define source of law

- The source of law is defined in three ways as follows:-
- (**1**) **FORMAL SOURCE**, which confers binding authority on a rule and converts the rule into law.
 - ✓ The **state** is the formal source of law
- (**2**) **THE LITERARY SOURCE** The **place** where information about the law can be obtained.
 - ✓ In this sense, the term source means:-
 - (i) statutes;
 - (ii) reports of decided cases; and
 - (iii) text books.

Cont...

- (3) Thirdly, it may mean **supplies** or **content** of the law.
- eg. Custom, religion, agreement, opinion of text –writers, statute, precedent
- ✓ All these may supply the **material** for law.
- ✓ So those are all material sources.

MATERIAL SOURCES OF LAW

- Material sources are classified into **two**
- **1. LEGAL MATERIAL SOURCES** Those regard as **authoritative** by the law itself-that is to say judges are **bound** to follow them
- This include **statute** law or legislation, **precedent** or case **custom** and **agreement** or conventional law.
- **2. HISTORICAL MATERIAL SOURCES** that are regarded as **merely persuasive**

Cont...

- **Material sources include:-**

- ✓ Custom,
- ✓ Religion,
- ✓ Legislation, and
- ✓ Court decision.

➤ We will discuss these sources of law herein under.

- Different authors define custom in various manners.
- May be defined as a **continuing** course of conduct regarded as **fixing** the **norm** of conduct for members as society.
- Custom is one of the **oldest sources** of law making.

Controversy over Custom as a source of law

- The importance of custom continuously **diminishes** as the legal system grows.
- Emergence and **growing** power of the **State**, custom is largely superseded by **legislation** as a source of law.
- There are **two opposing views**

The Historical school

- According to Savigny and the German Historical School, custom is in itself an authoritative source of law.
- According to them, to understand the true source of law we must go back to the days when society was in its infancy.

The Analytical School

- For Austin and the Analytical School, custom is not an authoritative source of law at all.
- Austin holds if the judge does base his judgment on custom, it becomes part of judge-made law

Cont....

- Neither the view of Savigny nor that of Austin can be accepted as correct.
- Custom can create rules of conduct but they cannot become laws without obtaining the recognition of the state.
- State recognition alone can invest custom with the full authority of law

IMPORTANCE OF CUSTOM

- Most of the **material contents** of developed systems of law have been **drawn** from **ancient customs**.
- The laws relating to **succession**, **property**, **contract**, etc, are evolved from early customary rules.
- However there are **Pre requisites** for a custom to be **recognized as law**

REQUIREMENTS FOR CUSTOM TO BE RECOGNIZED AS LAW

- There are about **six /6/ Pre requisites** that must be fulfilled a custom to be recognized as law
- **1. Reasonableness:** - Not repugnant to right and reason and it is likely to do more mischief than good if enforced.
- A custom is **contrary** to **reason** if it is **opposed** to the **principles of justice**, equity and good conscience.

Cont...

- **2. Consistency:** - A custom to be valid must be in **conformity with statute law**.
 - Should **not** be **contrary** to an act of Parliament.
- **3. Compulsory Observance-** Must be observed **as of right** and **not left** to individual **choice**
 - If a practice is left to individual choice, it **cannot** be treated as a

Cont...

- **4. Continuity and immemorial antiquity:** – Should have been continuously in existence from the time immemorial.
- If anyone can show the beginning of it, it is no good custom.
- **5. Certainty:-Must** be shown that it is being observed **continuously** and **uninterruptedly** with certainty from the time **immemorial**
- **6. Public policy:-** Some writers also hold a custom should **not be opposed to public policy** to be valid,

2. RELIGION AS SOURCE OF LAW

- Religion **contributed** very largely to the growth of legal systems of the world.
- The **ancient Roman and Greek laws** were largely **based** on religion.
- During the **Middle Ages** law contained **religious testaments** because of the **dominance of Church over the State**.
- Let us see two of them influence on

A) CHRISTIANITY

- Christianity has influenced Ethiopian laws.
- The best **example** is the **Fetha Nagast** which is **Coptic Orthodox Church** “nomocanon”
- This Fetha Nagast has its own sources
 - 1. manual of Roman Laws;
 - 2. legislation of Constantine; and
 - 3. the old and new **testaments**.
 - 4. Enactments of Lubia;
 - 5. Enactments of Nicaea (second council held in 887); and
 - 6 . writing of Aba Kalilios (father of church

Cont...

- The 1960 Civil Code of Ethiopia incorporates Christian principles in family and other areas.
- For example, one to one marriage.
- The Criminal Code also punishes bigamy under Art 650.

B) THE MOSLEM LAW

- The Fetha Nagast, also reflects **Islamic** civilization in the area of:-
 - **sales**,
 - charitable legacies,
 - **divorce**,
 - **penal** provisions,
 - **procedure**.
- Scholars hold that the style of the Fetha Nagast shows features of **Muslim** legal scholarship.

CONSTITUTION AS SOURCE OF LAWS

- Constitution is not only **higher in hierarchy** but also **a source for all other laws** because any law that contravenes the Constitution **has no effect**.
- All laws should be made to **implement** the principles of the Constitution.

THE FDRE CONSTITUTION AS SOURCE OF ETHIOPIAN LAWS

- A constitution, as a supreme law in the country, serves as source for other laws
- The Constitution contains only the **basic principles**.
- These basic principles are needed to be given in **other legislation** in detail.

Cont....

- For **example**, the FDRE Constitution laid down the **equality of both sexes**, under Article 34 **family rights**'.
- The Constitution **does not** and **not expected** to **define** essential conditions of marriage.
- a **subordinate** law would do perform that job.

Cont...

- Accordingly, **Family** Code has incorporated detailed provisions that ensure the **equality** of women and men that is recognized under the Constitution.
- So in that ways, the Constitution is the source for other laws as well

INTERNATIONAL AGREEMENTS AS SOURCE OF ETHIOPIAN LAWS

- International law establishes international standards.
- eg. By **signing** international human right instruments, states undertake to comply, in good faith, with rights and freedoms recognized in the instruments they endorse.

Cont...

- The FDRE Constitution has established the basis of the Ethiopian human rights system that is entrenched in **international human rights**.
- The FDRE Constitution **commits Ethiopia** to refer UDHR and other international human rights principles as **guidelines to interpret** the fundamental rights and freedoms embodied in the Constitution.
- Ethiopia has adopted several **international** and regional human rights conventions and so, these international agreements are **one of the sources** of our **Constitution**.

LEGISLATION AS A SOURCE OF LAW

- Legislation is regarded as one of the most important sources of law.
- This is because:-
- 1st , it is laying down of legal rules by the legislatures, which the State recognizes as law.
- 2nd , it is the **force** and **authority** of the **State**.
- 3rd it consists in the **declaration** of legal rules by **competent** authority.

Jurists and legal thinkers **views**

- Jurists and legal thinkers have **expressed divergent views** about legislation as a source of law.
- According to **Bentham and John Stuart** Mill, legislation includes **both**,
 - 1. the **process** of law making and
 - 2. the **law evolved** as a result of this process.

Cont....

- **Salmond** observed, “legislation is that source of law which consists in the **declaration** of legal rules by a competent **authority**”.
- **Gray** pointed out that legislation includes “**formal utterances** of the legislative organs of the society.”

Cont...

- Professor Holland has interpreted the term legislation in its widest sense.
- He observes “making of general orders by our judges is as true legislation as carried on by the Crown”
- In his view, in legislation, both the contents and legal force is given by Acts of the sovereign power which produce written law.”

Cont...

- According to Austin, legislation includes activities:-
 - Law making or
 - Amending,
 - transforming or
 - Inserting new provisions in the existing law.
- Austin holds that there can be no law without a legislative act

Cont...

- For Austin when a judge establishes a new principle by means of decision, he is said to exercise legislative powers and not judicial power.
- However, James Carter, supporter of the historical school, thinks that legislation is the least sources of law, as it is not possible to make law by legislative action alone.

COURT DECISIONS AS SOURCE OF LAW

- **A) Doctrine of Stare Decisis**
- The doctrine of stare decisis literally means “let the **decision stand in its rightful place.**”
- Courts decisions which contains a **new principle:-**
 - It is **binding** on **subordinates** courts and
 - Has **persuasive** authority for **equivalent** courts.

Cont...

- Stare decisis rule is **followed** by the courts but it may **not** be applicable if the court is convinced that the earlier **wrong** and likely to **perpetuate erroneous decision**.
- where the **correctness** of a decision has been **challenged**, the rule of stare decisis need **not** be applied.
- The operation of the doctrine of stare decisis presupposes the existence of a **hierarchy** of courts.
- There are four general principles of doctrine of stare decisis. They are:

Principles of Doctrine of Stare decisis

- (1) Each court is absolutely **bound** by the decisions of the courts **above** it.
- (2) To a certain extent, higher courts are **bound** by their **own** decisions.
- (3) The decision of one High Court is **not binding** on another High Court BUT it has a **persuasive** value.
- (4) A **single** Bench Judge is bound by the decision of a **Division** Bench of **the same** Court but a **Division** Bench is **not** bound by a **Single** judge of the **same** Court.

B) THE ROLE OF COURT DECISIONS AS SOURCES OF LAW IN ETHIOPIA

- Case law arise out of litigation and are, in principle, not normative.
- In Ethiopia, this principle is **not expressed** in a formal way
- Practically however, Court decisions were and still are **used as sources of law in Ethiopia**.
- For example, the **Digest of old Ethiopian Judgments** was prepared for the work of drafting and codifying the Civil **Code of 1960**

Supreme Court Cassation division

- Today, the Supreme Court Cassation division is empowered to render a decision that is binding on federal as well as regional council at all levels [Proc. No. 454/2005, Art 4].

Requirements

- A decision of this Cassation division to be binding must be:-
- (1) the **members** of judges must **not be less than five**;
- (2) the decision should be with regard to **interpretation** of laws.
- so long as these requirements are fulfilled, the Supreme Court cassation division will create rules (laws) and is a **source** of laws in Ethiopia.

FORMAL SOURCES OF LAW

- **1. CONCEPT OF FORMAL SOURCES**
- A formal source of law is from which a rule of law derives its **force** and **validity**
- It is the **will of state** manifested in statutes or decisions of the courts of law.
- It includes law making **authority**, **procedures** and **constitutional validity**.

2. ELEMENTS OF FORMAL SOURCES

- The 3 elements of formal sources of law are:
- 1. **sovereignty**; □ determines the methods by which **law is created**
- 2. **procedural** values □ procedures a **draft** of law should **pass** through in order to get its binding force.
- 3. **constitutional** values □ made **in line** with the Constitution.

