CHAPTER ONE

- ***Introduction***
  - ***Major laws used LP Proc. no 377/2003 & FCSP Proc no.1064/2017***

  - ✓ *Employment/ Labour laws includes:-*

    - ✓ *Civil service/public law- r/n b/n gov't & civil servant.(Public issues concern).*
    - ✓ *Labor/individual Employment relation- r/n b/n Employer & Employee. (Private issues concern).*

- ***Theories in relation to Employment/Labour Laws***

- *We have two theories for the foundation of employment law (labour law)*

  - ✓ ***Natural theory:*** *persons have accorded a right for their humanity, the right to work is a basic human right*
  - ✓ ***Liberalist theory (Rawls theory of justice):*** *he claims economic fair distributions which directly relate to creation of employment relationship.*

- ***Definition of Employment***

  - ✓ *Employment relation is established through a contract of employment and it shall be deemed formed where a person (the employee) agrees, directly or indirectly, to perform work for and under the authority of another (the employer) for a definite or indefinite period or piece work in return for wages.*
    - ✓ *Agreement*
    - ✓ *Direction*
    - ✓ *Performance*
    - ✓ *Wage*

- ***Employment Relations***

- *It is a law which governs the relationship between employer and employee. The relation can be:*
  - ✓ *Civil or commercial relationship (only the name)*
  - ✓ *Triangular employment relationship*
  - ✓ *Economically dependent workers: - who are formally self-employed but depend on one or a few "clients" for their income.*

- ✓ *A disguised employment relationship: - It is an attempt to conceal or distort the employment relationship, either by cloaking it in another legal guise or by giving it another form.*

- ➢ ***Some historical hints in relation to Employment/ Labour Laws***
  - ✓ *Before industrial era (16th century): it is up to employer to decide everything and employees were considered as mere slaves.*
  - ✓ *After industrial era employment becomes a mere economic contract and sometimes trade unions start to bargain with employment relation*
    - ✓ *Abolishment of slavery*
    - ✓ *Come of labor acts in Uk, France*
  - ✓ *Establishment of ILO in 1919 is a benchmark for the modern labour management in general and labour law in particular.*
  - ✓ *Vulnerable group considered in employment relation*
- ➢ ***Ethiopian Employment History***
  - ✓ *Before 1908 labor is considered as slavehood*
  - ✓ *In 1908 emperor Minilik declared "Let those who insult the worker on account of his labour cease to do so. You, by your insults and insinuations, are about to leave my country without artisans who can even make the plough. Hereafter anyone of you who insults these people is insulting me personally"*
  - ✓ *1923 Ethiopia entered ILO*
  - ✓ *In 1931 the emperor declared "All slaves who wished to be free could become free by asserting their freedom before a judge"*
  - ✓ *1942 slavery abolished and modern Ethiopian employment law starts*

- ❖ ***Source of employment law in Ethiopia***

  1. FDRE constitution

  - ✓ *Art 41 enshrines every citizen has the right to choose his or her means of livelihood, occupation and profession.*
  - ✓ *Art 42 stipulates rights of labourer:*
    - ✓ *The right to form trade unions and associations*
    - ✓ *The right to express grievance including to strike*
    - ✓ *Reasonable minimum conditions*
    - ✓ *Governmental employees below a certain level of responsibility*
  - ✓ *Art 52 (2), (f) To enact and enforce laws on the State civil service and their condition of work*

- ✓ *Art 55 (3) the power to enact labour law*

2. *Proclamations and Regulations*

- ✓ *We have some proclamation which are directly relate to employment, Namely:*
  - ✓ *Federal civil servant proclamation No 1064*
  - ✓ *Regional state civil servant proclamations*
  - ✓ *Labour proclamation No 377 with its amendments 466 and 494*
  - ✓ *Governmental employee's pension proclamation No 714 and its amendment 907*
  - ✓ *Private organizations pension proclamation 715 and its amendment 908*
  - ✓ *Right to employment of persons with disability proclamation 568*
- ✓ *Employment relations established by religious and charity organizations regulation No 342*

3. *Others*

- ✓ *ILO conventions and standards*
- ✓ *Federal supreme court cassation bench decisions per to proclamation No 454*
- ✓ *Directives according to the above proclamations or regulation*
- ✓ *Voluntary laws: contract of employment, collective agreement and working rules*

➢ *Some comparison of Ethiopian civil service and labour laws*

- *Both laws have some common objectives, like:*
  - ✓ *Protect the human right of employees as a general and introduce the principle of non-discrimination*
  - ✓ *Create favorable conditions of work industry*

➢ *Who is civil servant? Art 2/1&2 of CSP*

- *A person employed permanently or temporarily by federal government institution.*
  - *Exclusion from permanent civil servant :*
  - ✓ *Minister, deputy or director general or persons with that rank or above*
  - ✓ *HPR or HOF members*
  - ✓ *Judges and public prosecutors*
  - ✓ *Persons in arm force or police*
  - ✓ *Other persons excluded by any law (ERCA employees)*

- ***Exclusion from temporary civil servant***
  - ✓ *Daily labourer*
  - ✓ *Self-employed persons having contract to do something*
  - ✓ *Internee or trainee*
  - ✓ *Part-timer*

- ***General features of FCSP Proc.no 1064/2017***
  - ✓ *Conditions of work are rigorously regulated by law*
  - ✓ *There is little or no room for negotiation.*
  - ✓ *Stipulate maximum conditions of work e.g working hour, job description after BPR*
  - ✓ *Requires written instrument in all cases, E.g vacancy, recruitment, release etc***.**

- ***FCSP's Scope of application***
  - ✓ *FCSP is applicable civil servant in federal governmental institutions*
  - ✓ *Remember states have similar CSP which is similar to FCSP.*
  - ✓ *What are governmental institutions mean? Art 2/3 of FCSP, "government institution" is any federal government office established as an autonomous entity by a proclamation or regulations and financed by government budget.*
  - ✓ *Can this definition clash with Art 2/2 of the labor proclamation (LP)*

- ***Definition of undertaking (LP art 2/2)***

- *Undertaking is any entity established under a united management for the purpose of carrying on any commercial, industrial, agricultural, construction or any other lawful activity.*
  - ✓ *Established entity*
  - ✓ *It has its own purpose*
  - ✓ *Other lawful activity (a basket)*

- ***Scope of application of labor proclamation No. 377 and its amendments 466 &494***
  - ✓ *Pursuant to article 3 of the proclamation, it governs the employment relation between the worker and employer.*

- ✓ *What includes in the definition of employment relation for this proclamation? See art 4/1 LP*

➢ ***Exception***

- *Even though the proclamation covers a vast employment relationship, it does not include:*
  - ✓ *Contracts for the purpose of upbringing, treatment, care or rehabilitation*
  - ✓ *Contracts for the purpose of educating or training other than apprentice*

➢ ***Managerialemployee***

- ✓ *Managerial employee who is vested with powers to lay down and execute management policies by law or by delegation of the employer depending on the type of activities of the undertaking with or without the aforementioned powers an individual who is vested with the power to hire, transfer, suspend, lay off, assign or take disciplinary measures against employees and include legal service head who recommend measures to be taken by the employer regarding managerial issues by using his independent judgment in the interest of the employer.*
  - ✓ *See case No 92466 Saygn textile building construction trading Ethio Branch Vs Tesfay Tlahun, vol 15*
  - ✓ *They are governed by art 2512 to 2593 of civil code*
  - ✓ *Sometime the employee may be employed in managerial position but later can be changed to worker.*
  - ✓ *See case No 130685 Wegagen Vs Anagaw Gebeyehu, vol 21*
  - ✓ *See also case 42901 educational material producer and distributor company Vs Ngsti Letybelu, vol 8*
  - ✓ *See also case 117076 SNNPR housing development enterprise Vs Yohans Bzuneh, vol 19*

➢ ***Religious or charity employees***

- ✓ *Art 3/3/b give a power to council of minister to make a regulation which stipulates inapplicability of the proclamation on religious or charity organization.*

- *Accordingly regulation 342/2015 is issued.*
  - ✓ *Per to the regulation art 3/1 The Proclamation shall not be applicable with respect to a person who gives spiritual service in a religious organization.*
  - ✓ *Spiritual and administrative or spiritual and charitable activities, simultaneously, in a religious organization*
  - ✓ *Spiritual service means a service which is performed only to discharge functions directly related with spiritual activities religious organization. Art 2/1 of the regulation.*
  - ✓ *Collective bargaining is not allowed to religious or charity organization.*
    - ✓ *See case 18419 Hamerewerq St. church Vs DcMhret Brhan 6 persons. Vol 8*

- ✓ *See case 47806 Hotesemay St. Marry church Vs Dc Ayalew Adisu, Vol 9*

- ***Contracts of personal service: art 3/2/d cum 3/3/c***
  - ✓ *Contracts of personal service for non-profit making purposes*
  - ✓ *Yet, there is no regulation*
  - ✓ *This includes House servant, personal guard, family driver and gardener*
  - ✓ *They are governed by art 2601-2604 of civil code even if it is difficult to say these articles provide proper protection.*
  - ✓ *However there is exception of exception in Ethiopian's Oversea employment proclamation No 923/2015 art 71 which such personal service are subject to labour proclamation*
    - ✓ *See case 98771 Abi Miftah Agency Vs Tareqegn Mekonen and Fantanesh Arega, vol 20.*
    - ✓ *see also case 74111, vol 13*

- ***Working in diplomatic or international organization: art 3/3/a***
  - ✓ *Unless the Council of Ministers by regulations decides, or an international agreement to which Ethiopia is a signatory provides otherwise, employment relation between Ethiopian citizens and foreign diplomatic missions or international organizations operating within the territory of Ethiopia shall be governed labour proclamation.*
  - ✓ *There is no issued regulation regarding to this point.*
  - ✓ *Who is international organization? Does it include international multi corporations?*
  - ✓ *Ethiopia is a signatory to United Nation Charter; hence any Ethiopian who employed In Un or organization under UN is not governed by labour proclamation.*
    - ✓ *See case 98541 United nation development program Vs Alemayehu Olana, vol 17*
  - ✓ *UN and UN organizations have immunities not to be sued in any court*
  - ✓ *These employees have more benefited under the regulation of UN*
  - ✓ *Contracts relating to persons such as members of the Armed Force, members of the Police Force, employees of state administration, judges of courts of law, prosecutors and others whose employment relationship is governed by special laws*
  - ✓ *Contracts relating to a person who perform an act, for consideration, at his own business or professional responsibility.*

CHAPTER- TWO

INDIVIDUAL EMPLOYMENT RELATION

1. Formation: 1. LP (art 4-8)

- ✓ *Individual employment relation is a contractual relation between an employee and his/her employer in their individual capacity.*
- ✓ *There are certain requirements that shall be fulfilled to form a valid employment contract. i.e, consent, capacity, object and form.*
- ✓ ***Consent**: Shall stipulate clearly and in such manner as that the parties are left with no uncertainty.*
- ✓ *And it shall specify the type of employment and place of work the rate of wages, method of calculation thereof, manner and interval of payment and duration of the contract.*
- ✓ ***Capacity:** with no lessened personality. A young employee from age 14 to 18 is an exception. This age is taken from ILO C138 on minimum working age determines 14 years as the minimum working age which is ratified in 1991 E.C.*
- ✓ ***Object:** Shall not be concluded for the performance of unlawful or immoral activities.*
- ✓ ***Form:** No special form is needed. However the following are exceptions:*
    - ✓ *Agreement for probation art 11/3*
    - ✓ *Agreement to modify previous agreement art 15/3*
    - ✓ *To terminate contract in agreement art 25/2*
    - ✓ *Agreement on apprenticeship art 48/3*
- ✓ *If the parties agree to conclude their contract in writing, it shall contain the following:*
    - ✓ *The name and address of the employer;*
    - ✓ *The name, age, address and work card number, if any, of the worker;*
    - ✓ *The signature of the contracting parties*
- ✓ *In the case of contract of employment not made in writing the employer shall give the worker a written and signed statement containing the requirements specified within 15 days.*
- ✓ *The employee can object within 15 days. If not it shall be deemed contract.*
- ✓ *This is for documentation purpose only, it does not deprive right of worker.*
    - ✓ *See case 03171 Ethiopian electric power corporation Vs Ms Trsit Degefa, vol 8*
    - ✓ *See case 105555 Muftha Mume (3 persons) Vs Usman Ali, vol 17*

- ✓ *See case 104465 Defense construction Enterprise Vs Shewit Hailu. Vol 18*

2. FCSP (art 12-19)

- ✓ ***Ineligibility**: predetermined criteria*
  - ✓ *Under 18 age*
  - ✓ *Convicted of crime particularly corruption, theft, rape till five years*
  - ✓ *Disciplinary measures till five years*
  - ✓ *Any person unwilling to take oath*
- ✓ *Mandatory vacancy announcement*
- ✓ *Selecting based on examination result*
- ✓ *Taking oath*
- ✓ *Foreigner only for temporary work*
- ✓ *There is probability of employing a person with age 14-18*

➢ ***Duration of employment contract***

1. Principle: For indefinite period/permanent

- ✓ *Art 9 of LP provides that any contract of employment shall be deemed to have been concluded for an indefinite period.*
- ✓ *It is unrebuttable presumption.*
  - ✓ *Related Case,New generation university college Vs Endegena Teshome and others file No. 43160, vol 9 limiting time by itself cannot be made the contract for definite period.*
- ✓ *From Art 20 in cum 21 of FCSP, it can be infer that contract employment in governmental institution is for permanent.*

▪ ***Exception: Temporary***

- ✓ *Art 21 of FCSP provides three conditions when contract of employment may be for definite period, for a job which is not of a permanent nature, if the governmental institution so requires and employing of foreigner.*
  - ✓ *See case 132714 Dr. Desalegn Temesgen Vs A.A Science and Technology University, vol 21 temporary contract can only be done for projects and limiting time by itself cannot be considered as temporary employment relationship.*

2. *Definite period*

- ✓ *Art 10 of LP exhaustively lists employment relation for definite or piece of work as follow:-*

A. *The performance of specified piece work*

- ✓ *What makes it different from independent contractor?*
- ✓ *What amounts piece of work?*
  - ✓ *Related Cases, Sheraton Adiss Vs Genanaw Kebede and others file No. 80350 vol 14*

B. *In replacing temporarily absent worker*

- ✓ *When a worker Absent due to leave or sickness or other causes*
- ✓ *Do we have time limitation?*
- ✓ *Can this include a worker absent for long term education or training?*
- ✓ *Can the temporarily employed worker ask to be permanent if the temporarily absent workers totally leave the job?*

C. *Others*

- ✓ *Abnormal pressure art 10/1/c*
- ✓ *Urgent work for prevention art 10/1/d*
- ✓ *Irregular work part of permanent work but performed irregularly art 10/1/e*
- ✓ *Seasonal work art 10/1/f*
- ✓ *Occasional work which is not part of permanent work art 10/1/g*
- ✓ *Temporary replacement art 10/1/h only for 45 days*
- ✓ *Temporary structure position art 10/1/I only for 45 days.*

- ▪ ***Related cases***
  - ✓ *Case 35621 Sunshine construction Vs Ato Fqadu Gebisa, vol 8, masonry case for a given sight*
  - ✓ *Case 40305 Ethiopian pulping paper Axiom Vs Ato Tamene Chala, vol 8 guard case for pressure*
  - ✓ *Case 48648 Tsalqe integrated educational association Vs Ato Tateq Dejene, 9 unclear project case*
  - ✓ *Case 44218 Ethiopian electric corporation Vs Taju Abagaro(21 persons), 9 defining time by itself*
  - ✓ *Case 66306 Amsalu Wereda construction Vs Ato Mehamed Said, vol 12*
  - ✓ *Case 67533 Ethio telecom Vs Bereket Belete , vol 13*
  - ✓ *Case 29692 CBE Vs Ato Alemayehu Kebede, Vol 5 irregular work*

- ***Probation period LP***
  - ✓ *In art 11 of the LP the purpose of probation period is to test suitability of the worker for the post. What if s/he is well experienced?*
  - ✓ *It is not mandatory. But once agreed it shall be in writing and not more than 45 days*
  - ✓ *No probation for re-employed worker for the same position.*
  - ✓ *The worker will have similar right and obligations unless the law prohibits*
  - ✓ *Termination without any notice, if s/he is unfit during probation period.*
  - ✓ *Why in writing?*

- ***What is different in FCSP art 19?***
  - ✓ *Probation is mandatory and for six months for newly appointed civil servant.*
  - ✓ *The probation period can be lengthen up to additional three months, if s/he does not result in average evaluation.*
  - ✓ *Force majeure is tolerable for less than one month.*
  - ✓ *Absence for occupational disease or injure and maternity leave are differently treated.*
  - ✓ *The probation will continue after the case ceased.*

- ***Obligations of employer***
  - ✓ *Duty to provide work*
  - ✓ *Duty to provide implements and materials*
  - ✓ *Obligations to pay wage*
  - ✓ *Obligation to respect the worker's dignity*
  - ✓ *Obligation to take measures protecting workers from occupational hazards*
  - ✓ *Defray costs of medical examination of the worker whenever it is required by the law.*
  - ✓ *Obligation to register any relevant information about the worker.*
  - ✓ *Obligation to observe the labour proc., directives, and collective agreements and work rules issued in accordance with the law.*
  - ✓ *Provided under Art. 14(1) of L.Proc.*

- ***Obligation to be free from the unlawful acts (14/1LP)***
  - ✓ *Impede the worker's right*
  - ✓ *Discriminate against female workers, in matters of remuneration*
  - ✓ *Terminate a contract of employment contrary to law*
  - ✓ *Coerce any worker by force or in any other manner to join or not to join or to cease to be a member of a trade union or to vote for or against any given candidate*
  - ✓ *Require any worker to execute any work which is hazardous to his life*
  - ✓ *Discrimination between workers*

- ***Obligation of the worker***
  - ✓ *To perform the work*
  - ✓ *Follow instructions*
  - ✓ *Care all instruments and tools*
  - ✓ *To report for work always in fit mental and physical conditions;*
  - ✓ *To give all proper aid*
  - ✓ *To observe the provisions of this Proclamation, collective agreement, work rules and directives issued in accordance with the*

- ***Unlawful acts for worker (14/2LP)***
  - ✓ *Intentionally commit in the place of work any act which endangers life and property*
  - ✓ *Take away property from the work place without the express authorization of the employer, what about money?*
  - ✓ *Report for work in a state of intoxication*
  - ✓ *Except for HIV/AIDS test, refuse to submit himself for medical examination when required by law or by the employer for good cause*
  - ✓ *Refuse to observe safety and accident prevention rules and to take the necessary safety precautions.*

- ***Modification of employment contract: art 15 LP***
  - ✓ *The purpose of modification to cope up with dynamic conditions.*
  - ✓ *It is allowed for those conditions that are not stated in labour proclamation.*
- *Modification can be through:*
    - ✓ *Collective agreement*
    - ✓ *Work rule*
    - ✓ *Written agreement of the party*
  - ✓ *No modification of contract of employment can be followed by mere of amalgamation, division or transfer of a given undertaking.*
    - ✓ *Case 33314 Ethiopian commercial bank Vs Ato Alemayohu Welde and others, vol 6 mortgaged properties per proc 97/90 cannot has an amalgamation effect.*
    - ✓ *Case 119734 Yirga Trading PLC Vs Ato Bezabh Mekonen and others, vol 19 sell part of business cannot be considered as lawful termination of employment contract, it has amalgamation effect.*

- ***Suspension of contract of employment- Art, 17 of the L.Proc.no 377/2003.***
  - ✓ *Suspension is temporary interruption of some of the obligations of parties without terminating their contractual engagement. Thus:*
    - ✓ *The employee will not be required to provide service*
    - ✓ *The employer will not be obligated to pay wages and other benefits to the employee.*
- ***Ground of suspension – Art, 18 of the L. Proc.no 377/2003. (<u>Exhaustive list</u>).***
  - ✓ *Leave without pay granted by the employer upon request by the worker*
  - ✓ *Leave of absence for the purpose of holding office in trade unions or other social services;*
  - ✓ *Detention for a period not exceeding 30 days provided that the employer is notified within 10 days or is supposed to know of the detention*
  - ✓ *National call*
  - ✓ *Full or partially suspension due to force majeure of the activities of the employer for a period of not less than 10 consecutive days*
  - ✓ *Financial problems, not attributable to the fault of the employer, that requires the suspension of the activities of the employer for not less than 10 consecutive days*
  - ✓ *Reporting this condition to ministry of labour and social affairs within 3 days is mandatory.*
  - ✓ *The ministry shall decide within 3 days, if it accepts it shall determine the time but not more than 90 days.*
  - ✓ *If it does not accept the worker shall be paid all necessary payments*

- ***Effect of expiration***
  - ✓ *Reinstatement of worker*
  - ✓ *Reinstatement of the duties and rights of both parties*
  - ✓ *If the employer cannot resume, termination of contract with effect of severance payment and other necessary payments*

- ***Suspension in FCSP (art 29 and 72)***
  - ✓ *Secondment (art 29): transferring civil servant for one year in triple agreement.*
  - ✓ *Disciplinary case (art 72): to investigate the case civil servant may suspend his/her job for two months with one month extension. This may happen when the discipline may result in dismissal or there is obstruction to investigation.*

- ***Termination***

- *Employment relation can be terminated through:-*
  - ✓ *Lawful*
  - ✓ *Unlawful*

- ***Grounds of termination***
  - ✓ *In LP art 23-35 stipulates how employment contract can be terminated with or without notice.*
  - ✓ *Art 23 of LP, A contract of employment shall only be terminated upon initiation by the employer or worker and in accordance with the provisions of the law or a collective agreement or by the agreement of the two parties.*
  - ✓ *Amalgamation, division or transfer of ownership cannot be considered as ground of termination.*
  - ✓ *Art 83-91 of FCSP exhaustively lists the grounds for termination civil servant employment relationship*

- ***Termination by law: LP art 24***
  - ✓ *Completion of work where it is for definite period or piece work*
  - ✓ *Upon the death of the worker, art 90 of FCSP*
  - ✓ *Upon the retirement of the worker in accordance with pension proclamation No 715/2011 OR 714/2011 Art 17, 60 years old. BUT extension is possible in FCSP art 93*
  - ✓ *When the undertaking ceases operation permanently for due to bankruptcy or for any other cause, what about the death of an individual employer?*
  - ✓ *When the worker is unable to work due to partial or total permanent incapacity*

- ***Termination By agreement: LP Art, 25***
  - ✓ *The parties may terminate their contract of employment by agreement*
  - ✓ *Termination by agreement shall be effective and binding on the worker only where it is made in writing*
  - ✓ *Waiver of any right of the worker is totally prohibited*
  - ✓ *Can the employer waive right? Like reimbursement of lost money or property.*
    - ✓ *See Case 37575 Qaliti Balestra Production Vs Brhanu Ldet, vol 8, oral agreement to terminate contract paying some rights*

- ***Termination by Employer: without notice- Art 27 of the LP.***
  - ✓ *Art 27 of LP lists the grounds for termination of employment contract without notice by employer in the following way*
  - ✓ *Repeated and unjustified tardiness despite warning to that effect*
  - ✓ *Absence from work without good cause for a period of five consecutive working days or ten working days in any period of one month or thirty working days in a year*
  - ✓ *Deceitful or fradulent conduct in carrying out his duties having regard to the gravity of the case*
    - ✓ *See case 37402 Yenkomand PLC Vs Ato Bushra Bekele , Vol 8, burden to absence in working days is up to worker*
    - ✓ *See case 50009 Hilten Hotel Vs Yonas Tlahun, vol 9, deceitful or fradulent conduct shall have a relation with the work, see also case 39543, vol 8, forgery document*
    - ✓ *See case 79105 World Vision Vs Mezmr Mekbb, vol 13, time and place of Brawls and quarrels include the house prepared by employer*
    - ✓ *See case 114669 Ethiopian Road construction corporation Vs Asmare Fetene, vol 19, detaining more than 30 days for the purpose of investigation cannot be a ground to terminate a contract without notice*
  - ✓ *Misappropriation of the property or fund of the employer with intent to procure for himself or to a third person undue enrichment*
  - ✓ *Returning output which, despite the potential of the worker, is persistently below the qualities and quantities stipulated in the collective agreement or determined by the agreement of the two parties*
  - ✓ *Responsibility for brawls or quarrels at the work place having regard to the gravity of the case*
  - ✓ *Conviction for an offence where such conviction renders him incapable for the post which he holds*

- ✓ *Responsibility for causing damage intentionally or through gross negligence to any property of the employer or to another property which is directly connected with the work of the undertaking*
- ✓ *Commission of any of the unlawful activities referred to in Article 14 Sub-Article (2)*
- ✓ *Absence from work due to a sentence of imprisonment passed against the worker for more than 30 days*
- ✓ *Commission of other offences stipulated in a collective agreement as grounds for terminating a contract of employment without notice.*
    - ***Procedure***
- ✓ *If there is collective agreement suspension for the purpose of investigation is possible for not more than 30 working days*
- ✓ *The termination shall be in writing and state the reason*
- ✓ *What will be the effect if there is no written document?*
- ✓ *The right of an employer to terminate contract of employment lapse after 30 working days from the date the employer knows the ground for the termination, art 27/3*
    - ✓ *Mehamed Abdela Vs Diredawa Ethio Djoubti railway File No 31857 vol 6 reasons for lawful termination have 30 days period of limitation*

➢ ***Termination by Employer: with notice, Art 28 of the LP.*** ***(Focus on reduction of work force)***

- ✓ *Losing capacity of the worker or situation that affect the work*
    - ✓ *Manifest loss lack of capacity or lack of skill*
    - ✓ *Unable to carry out b/c health or disability*
    - ✓ *Unwillingness to move when the undertaking move*
    - ✓ *Work is cancelled and the worker cannot transfer to other work*
- ✓ *Grounds relating to the organizational or operational requirements of the undertaking*
    - ✓ *Fall in demand for the products or services of the employer*
    - ✓ *A decision to alter work methods or introduce new technology*
    - *Related Cases*
    - ✓ *Case No 38435 SOS village VsAto Kebede Kumsa and others, vol 8, outsourcing the work can be a ground of termination per to art 28 LP*
    - ✓ *Case No 38811 Robert holy savior Vs Amare Admasu, vol 8, cancellation of work*
    - ✓ *Case No 42752 National Travelling organization Vs Mami Asefa and other 30 persons, vol 8, to increase productivity of a given institution*

- ✓ *For the purpose of LP art 28/2 and cancellation of post resulting in reduction of similar workers we have the concept, reduction of workers.*
- ✓ *Reduction of work force means reduction of the work force of an undertaking that affects a number of workers representing at least ten percent of the number of workers employed or, in the case of an undertaking where the number of workers employed is between twenty and fifty, a reduction of workers affecting at least five employees over a continuous period of not less than ten days.*
- ✓ *Whet about for undertaking that has less than 20 workers?*
- ✓ *Number of workers is the average number of the workers employed by an employer concerned within the twelve months preceding the date when the employer took measures of reduction of workers*
- ✓ *When there is reduction of work force, workers shall be reduced in the following two manner*
- ✓ ***First**, In consultation with trade union or representative, the employer shall give for workers having skills and higher rate of productivity priority of being retained in their posts*
- ✓ ***Secondly,** when they have equal skill and productivity in the following order:*
    - ✓ *Those having the shortest length of service in the undertaking*
    - ✓ *Those who have fewer dependants*
    - ✓ *Those not covered under above category*
    - ✓ *Those who are disabled by an employment injury in the undertaking*
    - ✓ *workers' representatives*
    - ✓ *expectant mothers*
    - ✓ *What about workers infected by occupational disease?*

    - ▪ ***Exception: construction workers***
- ✓ *The reduction of workers due to normal decrease in the volume of a construction work as a result of its successive completion cannot follow the procedure provided in art 29 of LP*
- ✓ *Construction work includes the construction of a building, road, rail-way line, sea port, dam, bridge, installation of machinery and similar works of transformation, extension, repair or maintenance*

- ***Termination in FCSP art 83-90***
  - ✓ ***Resignation****: with 1 month notice which can be extended up to 3 months by employer in consultation with the future employer.*
  - ✓ ***Illness****: more than 8 month in a year or 12 months in four years for permanent civil servant and 1 month for civil servant in probation illness is a ground for termination*
  - ✓ ***Inefficiency****: below satisfactory for three successive evaluation period, capacity building is mandatory before termination*
  - ✓ ***Force Majuere****: a civil servant who is absent for force majiure and informed for employer within 1 month can have a chance for six months, after it lapses, termination transpires. Detention with final acquittal is an exception*
  - ✓ ***Retrenchment****: it happens when*
    - ✓ *his position is abolished*
    - ✓ *the government institution is closed*
    - ✓ *redundancy of man power is created*
  - ✓ ***Disciplinary measure****, retirement and death are grounds of termination for civil servant*

- ***Period of notice and it form: art 34 and 35 of LP***
  - ✓ *Any notice of termination shall be in written form and shall state the reason for termination as the date of its effectiveness.*
  - ✓ *It shall be handed in person. But if it is impossible to find the worker or refuse to receive it shall be affixed on board for ten consecutive days.*
  - ✓ *For a worker who served, up to one year 1 month notice, up to nine years 2 months, above nine years 3 months and for reduction of workers 2 months.*
  - ✓ *Obligation of both parties shall be performed with in the notice period*

- ***Termination by worker: with notice art 31 of LP***
  - ✓ *Any worker who has completed his probation period, may, by giving thirty days prior notice to the employer, terminate his contract of employment.*
  - ✓ *No need of stating reason*
  - ✓ *No extension of period of notice like FCSP art 83*

➢ ***Termination by worker without notice: art 32 of LP***

- *Art 32 states the following are good grounds of termination by worker without notice:*
  - ✓ *if the employer has committed against the worker any act contrary to his human dignity and morals or other acts punishable under the Criminal Code*
  - ✓ *if, in the case of imminent danger threating the worker's safety or health, the employer, having been made aware of such danger, failed to act within the time limit in accordance with the early warning given by the competent authority or appropriate trade union or the worker himself to avert the danger*
  - ✓ *If the employer has repeatedly failed to fulfill his basic obligations towards the worker as prescribed under this Proclamation, collective agreements, work rules or other relevant laws.*
  - ✓ *S/he shall inform in written form stating the reason and effective date*
  - ✓ *The period of limitation to use the right lapse after fifteen working days from the date on which the act occurred or ceased to exist*

❖ ***Effects of Lawful & Unlawful termination***

Effect of Law termination

1. Service certificate: art 12/7 LP and 91 FCSP

- ✓ *It is a document to be issued by the employer which testifies how long the employee had been employed at the employer; the position he/she held; and the wage he/she was earning while employed*
- ✓ *It shall be given without any payment (free of charge)*
- ✓ *It shall not have any unfavorable content for the worker (ILO recommendation No 119)*
- ✓ *Civil servant may not be entitled to service certificate for indebtedness particularly through contract*
- ✓ *How and to what extent is the law fair in this respect? Why should reason of termination be withheld?*

2. Payment of unpaid wages and other related benefits

- ✓ *Wages and other payments connected with wages due to the worker shall be paid within seven working days from the date of termination,*
- ✓ *The time of payment may be extended where the worker delays, because of his own fault to return property or any sum of money which he received from or is due to the employer.*

- ✓ *If there is a dispute on the amount of payment the employer shall pay what s/he accept*
- ✓ *Not paying in the given time results in additional payment up to three months' salary of the worker unless it is b/c of cause beyond control*

3. Severance payment: art 39 LP and 92 of FCSP

- ✓ *It is specific ground based payment for both proclamations*
- ✓ *The worker/ civil servant shall pass probation period*
- ✓ *It will not be payable, if pension can be paid immediate of contract termination or provident fund is available in labour case*
- ✓ *A civil servant can only entitled to severance payment in retrenchment case*

- ➢ ***Grounds in LP***
  - ✓ *Termination because the undertaking ceases operation permanently*
  - ✓ *Termination by the initiation of the employer against the provision of law*
  - ✓ *Reduction of work force*
  - ✓ *Termination because his employer did things which hurts the workers human honor and moral or the thing done by the employer is deemed as an offence criminal code*
  - ✓ *Termination because the employer being informed of the danger that threats the security and health of the worker did not take measures*
  - ✓ *Termination because of reason of partial or total disability and is certified by medical board*
  - ✓ *Retirement without pension or provident fund*
  - ✓ *Worker who has given service to the employer for a minimum of five years and his contract of employment is terminated because of his sickness or death or his contract of employment is terminated on his own initiative provided that he has no contractual obligation, relating to training, to serve more with the employer*
  - ✓ *Termination on his/her own initiative because of HIV IAIDS*
    - ▪ ***Amount of severance payment***
  - ✓ *For civil servant 3 month's salary for one year service and add one-third of monthly salary for each additional service but not exceed totally more than 12 month's salary of the civil servant.*

- ***Amount of severance payment in :LP art 40***
  - ✓ *Taking the last week daily average times thirty for first year service and add one-third of the daily average for each additional year of service but not exceed 12 months' salary*
  - ✓ *Reduced workers or termination due to cease of undertaking shall have additional payment of last week's daily average times 60.*
  - ✓ *Can a worker get severance payment if s/he serves less than one year in both proclamations?*

4. Compensation for termination without notice

- ✓ *When a worker terminates the work due to reasons stated in article 32 of LP, s/he has the right to claim a compensation*
- ✓ *The amount of compensation is daily wage average of last week of service times thirty*
- ✓ *It is in addition to severance payment*
- ✓ *It is not based on work service rather a lump sum payment for all*
- ✓ *It is paid even for workers covered in pension immediately*

- ***Effect of Unlawful termination***
  - ✓ *Any termination which fails to observe the substantive or procedural requirements of termination shall be held unlawful.(refer Arts.14(1)(c),23(1) & 42 of Labour Proclamation.*

5. Compensation or reinstatement

- ✓ *It is for unlawful termination only*
- ✓ *According to art 42 unlawful termination means- When employer or a worker fails to comply with the requirements laid down in LP or other relevant law regarding termination,*
- ✓ *Termination b/c being membership of trade union or hold that office, conduct lawful activity or submit a grievance or based on any discrimination result in reinstatement, unless the worker does not need it.*
- ✓ *Termination contrary to the provisions of Articles 24, 25, 27, 28 and 29 of LP result in reinstatement or payment of compensation*
- ✓ *Courts can order even the worker wants reinstatement, if it has serious effect*
- ✓ *The amount is:*
  - ✓ *180 times daily average wage if the contract is for indefinite period (6 months)*

- ✓ *A sum equal to his wages which the worker would have obtained if the contract of employment has lasted up to its date of expiry Or completion but not exceed 6 month's wage*
- ✓ *With reinstatement courts shall order back-pay up to 6 month's wage for instance courts and 1 year for appellate court*
- ✓ *Non-compliance by the employer with the notice requirements specified under Article 35 shall only result in the payment by the employer, wages in Lieu of the notice period,*

6. Compensation by worker

- ✓ *A worker who terminates contract without giving a monthly notice or in contrary to the reasons stated in article 32 of LP shall compensate the employer*
- ✓ *The compensation cannot exceed more than thirty days wage*

7. Payment instead of unutilized annual leave

- ✓ *if the contract of employment is terminated prior to the utilization of the annual leave, the employee is entitled to his pay for the leave he has not taken per to article 77/5 of LP*
- ✓ *Civil servant has also similar right but it is only the working days that could be considered per article 41 of FCSP*

- ➢ ***Period of limitation (lawful termination focus)***
  - ✓ *The time within which the entitlements are to be claimed is also relevant. In principle, the labour proclamation tends to fix short durations after the expiry of which the claim maybe barred by limitation.(refer Art.162)*
  - ✓ *In addition to fixing short of period of limitation, the law obligates the employer to effect all payments due to the employee within seven working days from the time of termination. (refer.Arts.36-38). It is interesting to note that the FCSP does not possess similar stipulations except in cases of disciplinary measures.*

- ➢ ***The following are the remedies stipulated by law for unlawful terminations in general***
  - ✓ *Reinstatement (Arts.26(2)& 43(1)),*
  - ✓ *compensation together with severance payment(Art.43(2),(3)(4) &39(1)(b)),*
  - ✓ *payment in lieu of notice period(Art.44 & 45), fine(Art.14(1)(c)&184(2)(c)*

CHAPTER THREE

SPECIAL CATEGORIES OF EMPLOYEES

- ***Probationary employees- Art, 11 of the LP, Proc.no 377/2003***
  - ✓ *At the commencement of a contract of employment, the employer is entitled to set a probationary period (i.e. trial period).*
  - ✓ *"Whenever a person is dismissed for unfitness, it is sufficient that the employer honestly believes on reasonable grounds that the person is unfit. It is not necessary for the employer to prove that she is in fact incompetent."*
  - ✓ *Under the Civil Service, probation period is mandatory & its length is specified by law and hence it is not subject to contractual bargain. This does not seem the case under the Labour Proclamation.*

- ***Apprentice- Art, 48 of the LP, Proc.no 377/2003***

✓ *This is a situation through which the employer agrees to provide a person (i.e. the apprentice) complete and systematic training and the apprentice in return agrees to obey the instruction given to carry out the training. Strictly speaking, such an arrangement is not an employment relationship*

- ***Young employees - between the age of 14 and 18.***

✓ *The Civil Service Proclamation, in principle, prohibits civil service employment below the age of majority.*

- *Their differential treatment is manifested in the following terms of employment under the labour law,*
  - ✓ *As regards to length of working hours and its timing- Arts.61 (1) & 90 LP*
  - ✓ *As regards to types of work*

- ***Female employees***

✓ *The Ethiopian legal system appears to be on the right track. The FDRE constitution has already incorporated both principles in its body of provisions.*

✓ *Arts.13 & 41of the Federal Civil Service and Arts. 14, 87, 88 of the Labour Proclamation Two angles*

- ✓ *, The first type of regulation is providing flat protection available to all females by virtue of being female.*
- ✓ *The other type of regulation is providing special provisions for females under particular circumstances such as pregnancy and maternity.*

- ***Employees with disability***

- ✓ *FDREC stipulates," The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, Art.41 (5).*
- ✓ *Proclamation No.568/2008 has also important provisions for persons with disability.*
- ✓ *The principle of non-discrimination on grounds of disability has also been expressly inserted under the FCSP (Art.13 (1)). Though not as express as the FCSP, the LP prohibits discrimination among employees "…on the basis of nationality, sex, religion, political outlook or any other condition."(Art.14 (1) (f)*
- ✓ *The Disability Act of Ethiopia (2008) has also incorporated principles*

- ***Non Ethiopian employees***

- ✓ *The Ethiopian legislature lays down conditions on the basis of which foreign nationals may be employed in Ethiopia Art.174 LP & Art.15 & 22(2) FCSP.*
- ✓ *for a foreigner to be lawfully employed in Ethiopia, he/she needs to possess double permits.(namely; Residence Permit & Work Permit) The Power to issue Residence Permit is vested on the Security, Immigration and Refugee Affairs Authority; while Work Permit is to be issued by the Ministry of Labour and Social Affairs.(Art.174 LP)*
- ✓ *Under the Civil service employment regime, there is an express provision which stipulates "a person who is not an Ethiopian national may not be eligible to be a civil servant". exceptions (Art.15 FSCP).*

CHAPTER FOUR

LEGALLY STIPULATED MINIMUM WORKING CONDITIONS

1. Minimum Wage: Art7-10 FCSP & 53-60 of LP

- ✓ *What is the difference b/n Wage and Salary? Both are fixed regular payments, their main difference is time of payment, but sometime salary is considered as professional or white collar payment.*
- ✓ *Salary is defined as base or step pay for authorized for the jobs classified in the same grade. (art 2/9 FCSP)*
- ✓ *Wage is defined as - The regular payment to which the worker is entitled in return for the performance of the work that he performs under a contract of employment. (Art 53/1LP) but it does not include:*
    - ✓ *over-time pay, bonus, commission, other incentives paid for additional work results, service charge received from customers*
- ✓ *amount received by way of per-diems, hardship allowances, transport allowance, transfer expenses, and similar allowance payable to the worker on the occasion of travel or change of his residence*
- ✓ *However if the parties clearly state in their contract the above payments shall be considered as wage "they can be".*
    - ✓ *See case No 117070 Weynishet Bekele Vs Olompyacos Henenic Athletics association, vol 20*
- ✓ *Wage/Salary pays for work/job done as principle. But if the failure not to work is not attributable to employee, it shall be paid.*

- ➢ ***Determination of minimum wage***
    - ✓ *Labour is not a commodity" (Annex-I (a)) of ILO constitution, it cannot be pulled or pushed by market supply/demand. Minimum wage fixing conventions, No 131/1970 also oblige countries to have base wage.*
    - ✓ *Hence some countries set minimum wage such Australia $6.73/hr, Cameroon $75/month, Germany $8.84/hr, UK $8.31/hr, USA $15*
    - ✓ *Ethiopia has minimum salary scale ETB613/month for civil servant case ,it can be revised considering economic conditions*
    - ✓ *Where as in labor case we have not minimum wage standard, it is up to parties to agree*
    - ✓ *What is the advantage and disadvantage of determining minimum wage?*

- ***Mode and payment execution***
  - ✓ *Salary shall be paid in cash for the civil servant in person/ to bank account at the end of every month*
  - ✓ *Wage shall be paid in cash by principle but parties can agree in cash and kind in which the kind cannot exceed 30% in person at work place*
  - ✓ *The employer shall keep a register of payment specifying the gross pay and method of calculation of the wages, other variable remunerations, the amount and type of deduction, the net pay and other relevant particulars, unless there is a special arrangement, on which the signature of the worker is affixed*
  - ✓ *The employer shall not deduct from, attach or setoff the wages/salary of the employee.*
    - ✓ *SEE case No 59666 Oromya Road Authority Vs Abu Gobena, Vol 12*
  - ✓ *However law, collective agreement, interest of worker in writing or court the employer can deduct, attach or setoff wage up to one-third only*
  - ✓ *In civil servant proclamation there is probability of attach salary more than one-third if the civil servant consented in written form.*

2. Working hour and leaves: art 61-86 LP &33-47 FCSP

- ✓ *Working hour of civil servant is not more than 39 hours a week*
- ✓ *In LP working hour is not exceeding 8hr a day or 48hr a week*
- ✓ *In LP MOLSA can reduce the working hour for selected economic sectors considering special conditions of work without affecting amount of wage*
- ✓ *48hr shall be equally divided over working day, but if the nature of work so requires one working day may extended by 2hr plus.*
  - ✓ *See case No 36518 Meta Abo Beer Vs Samiel Tefera and others, vol 6*
- ✓ *The above working hours shall not apply for commercial travelers or representatives unless they agree likewise*

- ***Issue of overtime***

- ✓ *Overtime is Work done in excess of the normal daily hours fixed by law*
- ✓ *FCSP does not state reasons for overtime, the civil servant shall be compensated by leave or payment in his/her own preference*

- ✓ *In LP the grounds for obligatory overtime and the employer has no other resort are:*
  - ✓ *Accident, actual or threatened*
  - ✓ *Force-majeure*
  - ✓ *Urgent work*
  - ✓ *Substitution of absent workers assigned on work that runs continuously without interruption*
- ✓ *But overtime due to urgent work cannot exceed 2hr a day, 20hr a month or 100hr a year*
- ✓ *In LP overtime is payable in the following way for the work done B/n:*
  - ✓ *12:00 morning to 4:00= 1 and one-quarter rate*
  - ✓ *4:00 night to 12:00 morning= 1 and one-half rate*
  - ✓ *In week rest= 2 rate*
  - ✓ *In public holiday = 2 and one-half rate*
  - ✓ *Employer shall record overtime*
- ✓ *Payment for over-time work shall be effected on the day fixed for wage pay day*

- ➢ ***Week and public rest***
  - ✓ *Civil servant has weekend rest (2 days)*
  - ✓ *Workers shall also have week rest for one day on Sunday for all workers but if the nature of work is difficult to set on Sunday one day in seven days*
  - ✓ *If the worker is obliged to work in week rest in addition to overtime payment She/He has to get other week rest.*
    - ✓ *See case No 37815 Alemayehu general contractor Vs Abyot Befqadu, vol 6*
  - ✓ *This is not applicable for commercial travelers or representatives*
  - ✓ *Employees have public rest with pay*

- ➢ ***Leaves: Annual leave***
  - ✓ *Its main objective is to resume work with renewed strength*
  - ✓ *Civil servant has the right to take annual leave for the first service 20 working days and 1 working day for each additional service but not exceed 30 working days*
  - ✓ *A worker has a right to take annual leave for the first year service 14 working days and 1 working day for each additional service*
  - ✓ *An agreement by a worker to waive in any manner his right to annual leave shall be null and void*
  - ✓ *Paying wage/salary in lieu of annual leave is forbidden*
  - ✓ *It is also prohibited to postpone annual leave for more than two years*

- ✓ *In LP the parties can agree to postpone up to 2 years but in FCSP it is only if the work condition so requires*
- ✓ *Annual leave is granted considering the wish of employee and work condition as scheduled*
- ✓ *A civil servant who recruited for the first time can only claim annual leave after serving 11 month*
- ✓ *Advanced salary payment is possible for civil servant*
- ✓ *If employee falls in sick while taking annual leave the will be interrupted*
- ✓ *A worker can be recalled from annual leave unforeseen circumstance happen his presence at work*
- ✓ *The worker shall be entitled to a payment covering the remainder of his leave, defrayed expenses and perdium*
- ✓ *A civil servant can be recalled from annual leave for which s/he may take later*
- ✓ *Can a service year in another undertaking be considered in annual leave?*

- ➢ ***Maternity/paternity leave***
  - ✓ *A pregnant has paid leave with medical examination and before delivery with the recommendation supported by evidence. This cannot be taken as sick leave.*
  - ✓ *In LP art 88 she is entitled to 30 consecutive days prenatal and 60 consecutive day postnatal*
  - ✓ *For civil servant 30 prenatal and 90 days postnatal*
  - ✓ *What happens if the woman does not deliver with in prenatal leave?*
  - ✓ *If the civil servant miscarriage before 6 months pregnancy she will have 30 days leave*
  - ✓ *If miscarriage is after 6 months before prenatal leave she has 60 days leave*
  - ✓ *If the miscarriage is at prenatal 90 days leave*
  - ✓ *The father has the right to paternity leave of 10 working days at his wife's delivery, this is only in FCSP*
  - ✓ *A woman cannot be terminated her contract during pregnancy or up to four months after confinement Art 87/5 LP.*
    - ✓ *See case No 121063 Mulunesh meles Vs Waliya School, vol 20*

- ➢ ***Sick leave***
  - ✓ *A worker who has passed probation can claim sick leave up to six month consecutive days or separate in 12 months*
  - ✓ *He has the obligation to inform the employer*
  - ✓ *1 month with full payment, 2 month with half payment and 3 month without payment*

- ✓ *A civil servant who pass probation period has the right to get sick leave up to eight months in a year or 12 month in four years*
- ✓ *Six month with full pay and two month with half pay*
- ✓ *A civil servant who does not pass probation period has the right to one month*
- ✓ *For all medical evidence is mandatory*
- ✓ *This sick leave does not include occupational injury*

➢ ***Family leaves***

- ✓ *A worker has a right to leave in cases of self-marriage or mourning of family for three working days*
- ✓ *A civil servant has seven days within budget year, here it includes examination time and it is not exhaustive*
- ✓ *In LP for other serious conditions leave without payment up to five consecutive days is allowed*

➢ ***Special leave with or without payment***

- ✓ *An employee who exercises his civil rights or duties shall be granted leave with pay, only for the time utilized for the said purpose both in LP and FCSP, it include court appearance*
- ✓ *Although subject to collective agreement a worker in LP has a right to leave for education or training with pay*
- ✓ *A civil servant has right for leave without pay for justified reasons, if the head accepts for not more than one year*
- ✓ *For election, governmental project, or diplomatic mission up to the end of action*

➢ ***Union leave: in LP only***

- *Leaders of trade unions shall be entitled to leave with pay for the purpose of presenting cases in labour disputes, negotiating collective agreements, attending union meetings, seminars or training courses. The manner of granting such leave may be determined in a collective agreement.*

3. Occupational safety and health: General

- ✓ *It is well known that industrial activities are full of risks*
- ✓ *In the first times, these risks "let the damage rest where it falls" hence the worker was responsible for three reasons namely, contributory negligence, assumption of risk, and fellow servant rule.*
- ✓ *But later risks pass off to employer for two reasons equity as it can thinly distribute the cost to whole consumer and employer has deeper pocket*
- ✓ *The Risk may express itself in the form of accident, occupational disease or environmental pollution*
- ✓ *Its main objective is to safe employee and increase productivity*
- ✓ *This minimum condition has two stages: prevention measure and after injury measure*
- ✓ *Both Art 54 of FCSP and 92 of LP oblige the employer to:*
    - ✓ *Ensure that the work place is safe and not cause hazard to employee*
    - ✓ *Provide protective devices and materials like clothe, hamlet, dry shoe, eye glass, glove, etc*
    - ✓ *Give proper instruction for employee how to use safety materials*
    - ✓ *Establish safety committee as the case may be*
    - ✓ *Follow the instruction and directives given by concerned body regarding to preventing and safety measures (inspectors)*
- ✓ *Worker/civil servant has also the following duties towards safety per to Art 93 LP and 54/2 FCSP:*
    - ✓ *Observe instructions or directives of safety*
    - ✓ *Use the protective materials or devices properly*
    - ✓ *Inform concerned officer if S/he thinks there could be hazard*
    - ✓ *Cooperate with employer to formulate safeguards*
    - ✓ *Do not interfere with, remove, displace, damage or destroy any safety devices or other appliances furnished for his protection or the protection of others*
    - ✓ *Do not obstruct any method or process adopted with a view to minimizing occupational hazard*

- ***Occupational/employment Injuries***
  - ✓ *Occupational injury include both accident and disease*
  - ✓ *Occupation accident defined in art 53/2 FCSP and 97 LP as any organic injury or functional disorder sustained by an employee as a result of any cause extraneous to the injured employee or any effort s/he makes during or in connection with the performance of his/her work and includes:*
    - ✓ *Any injury sustained by an employee while carrying out the employer's order, even away from the work place or outside his normal hours of work*
    - ✓ *Any injury sustained by an employee as a result of an action of the employer or a third party during the performance of his work*
    - ✓ *Any injury sustained by a worker before or after his work or during any interruption of work if he is present in the work place or the premises of the undertaking by reason of his duties in connection with his work*
    - ✓ *Any injury sustained by an employee while he is preceding to or from place of work in a transport service vehicle provided by the undertaking which is available for the common use of its workers or in a vehicle hired and expressly destined by the undertaking for the same purpose.*
    - ✓ *Any injury sustained by a worker before or after his work or during any interruption of work if he is present in the work place or the premises of the undertaking by reason of his duties in connection with his work*
    - ✓ *Any injury sustained by a employee while he is preceding to or from place of work in a transport service vehicle provided by the undertaking which is available for the common use of its workers or in a vehicle hired and expressly destined by the undertaking for the same purpose.*
    - ✓ *Any injury sustained by an employee while saving the place work from imminent danger or destruction even if out of working hour and order of employer (for LP you can infer from art 27/1/b of pension proc 715/2011).*
  - ✓ *An employee self-inflicted injury or caused b/c not using safety materials cannot be considered as occupational injury*
    - ✓ *See case no 67201 Ato Mtku Hailu Vs Mesfin Tlahun, vol 13, being intoxicated worker is one ground not to assume injury*
  - ✓ *Occupational disease is defined in art 53/3 FCSP and 98 LP as Any pathological condition whether caused by physical, chemical or biological agents which arises as consequence of the type of work performed by the employee or the surroundings in which the worker is obliged to work during a certain period prior to the date in which the disease become evident*
  - ✓ *But disease do not include endemic or epidemic unless the type of work is to protect them*

- ✓ *MOLSA has the obligation to prepare schedule of occupational disease yet not done.*
    - ✓ *See case no 47807 Ethiopian insurance corporation Vs Tsehaynesh Fentaw and others, vol 9 how to interpret occupational injury*

- ➢ ***Types of disablement***
    - ✓ *Temporary disability=incapacitating the employee for a time being from work*
        - ✓ *Total temporary disablement*
        - ✓ *Partial temporary disablement*
    - ✓ *Permanent disablement= incapacitating the employee forever or cannot work in remunerated work*
        - ✓ *Permanent Total disablement*
        - ✓ *Permanent Partial disablement*
        - ✓ *See case No 43370 Agricultural production supplier company Vs Getachew Gedlu, vol 8 how to define working capacity and being employed after disablement cannot prevent from paying necessary benefits.*
    - ✓ *Assessment of disablement expect prepared table of disabled which has not yet done*
    - ✓ *Assessment of disablement is proved by medical board*
    - ✓ *Cause serious mutilation or disfigurement of the injured person shall be considered permanent partial disablement, for the purpose of compensation and other benefits.*
        - ✓ *See case No 60464 Oromya Road authority Vs Grma Weyso, vol 11*

- ➢ ***Remedies for occupational injury***

- *Once the injury sustained the employer has three obligations:*
    - ✓ *Immediate obligations like providing first aid, transportation and inform concerned body the occurrence of injure*
    - ✓ *Cover all medical expenses*
    - ✓ *Give disability benefits*
- *In both laws medical expenses include:*
    - ✓ *General and specialized medical and surgical care*
    - ✓ *Hospital and pharmaceutical care*
    - ✓ *Any necessary prosthetic or orthopedic appliances.*
    - ✓ *In FCSP art 59 civil servant has the right to get medical treatment coverage with full payment of salary till heal or certification of disablement in local institutions, it also include private institution if the service cannot be provided by governmental institutions*
    - ✓ *in LP worker has the right get all medical treatment expenses till the decision of medical board*

- ✓ *Periodical payment in LP is up to 12 month commencing from occurrence of injury. Full payment for 3 months, not less than 75% for the next 3 month and not less than 50% the wage for the rest 6 months*
- ✓ *Either medical expenses coverage or periodical can be suspended if employee is unwilling to medical examination, fail to follow direction from competent body or stop taking medicine*
- ✓ *Does the employer have obligation to cover medical expenses in foreign country in LP?*
    - ✓ *See case 46363 Salini constritori SPA Vs Tglu Frehiwot, vol 9, employer has no obligation to cover these expenses except agreed otherwise*

➢ ***Disablement benefits***

- ✓ *Does medical expense include foods, clothes or special house treatment b/c occupational injury?*
- ✓ *FCSP art 60 lead to public servant pension proclamation No 714/2011 and its amendment 908/2015: according to this proclamation civil servant is entitled to:*
    - ✓ *Incapacity pension: if civil servant injured not less than 10% and cannot work in remunerated work, S/he is entitled to 47% of salary for life*
    - ✓ *Incapacity gratitude: sustains employment injury of not less than 10% without loss of capacity to work shall receive 47% of salary times 60 in the form of a lump sum*

- *In art 109 of LP there are three options regarding to disablement benefit:*
    - ✓ *Those covered in pension according to private organizations pension proclamation 715/2011 and its amendment which is similar to public servant pension*
    - ✓ *Insurance scheme*
    - ✓ *If the worker has no pension or insurance:*
        - *For permanent total disability monthly wage times 60*
        - *If permanent partial disability proportionately*
- ✓ *If the employee died the following survivors earn severance payment and disability benefits*
    - ✓ *Widow/er 50%*
    - ✓ *Children under 18 years 10% each in LP or 20% or 30% as the case may be in pension proclamations*
    - ✓ *Parent 10% in LP or 15% in pension proclamations each*
- ✓ *In addition to above benefits funeral expenses cover not less than two month's wage in LP and three month's salary for civil servant*
- ✓ *Disability or death benefits are exempted from income tax and cannot be attached.*

CHAPTER FIVE

COLLECTIVE BARGAINING & COLLECTIVE AGREEMENT

- ***Evolution of collective Labour relationship***
  - ✓ *Collective Labour Relation: it is a relation between an employer or employer's association with a trade union or an association of trade unions*
  - ✓ *Collective bargaining, collective agreement and strike are among this type of relationship*
  - ✓ *There were times in labor history that formation of associations of employees was considered as conspiracy and hence criminal offence*
  - ✓ *Since the establishment of ILO as a world body the right to form association has been one of the fundamental rights for both the employees and employers*
  - ✓ *However after right recognition there were an employment contracts forbidding membership in a labor union, called yellow dog contract.*
  - ✓ *Freedom of Association and Protection of the Right to Organize Convention No 87, 1948 and Right to Organize and Collective Bargaining Convention No 98, 1949 developed for this purpose*
  - ✓ *Ethiopia ratify these convention in 1963 as the constitution of 1955 recognize labour associations*
  - ✓ *Proclamation No 210/1963 had more detail in the formation of associations by limiting minimum number of members 50 persons*
  - ✓ *In Derg regime, by proclamation 65/1975 number of membership lowered down to 20, but it block employers association being silent*
  - ✓ *FDRE constitution enshrine the right to association in article 31 as a general and the right to form labour unions in article 42 as a specific concern*
  - ✓ *Labour proclamation 42/85 later proclamation No 377/96 detailed about the formation of trade unions and employer associations as well their obligations as follow.*

- ***Formation of trade union and employer association: Art 113&114 LP***
  - ✓ *Trade Union: is an organization formed by workers*
  - ✓ *General Trade Union: is a type of trade union formed by workers of two or more different undertaking jointly*
  - ✓ *Employers' association: is an organization established by employers*
  - ✓ *Federation: is an organization established by more than one trade unions or employers' association*
  - ✓ *Confederation: is an organization established by more than one trade unions federations or employer's federations*
  - ✓ *A worker has a right to form and be a member of trade union but cannot be a member in two or more trade unions at once*
  - ✓ *A trade union can be formed by ten or more workers. There may be multiple trade unions in a given undertaking*
  - ✓ *A trade union can form federation and the federation be member of confederation. A trade union cannot be immediate member of confederation*
  - ✓ *An employer has the right to form employers' association, then the association federation, the federation be member of confederation*
  - ✓ *If the worker in undertaking is less than ten worker, the worker has the right to form general trade union*

- ***Obligations of organizations: Art 115 and 116 LP***
  - ✓ *Observe the conditions of work and fulfill the obligations set forth in the LP*
  - ✓ *Respect the rights and interests of members*
  - ✓ *Represent members in collective negotiations and labour disputes*
  - ✓ *Ensure that laws, regulations, directives and statements are known to, be observed and implemented by members;*
  - ✓ *Initiate laws, and participate actively during their preparation and amendments*

- ***Registration: Art 118 of the LP***
  - ✓ *All organizations have the obligation to prepare full constitution and be registered by MOLSA*
  - ✓ *The registration can be actual (certifying By MOLSA) or presumed (default of decision By MOLSA within 15 days)*

- *Registration can be objected for the following reasons:*
    - ✓ *the organization does not fulfill the requirements laid down in this Proclamation, regulations and directives issued in accordance with this Proclamation*
    - ✓ *the objectives and the constitution of the organization are illegal*
    - ✓ *the name of the organization is similar to another organization*
    - ✓ *One or more than one of those elected as leaders of the organization have been convicted and punished, within the late ten years, of serious, nonpolitical offences and the organization is not willing to substitute them.*
  - ✓ *Once registered the organization will have full legal personality*
  - ✓ *There is also a probability that organization can be cancelled from registration by order of regional high court when :*
    - ✓ *The registration was by fraud or deceit*
    - ✓ *The organization found in illegal acts and could not correct*
    - ✓ *The objective of organization is illegal and cannot correct it*
    - ✓ *By request at dissolution of organization*
  - ✓ *In both cases there is the right to appeal*
  - ✓ *In cancellation case there is prior one month notice*

- ***Collective bargaining and Agreement***
  - ✓ *Collective Bargaining: is a negotiation made between employers and workers organizations or their representatives concerning conditions of work or collective agreement or the renewal and modifications of the collective agreement*
  - ✓ *To be effective, the exercise of the right to collective bargaining requires that workers' organizations are independent and not "under the control of employers or employers' organizations" and that the process of collective bargaining can proceed without undue interference by the authorities.*

- ✓ *Collective agreement: is an agreement concluded in writing between one or more representative of trade unions and one or more employers or agents or representatives of employers or organizations*
- ✓ *Collective agreements should be binding. It must be possible to determine terms and conditions of employment which are more favorable than those established by law and preference must not be given to individual contracts over collective agreements, except where more favorable provisions are contained in individual contracts.*
- ✓ *Both trade union and employer's association are represented by their leaders*

- ➢ ***Subjects of collective agreement : Art 128 and 129 LP***
  - ✓ *Matters concerning employment relations*
  - ✓ *Conditions of work*
  - ✓ *Relations of employers and their organizations with workers' organizations*
  - ✓ *Matters left by the law to be regulated by collective agreements*
  - ✓ *Occupational safety and health*
  - ✓ *Workers' promotion, wages, transfer, reduction and discipline*
  - ✓ *Working hours and interval break times*
  - ✓ *In general the purpose of collective bargaining is the regulation of terms and conditions of employment, in a broad sense, and the relations between the parties.*

    - ▪ ***Procedures***

  - ✓ *The following are basic principles in collective bargaining and agreement;*
    - ✓ *Non-interference*
    - ✓ *Free and voluntarily*
    - ✓ *Having good faith*
  - ✓ *A party who want to bargain request in writing to other party preparing a draft of issues*
  - ✓ *The other party reply within ten days and they both set rules of bargaining*
  - ✓ *In order to amend a previous collective agreement, the request shall be before 3 months of expiration*
  - ✓ *Registration of collective agreement in MOLSA*
  - ✓ *Acceding is possible*
  - ✓ *It governs all workers in the undertaking and the employer*
  - ✓ *It is effective from date of signature*

- ✓ *It cannot be challenged before 3 years unless there is major economic change*
- ✓ *Less favorable conditions than provided by LP are void and null*
    - ✓ *see case No 92410 China high way Group limited Vs Ato Wubshet vol, 16*
- ✓ *Even if the trade union dissolved collective agreement continues b/n workers and employer*

- *In case of amalgamation the following will be applicable:*
    - ✓ *Where undertakings which have their own collective agreement are dissolved the collective agreement concluded by more workers before the dissolution shall be deemed as concluded by the others and shall be applicable*
    - ✓ *where only one of the undertakings has a collective agreement, it shall be applicable to the undertaking which results from the amalgamation*
    - ✓ *where the number of workers of all of the undertakings, are equal and they have their own collective agreements, the one more favorable in general, shall be applicable*

    - ***Related Cassation Cases***
        - ✓ *Case No 26077 Ethiopian Commercial bank Vs Aynalem Bayle, vol 6, when the collective agreement is more favorable than the provisions of LP collective agreement shall be applicable*
        - ✓ *Case No 36692 Anbese city bus service company Vs Tesfaye Mekonen, vol 8, uncovered issues in LP can be subject of collective agreement*
        - ✓ *Case No 54326 Anbesa shoe company Vs Ethun Ayalew , vol 11 breaking conditions state in collective agreement is unlawful act*
        - ✓ *Case No 55731 Ethiopian national bank employees' association Vs MOLSA, vol 11, Formation of trade union is only given to workers in LP*

CHAPTER SIX

EMPLOYMENT DISPUTE SETTLEMENT MECHANISMS

- ✓ *The labour law and the Civil Service employment regimes follow different kinds of dispute settlement machineries.*

- ➢ ***Labor Dispute Settlement process***
  - ✓ *The powers to adjudicate over individual labour disputes are concurrently vested both in the Federal Courts and the State Courts.*
  - ✓ *The Proclamation establishes in each First Instance Courts of the States (a) labor division (s).*
    - ▪ *Labour divisions are also established in the State Appellate Courts to hear mostly appeals from decisions rendered by the First Instance Courts or by the Ministry of Labor and Social Affairs or Bureau of Labor and Social Affairs.*
  - ✓ *Ordinarily, labour disputes are either individual or collective.*
  - ✓ *The labour proclamation has employed illustrative listings of what constitutes individual labour dispute and what constitutes a collective one (Arts.138 (1) &142(1) LP respectively).*
  - ✓ *Individual labour disputes are within the competence of the labour divisions of the ordinary woreda court while the collective ones are within the power of the Labour Relation Boards.*

  - ✓ *As regards to composition, the Labour Divisions are to be operated by sitting judges of the ordinary courts while the Boards are composed of representatives of the employers' and employees associations in addition to the appointees of the government(i.e. tripartite arrangement).*
  - ✓ *With respect to the working systems, the labour divisions are expected to conduct business in accordance with the stipulations of the civil procedure in their judicial proceedings. Winner-loser determination is the final outcome in such forum.*
  - ✓ *Nevertheless, the Boards are expected to serve as more of negotiating forum rather than an adjudicating one. It is only when amicable settlement is not attained that the Boards will resort to judicial settlement.*
  - ✓ *Decisions of the labour divisions are appealable to the upper floor in the judicial hierarchy and the decision of the appellate division is final irrespective of whether the appellate division affirms or reverses the decision of the lower court.*

- ✓ *With the same token, decisions of the Boards are appealable, on issues of law only, to the Federal High Court and the decision of this court is held final regardless of whether is agrees or disagrees with the Board's position (but still there is cassation).*

➢ ***Permanent and ad hoc labor relations board***

- *Once the Conciliation proceedings fail to bring forth a negotiated settlement, Art. 142(3)LP comes.*
  - ✓ ***Firstly**, the power to conciliate and decide over all collective labor disputes, except those on matters of wages and other benefits arising in the EPSU, is vested in the Permanent Labor Relations Board*
  - ✓ ***Secondly**, the power to decide over collective labor disputes arising particularly out of wages and other benefits in the EPSU is vested in the Ad Hoc LRB.*

➢ ***The place of arbitration under the labour proclamation***

- ✓ *Art.143 of LP - nowhere is the word 'arbitration' or 'arbitrator' allowed to but in this Provision!!*
  - ▪ *paragraph (1) of the Provision could be briefly put as enabling disputing parties to agree to submit their case to arbitrators for settlement in accordance with the appropriate law, either by inserting it in the main contract, i.e., arbitral clause (probably in the collective agreement) or concluding it as a separate agreement, i.e., arbitration submission.*
- ✓ *Dispute settlement mechanism under the Civil Service employment regime - as there is no legal framework enabling civil servants to form associations of their own, collective employment dispute under the civil service is unthinkable.*
- ✓ *For this the Civil Service Proclamation has laid down mechanisms for grievance handling within the internal structure of every civil service office. Accordingly, every government of is expected to establish a "Grievance Handling Committee".*
- ✓ *"Disciplinary Committees" are also expected to be established in view of investigating alleged misdeeds committed by civil servants and recommend proportional measure to the head of the government office concerned.*
- ✓ *Furthermore, civil servants are entitled to lodge appeals from the decisions of the government organs to Administrative Tribunals (Art 74) FCSP no. 515/2007.amemded by Art, 79 & ff FCSP.no. 1064/2017.*

❖ *Conclusion*

- ✓ *ADR methods feature in settling labor disputes: individual labor disputes, though vested in the First Instance Courts of the States, can be submitted to conciliation and/or arbitration.*
- ✓ *In the settlement of collective labor disputes, Conciliation is used both in the Essential Public Service Undertakings (EPSU) and in those Undertakings that are otherwise categorized (UOC). Whilst it seems to have been left for the discretion of the parties whether to resort to conciliation or not in the EPSU, it is compulsorily imposed on the UOC.*
- ✓ *In the event that conciliation does not bear fruits, parties may resort to LRB (ad hoc or permanent). Ad Hoc LRB seems to have been devised for settlement of disputes arising from wages and other benefits in the EPSU. The judgment-debtor has the right to appeal against the decision of LRB to the Federal High Court or State Supreme Court.*
- ✓ *Disputing parties may opt out of LRB, though. They may agree to submit their disputes for settlement to arbitration. The award-debtor may similarly appeal against the arbitral award, provided that, under their submission, the parties have not waived their right of appeal. The award-debtor may also resort, under certain circumstances, to the setting aside procedure. Here, it is good to note that arbitral awards are final i.e., no appeal to court lies against the award, under the arbitration rules of arbitration centers, if the parties submitted their disputes to the institutions so-far established and operating in Ethiopia.*
- ✓ *Finally, in Ethiopia, the use of ADR methods in the commercial dispute settlement is yet at its infantile stage. The low profile that ADR methods suffer from, amongst the business community, needs to be quickly addressed so that the emerging conciliation and arbitration centers in Ethiopia play their role in effectively settling disputes arising both from domestic and international trade and investment.*
- ✓ *In this author's opinion, it is imperative for the efficacy of conciliation proceedings that statements, offers, admissions, suggestions made during the conciliation proceedings should not be adduced as evidence in court against the party making them. Today, short of legal provisions to this effect, parties may find it difficult to be transparent in the conciliation proceedings.*
- ✓ *The arbitration laws in force are far from being modern, too. The fact that Ethiopia has recently ratified the Hague Convention on the Pacific Settlement of International Disputes (1899 and its commitment under the COMESA Treaty to accede to multilateral agreements on investment dispute resolution, this author hopes, may serve as a catalyst in the process of ratifying the NYC and the International Convention on Settlement of Investment Disputes Between States and Nationals of Other States (ICSID), otherwise known as "The Washington Convention of 1965".*
- ✓ ***Industrial Action-** This action may take either of the two forms namely; strike or lock -out. When the action is taken by the employees, it will be a strike while the measure will be lock-out where it is exercised by the employer.*
- ✓ *In both cases the measure is a sort of self -help action where the aggrieved party takes its own action in view to compelling the other party to accept its term.*

JURISPRUDENCE

UNIT ONE

❖ *GENERAL CONSIDERATIONS*

- ✓ *What is Jurisprudence- comes from the Latin term juris prudentia, which means "the study, knowledge, or science of law." This signifies that like any other social study, law can also be studied scientifically or systematically.*
    - ✓ *It seeks to analyze, explain, classify, and criticize entire bodies of law.*
    - ✓ *It compares and contrasts law with other fields of knowledge such as literature, economics, religion, and the social sciences.*
    - ✓ *It raises fundamental questions about the law itself & focuses on even more abstract questions, including, what is law?*

- ***Why we study Jurisprudence-*** *it develops the ability to analyze and to think critically and creatively about the law.*
    - ✓ *At a professional level, jurisprudence is the way lawyers and judges reflect on what they do and what their role is within society.*

➢ *Schools of Jurisprudence*

1. Natural Law School

- ✓ *The oldest school of jurisprudence, it upholds that beyond, and superior to the law made by man are certain higher principles, the principles of natural law. These principles are immutable and eternal. With regard to the highest matter man-made law should be in accord with the principles of natural law. And to the extent that man-made law conflicts with natural law, it lacks validity: it is not a valid, binding law at all.*

2. Legal Positivism (Analytical School)

- ✓ *It holds that there is no higher law than that created by governments, legitimate or self-imposing, and that such law must be obeyed, even if it appears unjust or otherwise at odds with the "natural" law. Unlike the natural law theory, this one treats law and other values, such as, Morality and Religion separately.*

3. Historical School

- ✓ *Views law as an evolutionary process and concentrates on the origin and history of the legal system.*

4. Sociological School

- ✓ *Unlike the Historical School that conceives a nation's law as tied to the primitive consciousness of its people, sociological conception of law locate the law in the present-day institutions of its society.*

5. Legal Realism

- ✓ *Conceives law as judge made and by doing so it puts the court at the center.*

UNIT TWO

CLASSICAL NATURAL LAW THEORY

- ✓ *The Notion of Natural Law- its adherents believe that beyond, and superior to the law made by man are certain higher principles, the principles of natural law.*
- ✓ *It comprises a body of permanent, eternal truths, truths embodying precepts of universal applicability, part of immutable order of things, unaffected by changing human beliefs or attitudes.*

Ancient Greece: Natural Law as Source of Justice and Virtue

1. Socrates

- ✓ *His idea of law as recorded in Apology and Crito, two different writings written by his pupil Plato. Apology is all about Socrates' defense in court, while Crito is a discourse made between Socrates and his friend Crito in prison.*
- ✓ *In his apology, he importantly said that it was good to obey the law and the order of a commander so long as they are just.*
- ✓ *Socrates justified the coercive power of the state laws (positive law) and thereby upholding and respecting the decision of the courts (not to escape from prison) on three grounds.*
  - ✓ *On moral grounds, to do injustice in return for injustice or to return harm for harm is also bad.*
  - ✓ *Citizens are not justified to back-harm their country whatever harm the country caused to them.*
  - ✓ *there was a tacit agreement between Socrates (and other citizens for that matter) and the state of Athens*

2. Plato

- ✓ *Concerned to redefine the nature of justice by relating it to something far more permanent and absolute than the nomos (man-made laws) of the city-state.*

3. Aristotle

- ✓ *There are two sorts of political justice, one natural and the other legal.*
  - ✓ *The natural is that which has the same validity everywhere (as fire burns both in Greek and in Persia are the same) and does not depend upon acceptance;*
  - ✓ *The legal is that which in the first place can take one form or another indifferently.*

➢ ***The Stoics***

- *Natural Law as a Reason- existed from the life time of its founder Zeno (during the 3rd century BC) down to about the fourth century AD & represented by the writings of Cicero, Seneca, and the Emperor Marcus Aurelius.*
  - ✓ *The conception of a universal law for all mankind under which all men are equal;*
  - ✓ *The idea of a method of deriving universal principles of law from the observation of the laws of different people;*
  - ✓ *And the conception of a law binding upon all states, which have got today the name "international law".*
  - ✓ *Stoics added flesh to the bones of natural law. Tolerance, forgiveness, compassion, fortitude, uprightness, sincerity, honesty – these were the qualities that the Stoics believed that natural law required of men.*
- ***Cicero**-Law is the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite. True law is right reason in agreement with nature. To curtail this law is unholy, to amend it illicit, to repeal it impossible.*
- ***Seneca**- has also emphasized the need for rational approach, i.e. that man shall live in harmony with nature.*

Christianity: Natural Law as Morality

- *St. Augustine of Hippo- De Civitate Dei (the City of God), the will of God is then seen as the highest law, eternal law, for all people.*
  - ✓ *Nothing which is just is to be found in positive law which has not been derived from eternal law.*

- *St. Thomas Aquinas- Summa Theologica, (1) Eternal Law; (2) Divine Law; (3) Natural Law; and (4) Human Law*

Modern Natural Law Theory

- ***Nature of Man and Justification for Law***

  - ✓ *The medieval power of the church dissolved with the coming of Renaissance and political writers such Hobbes, Locke and Rousseau.*

1. ***Thomas Hobbes-*** *Leviathan postulates a natural condition of mankind in order to explain the origin and nature of the state and to show the justifications behind a strong sovereign power. He imagined a natural condition of man, termed as State of Nature, in which there was no law and government.*
2. ***John Locke-*** *The Second Treatise of Civil Government, Unlike the Hobbessian picture of man's natural condition, which was a state of perpetual warfare, Locke depicts the state of nature as one of peace in which most men respect the lives, liberties, and estates of others. These are the natural rights of man, given to him by the law of nature which commands that "no one ought to harm in his life, health, liberty, and possession".*

- ***Kelsen's Criticism on Natural Law Theory***
  - ✓ *Natural law confuses value and reality- Value is not immanent in natural reality. Hence value cannot be deduced from reality.*
  - ✓ *Good/Bad contradiction- Natural lawyers justify positive law (man-made or human law) on the ground that these are needed because of man's badness. At the same time their doctrine requires an assumption that man is good, because it is from human nature that the principle of natural law are to be deducted.*
  - ✓ *Insincerity- Where laws of the state conflicts with natural law do natural lawyers in fact say that a citizen should disobey it?*
  - ✓ *Absolute values and Relative values- knowledge is relative to the person seeking it. Reality exists only in relation to our own feelings and convictions.*

- *So, there is one nature but we have different systems of law; different beliefs of goodness and badness.*

UNIT THREE

THE REVIVAL OF NATURAL LAW

- ***Introduction***

  - ✓ *The massive human delinquencies by the Nazis during the Second World War and the emergence of totalitarian States and dictators stimulate in the 20th c the rethinking of natural law theory. Jurists raised questions whether positive law is adequate enough to protect mankind.*

- ***Procedural Natural Law***

- ***Lon L. Fuller****- Morality of Law, published in 1963, His first step was to repeal all existing laws and to set about replacing these with a new code.*
  - ✓ *In a legal system the laws must be: Generality (not made ad hoc or for temporary purpose only), Published, Prospective, not retroactive, Intelligible (clear or understandable), Consistent, Capable of being complied with, Endure without undue changes, Applied in the administration of the society.*
    - ✓ *These qualities make up the 'inner morality of law'.*

- ***Substantive Natural Law***

- ***John Finnis*** *- Natural Law and Natural Rights, there is a strong affinity between Finnis' view of natural law and that of Aquinas.*
  - ✓ *The major difference is that, for Finnis, the existence of God is only possible explanation for the comparative order of that he seeks to project on human values, not the necessary reason. Finnis instead states that his goods are self-evident.*
  - ✓ *Finnis' seven basic goods r life, knowledge, play, Aesthetic experience, Sociability or friendship, Practical reasonableness & religion.*
  - ✓ *Finnis asserts is that these goods are not the result of speculative reason. They are not goods because of anything, they are just good.*

UNIT FOUR

POSITIVISM

- ***Introduction***
  - ✓ *By requiring that all law be written or somehow communicated to society, it ensures that the government will explicitly apprise the members of society of their rights and obligations.*
  - ✓ *Positivism reduces the power of the judge to the application of laws; it does not allow judges to make laws.*

- ***Influence of David Hume-*** *it was Hume who first opened the eyes of positivists who challenged the close relationship of law and morality; that law has nothing to do with morality or religion. Law should be investigated beyond any bias of morality.*
- ***Jeremy Bentham-*** *had many specific complaints about common law theory and its practice.*

- ***The Command Theory: John Austin's Positivism***
  - ✓ *Law is a command of the sovereign enforced by sanction.*
  - ✓ *Strongly influenced by Hume and Bentham, Austin wrote that the starting point for the science of law must be clear analytical separation of law and morality.*
  - ✓ *Positive morality is distinguished from positive law; and it is positive because it is laid down by human beings for human beings.*
  - ✓ *He developed separation thesis, the existence of law is one thing, its merit or demerit is another.*
  - ✓ *He makes a clear separation between the question and what the law ought to be (it is possible one can make reference to higher laws) and the determination of what the law is.*
  - ✓ *Ought can be identified (to simplify) with criteria for distinguishing between good and bad law.*
  - ✓ *A law might be bad, but it is still law and must be obeyed by the subjects so long as it is made by the sovereign.*
  - ✓ *If you are to obey the law it ought to be in conformity with the higher laws, such as morality or divine laws (the Bible or the Koran.) As a positivist, however, what comes to your mind first is whether the law is (means actually exists).*

- ***Criticism on Austin by HLA Hart***
  - ✓ *Laws as we know them are not like orders backed by threats*
  - ✓ *Austin's notion of the habit of obedience is deficient, law should not be based on one particular body*
  - ✓ *Austin's notion of sovereignty is deficient, In Austin's theory of law, there is no legal limit on a sovereign's power*

- *Pure Theory of Law: **Hans Kelsen** - He declares that law must be studied as a pure science independent of other incidents, like morality and justice.*
- *The law, according to Kelsen, is a system of norms.*
  - ✓ *The basic norm, then, is the most general norm which is hypothesized as the norm behind the final authority to which all particular valid norms can be traced back.*

- ***H L A Hart-** The Concept of Law (1907- 1992) - He distinguishes first between social rules which constitute mere regularity from social habits.*
  - ✓ *Primary rules of law are said to be those which are essential for any kind of social existence, those which prescribe, prevent or regulate behavior in every area with which the law is concerned. These are all the rules constraining anti-social behavior; rules against theft, cheating, violence and so on.*
  - ✓ *Secondary rules are those that stipulate how, and by whom, such primary rules may be formed, recognized, modified or extinguished. The rules that stipulate how parliament is composed, and how it enacts legislation. . .*

- ***Dworkin's criticism on Hart/Positivism***
  - ✓ *Legal positivism envisaged, Dworkin claimed, that the law consists of rules only. However, this is a serious mistake, since in addition to rules; law is partly determined by legal principles.*

UNIT FIVE

HISTORICAL AND SOCIOLOGICAL LEGAL THEORY

- ***Historical School***

1. *The Spirit of the People*: ***Savigny***- *the principles of law derive from the beliefs of the people.*
2. *The Changing process of Ancient Law:* ***Henry Maine***- *Maine departed from Savigny in two important respects: he believed in stages of legal evolution, in which the primitive ideas might be discarded; and he sought to discover by comparative studies of different systems of law the ideas which they had in common.*

- ***Sociological School***

1. *Living Law*: ***Eugen Ehrlich***- *earlier legal theories that recognize law as a sum of statutes and judgments gave an inadequate view of the legal reality of a community.*
2. *Law in Action*: ***Roscoe Pound***- *saw a legal system as being a phenomenon which intimately interacts with the prevalent political, economic, and social circumstances in a given society and which constantly alters with them in a living process of development.*

UNIT SIX

LEGAL REALISM

❖ *Introduction*

- ✓ *It attempts to describe the law without idealizing it, to portray the law as it is – not how it should be*

➢ *American Realists*

1. *Pragmatist approach- Oliver Wondel Holmes and John Chipman Gray are the two mental fathers of the American Legal Realism.*
   - ✓ *Its theme is how the rule of law works, not what they are on paper.*
2. *Law as prophesy of the court: Oliver W. Holmes- The actual life of the law has not been logic: it has been experience.*
   - ✓ *But, this approach disregards the rules and laws that establish the judiciary itself.*
3. *Centrality of the judge: John Chipman Gray- it is not a law until it had been interpreted by the courts, for "the courts put life into the dead words of the statutes.*
4. *Rule Skepticism: Karl Llewellyn*

➢ *On the nature and purpose of law*

- ✓ *He suggested that no definition of law has really proved adequate to the task.*
- ✓ *Law for Llewellyn was a means for the achievement of social ends and for this reason it should not be backward looking for its development but should be forward looking in terms of moulding the law to fit the current and future needs of society.*
- ✓ *Furthermore, realists should be concerned with the effects of law on society and he insisted that law should be evaluated principally in terms of its effects.*

➢ *Rule Skepticism*

- ✓ *Llewellyn is described as "rule skeptic" in that he distrusts rules as laws.*
- ✓ ***Jerome Frank** (another American jurist) called this aspect of realism as 'rule skepticism' – skepticism as to whether rules, if they exist, in practice play the part traditionally ascribed to them.*
- ✓ *For Llewellyn, legal rules do not describe what the courts are purporting to do nor do they describe how individuals concerned with the law behave. Legal rules as found in books and emphasized in judicial decisions do not accord with reality. Rules, as described in books and judicial decisions, have essentially taken on a life of their own, and as such bear little resemblance to the actuality of legal process. Legal rules are not the 'heavily operative factors' in producing the decisions of courts although they appear to be on the surface. The realist should be concerned with discovering those factors that really influence judges, and judges in return should be more open about using them*

UNIT SEVEN

RADICAL LEGAL THEORIES

- ***Critical Legal Studies***

  - ✓ *The critical legal studies movement, was initially emerged in the United States in the 1970s in part as a successor to the American realist movement,*
  - ✓ *The overall aim of critical theory is to destroy the notion that there is one single 'truth' and that by disclosing the all-pervasive power structures and hierarchies in the law and legal system, a multitude of other possibilities will be revealed, all equally valid.*
  - ✓ *The Critique of the Liberal Legal Tradition from critical legal scholars - The law is portrayed as rational, coherent, necessary and just by liberal legal scholarship, when in fact, according to the critical legal scholars, it is arbitrary, contingent, unnecessary and profoundly unjust.*
  - ✓ *The constitutive theory of law- it is trend in the critical legal studies movement in w/c law plays an important role in shaping society is part of the wider post-modernist perspective that ideas, and not the economic base, constitute (form or make up) society.*

- ***Critical Legal Studies and Feminist Legal Theory***
  - ✓ *Feminist legal theories represent a most important modern development in the analysis of law, concerned with the treatment of women by the legal system and the perception, or lack of perception, of women's experience and needs in legal provision.*
  - ✓ *Feminism and critical legal studies are, of course, two entirely different creatures. Feminism is only partially and peripherally concerned with academic theorising. It is motivated by the dissatisfactions of a wide spectrum of ... women and by the everyday experience of such women.*
  - ✓ *The value of critical methodologies in the display and analysis of such gender distortions in law and legal administration should be evident.*
  - ✓ *The key endeavor of feminist legal theory may rather be to identify a fact of social, political and legal history which in many important respects fails adequately to take account of the experience of somewhat more than half of the human population.*

➢ ***Postmodern Legal Theory***

- ✓ *The latest radical theory to challenge the liberal orthodoxies that society has a natural structure and that history is simply a process of evolution towards that truth.*
- ✓ *Liberalism and capitalism are not the end of the road but are simply the major components of what the postmodernists call 'modernity'.*

- ***A Critique of the Enlightenment***
  - ✓ *The Enlightenment sought to free humanity from the chains of unthinking tradition and religious bigotry. It sought to master the world through science and remake the world according to the dictates of reason.*
  - ✓ *The emancipation we now require cannot be on the same terms as those proposed by the Enlightenment. It must, at least in part, be a rejection of the terms by which we freed ourselves from pre-Enlightenment thinking.*
  - ✓ *In essence, postmodernism is not anti-modernism, for as Lyotard's example illustrates 'a work can only become modern if it is first postmodern', so that postmodernism is definitely 'a part of the modern', not a historical period beyond modernity.*
  - ✓ *Identity and the 'Other'- the 'other' (eg women and racial minorities) appear to be the individual who is outside the system, who is disadvantaged by it.*
  - ✓ *Postmodernism is inclusive in that it purports to embrace the 'other'. Z postmodernist concern with the 'other', the law should seek to accommodate their claims but to what extent and in what manner cannot be determined.*
  - ✓ *Postmodernism and Fundamental Values- whether cultures and minorities will disappear because of possible post-structuralist 'enlightenment'.*

UNIT EIGHT

JUSTICE

- ***Introduction***
  - ✓ *Justice concerns the proper ordering of things and persons within a society*

    .

- ***John Rawls**: Justice as Fairness - Theory of Justice" (1972), Rawls makes a distinction between the concepts of justice and conception of justice. He claims that any theory of justice must deal with both of these.*

  - ✓ *By a concept of justice, Rawls means the role of its principles in assigning rights and duties and in defining the appropriate division of social advantage.*
  - ✓ *The conception of justice for Rawls can be stated in the form of **two** principles as follows:*

    - ✓ *first, each person participating in a practice, or affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all, providing everyone with basic human freedoms such as freedom of thought, religion, belief, expression…etc. and*
    - ✓ *Second, inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage, equal distribution of primary social resources to everyone and inequalities are arbitrary.*

    - *The first principle has absolute priority over the second*

- ***Will Kymlicka**: Justice and Minority Rights- forms of group-specific rights:*
  - ✓ *self-government rights;*
  - ✓ *polyethnic rights; and*
  - ✓ *Special representation rights.*
  - ✓ *One mechanism for recognizing claims to self-government is federalism, which divides powers between the central government and regional subunits.*

- ✓ *'**polyethnic rights'** - are intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society.*
- ✓ *Unlike self-government rights, polyethnic rights are usually intended to promote integration into the larger society, not self-government.*

- ➢ ***The Equality Argument**- ethnic and national minorities are needed to ensure that all citizens are treated with genuine equality.*
  - ✓ *Equality-based argument will only endorse special rights for national minorities if there actually is a disadvantage with respect to cultural membership, and if the rights actually serve to rectify the disadvantage.*

- ➢ ***The Role of Historical Agreements**- such as the treaty rights of indigenous peoples, or the agreement by which two or more peoples agreed to federate.*
  - ✓ *Where historical agreements are absent or disputed, groups are likely to appeal to the equality argument.*

- ➢ ***Rawls Revisited-** Liberals can and should accept a wide range of group-differentiated rights for national minorities and ethnic groups, without sacrificing their core commitments to individual freedom and social equality.*
  - ✓ *Many polyethnic liberal states have adopted various forms of polyethnic policies and group-specific rights.*

CHAPTER NINE

LIBERTY

- ***Introduction***
  - ✓ *Liberty is generally considered as a concept of political philosophy that identifies the condition in which an individual has the ability to act according to his or her own will.*
  - ✓ *Liberty and equality are principles of justice.*

- ***Isaiah Berlin: Two Concepts of Liberty***
  - ✓ *the 'negative' sense, is involved in the answer to the question 'What is the area within which the subject - a person or group of persons - is or should be left to do or be what he is able to do or be, without interference by other persons?'*
  - ✓ *The second, 'positive' sense, is involved in the answer to the question 'What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?'*

CHAPTER TEN

EQUALITY

- ✓ ***Equality:*** *Defining the Concept- 'Equality' (or 'equal') signifies correspondence between groups of different objects, persons, processes or circumstances that have the same qualities in at least one respect, but not all respects, i.e., regarding one specific feature, with differences in other features. distinguished from 'identity'*

- ***Principles of Equality and Justice***
  1. ***Formal Equality-*** *When two persons have equal status in at least one normatively relevant respect, they must be treated equally with regard to this respect.*
  2. ***Proportional Equality-*** *proportional or relatively equal when it treats all relevant persons in relation to their due. Just numerical equality is a special case of proportional equality. Numerical equality is only just under special circumstances, viz. when persons are equal in the relevant respects so that the relevant proportions are equal.*
  3. ***Moral Equality-*** *This principle is too abstract and needs to be made concrete if we are to arrive at a clear moral standard.*
  4. ***Presumption of Equality*** *- requires that everyone, regardless of differences, should get an equal share in the distribution unless certain types of differences are relevant and justify, through universally acceptable reasons, unequal distribution.*

CHAPTER ONE

- ***Gender and history***
  - ✓ *Gender defined- Gender is a social attribute ascribing some characteristics or norms and modes of behavior to the female and other to the male sex.*
  - ✓ *It is the result of the interplay of culture, religion, and similar factor of a society.*
  - ✓ *Sex is a natural attribute helping us to identify a person as male or female.*
  - ✓ *Gender roles refer to the expected duties and responsibilities, rights and privileges of men-women, girls-boys, etc. that are specified by socio-religious and cultural factors.*
- ***Global and historical perspective on the legal status of women***
  - ***Historical Perspective***

- *Four world conferences on women convened by the UN from1975-1995 have been instrumental in elevating the cause of gender equality to the very centre of the global agenda.*

1. *The first world conference on the status of women was convened in **Mexico City** to coincide with the 1975 International Women's Year, observed to remind the international community that discrimination against women continued to be a persistent problem in much of the world.*
   - ✓ *The Conference called upon governments to formulate national strategies and identify targets and priorities in their effort to promote the equal participation of women.*
2. *There was a general consensus that significant progress had been made as representatives of 145 Member States met in **Copenhagen** in 1980 for the second world conference on women to review and appraise the 1975 World Plan of Action. The Review Process begins.*
3. *The movement for gender equality had gained true global recognition as the third world conference on women, The World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, was convened in **Nairobi** in 1985. The Birth of Global Feminism.*
4. *The Fourth World Conference on Women held in **Beijing** in 1995, that a new chapter in the struggle for gender equality can truly be said to have begun. Legacy of Success*
   - ✓ *The recognition of the need to shift the focus from women to the concept of gender, recognizing that the entire structure of society, and all relations between men and women within it, had to be re-evaluated.*
   - ✓ *The Conference unanimously adopted the Beijing Declaration and Platform for Action, which was in essence an agenda for women's empowerment.*

- ***Historical perspectives on the legal status of women in Ethiopia***
  - ✓ *The Ethiopian society can be regarded as a "traditional, ancient and conservative one.*
  - ✓ *Ethiopia has ratified both the UN Charter & other HRs bills, The FDREC adopted in 1995*
  - ✓ *Many of the concerns that were included in the Beijing Platform had been considered and placed at the priority list of the Ethiopian government, The MDG is another instrument that Ethiopia ratified with the aim of reducing poverty, Labor Law Proclamation, Political Participation*

- ***National policies and inputs on promotion of gender equality***
  - ✓ *To rehabilitate the social and economic infrastructure and create an environment for sustainable development.*
  - ✓ *economic Policy along with its strategy, the Agricultural Development Led Industrialization (ADLI), the National Policy of Ethiopian Women, the National Population Policy, the Education and Training Policy, Health Policy, Developmental Social Welfare Policy, Environmental Policy, Culture Policy, Policy on Natural Resources and Environment, and others.*

- ***Impact of globalization on women***
  - ✓ *With the establishment of international free trade policies, such as NAFTA and GATT, transnational corporations are using the profit motive to guide their factories toward developing nations in search of "cheap" female labor.*
  - ✓ *Its positive impacts are Employment opportunities, Education and knowledge.*
- *In Ethiopia there are three major constraints to women specifically and the society can generally benefit from globalization:-*
    - ✓ *lack of proper infrastructure or other communication channel*
    - ✓ *low level of education and*
    - ✓ *language barrier*
- ***Gender socialization***
  - ✓ *Socialization is consisting of "complex process of interaction through which the individual learns the habits, beliefs, skills and standards of judgment that is necessary for effective participation in social groups and communities."*
  - ✓ *Individuals are converted from biological male and biological female into man and woman respectively with the process of socialization.*

- ***Gender construction: a psychoanalytic view***
  - ✓ *The learning of gender differences in infants and the young children is centered on the presence or absence of reproductive organ. "I have a reproductive' is equivalent to 'I am a boy'*
- ***Cultural construction of masculinity and femininity****- This socialization process is so strong in men, the feminine that is associated with woman is characterized as passive.*
- ***Patriarchy and its structures****- Patriarchy refers to male domination and female's acceptance and internalization of that dominance.*
  - ✓ *Most of the institutions of the society are patriarchal in nature, regardless of whether it is the state, religion, educational institutions, family or the media.*
- ***Nature versus culture****- When a child is born, the mother in most cultures is usually in charge of breast feeding the baby, taking care and socializing it.*
  - ✓ *Physical and social roles of women and men have extended their association with nature and culture respectively.*
- ***Private versus public****- The private sphere popularly known as the domestic has no economic, political or historical significance. It does not contribute to one's social life.*
  - ✓ *The public sphere is a competitive world, which requires being aggressive, reasonable and ambitious with no trace of emotions.*
  - ✓ ***Gender and workplace****- Occupational segregation has two dimensions, vertical and horizontal.*
    - ✓ *"Vertical segregation" refers to the tendency of women to remain in the second position, whereas men remain in influential position.*
    - ✓ *"Horizontal segregation" refers to the tendency of men and women to occupy different categories of jobs.*
  - ✓ ***Gender in the Media and Information Technology****- The issue of women and media can be looked at from three perspectives: women's portrayal, the content, and women as media consumers.*
  - ✓ *There are a number of constraints women encounter in accessing information, especially accessing information using ICTs.*
  - ✓ *The formation of the Ethiopian Media Women Association (EMWA), with the objectives of training and exchanging experience for capacity building is an attempt to address problems of gender and the media.*

CHAPTER TWO

THEORETICAL FOUNDATION OF GENDER EQUALITY THEORY

- ***Social inequality***
  - ✓ *Women and men usually have different roles and responsibilities in their daily lives.*
  - ✓ *Women have unequal access to education and health services.*
  - ✓ *Social customs that encourage or force girls into teenage marriages*

- ***Economic inequality***
  - ✓ *Nearly 70% of the world's poor are female.*
  - ✓ *Women have unequal access to economic resources*
  - ✓ *Females have unequal access to education and training opportunities*

- ***Political and legal in equality***
  - ✓ *Women are very poorly represented at all levels*
  - ✓ *discriminates against women in z areas of inheritance, property, and land ownership and criminal law*

- ***Models of equality and approaches***

1. ***The formal model of equality****- regards men and women as being the same and therefore sets out to treat women the same as men.*
   - ✓ *The problem with this model is that it does not take into consideration the biological and gender differences between women and men.*
2. ***The substantive model of equality****- stresses the importance of equality of opportunity in terms of women's access on equal terms with men.*

CHAPTER THREE

GENDER AND FAMILY

- ***Traditional marriage and its consequence on women***

1. ***Child marriage****- any marriage of a child younger than 18 years old, in accordance to Article 1 of the CRC, girls are disproportionately affected.*
   - ✓ *Tradition, religion and poverty continue to fuel the practice of child marriage.*
   - ✓ *In Ethiopia it includes promissory marriage, whereby a verbal promise is made at infancy or even childbirth by the parents to have their children married.*
2. ***Child and forced marriage-*** *a marriage "conducted without the valid consent of one or both parties and is a marriage in which duress - whether physical or emotional - is a factor".*

- ***Causes of early marriage***
  - ✓ *the desire or need to maintain the family's good name and social standing (notions of morality and honor) placed on a girl's virginity*
  - ✓ *Poverty and economic transactions, bride price*
  - ✓ *It is a tradition, to strengthen relationships, difficult to get married if older*

- ***Consequences for health and well-being- physical, Psychological and social***
  - ✓ *Marital instability*
  - ✓ *Inability to plan or manage families*
  - ✓ *Termination of education*
  - ✓ *Impact on sexual health of women and girls*
  - ✓ *Vulnerability to HIV infection*
- ✓ *Custody and support of children- An important inclusion in the revised Penal Code is the criminalization of female circumcision and genital stitching, Ombudsman & HRs Com.*
- ✓ *The role of women in the success of their husband- Despite significant gains in educational attainment and attitudes toward women, women continue to lag behind men in economic and labor market success.*

CHAPTER FOUR

GLOBAL AND COMPARATIVE APPROACHES TO VIOLENCE AGAINST WOMEN WITHIN AND OUTSIDE FAMILY

- ***Defining Violence against Women***
  - ✓ *DEVAW "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."*
- ***Scope and Context***
  - ✓ *VAW occurs in all geographic regions, countries, cultures, and economic classes.*
  - ✓ *Social and Health Consequences- serious social stigma and civil hurt, severe physical and mental health consequences - both immediate and long-term.*
  - ✓ *Prevalence and Circumstances- VAW can occur in the home as well as in public and private institutions, including the workplace, schools, universities, and state institutions.*
  - ✓ *Custodial VAW includes violence in prisons, immigration detention centers, and social welfare institutions.*

- ***Types of Violence- physical, psychological, or sexual in nature***
  - ✓ ***Harmful Traditional Practices-*** *generally considered socially acceptable; in some cases, they are encouraged by family members and the community.*
  - ✓ ***Abduction-*** *used to take a girl as wife by force. Abduction and rape are criminal offences under the Ethiopian law.*
  - ✓ ***Rape-*** *without her consent, effected by force, duress, intimidation, or deception as to the nature of the act.'*
  - ✓ *Its causes are personal and cultural beliefs as well as economic status, inequality in gender power relations and the anger and sadism of the rapists, culture (men dominance),war, poverty*
  - ✓ ***Marital rape-*** *non-consensual sexual assault in which the perpetrator is the victim's spouse.*
  - ✓ *Sexual contact gained through force, coercion, manipulation or fear of harm is rape.*
  - ✓ *But some societal beliefs and misconceptions contributing to the tolerance of marital rape.*
  - ✓ ***Sexual harassment-*** *"quid pro quo" occurs when a supervisor or faculty member, or a person acting with authority, with holds, demands and/or promises a benefit by pressuring an employee or student to submit to unwelcome sexual conduct.*

- ***"Hostile environment" unreasonably interferes with a person's work or academic performance***
  - ✓ ***FGM-*** *a very painful operation that deprives a woman of a vital part of her sexual organs.*
  - ✓ ***Forced prostitution-*** *is a crime & it violates human rights of emotional and physical integrity.*

- ✓ ***Forced marriage-*** *one or more of the parties is married without his or her consent or against his or her will.*
- ✓ *Involve varying degrees of force, coercion or deception, ranging from emotional pressure by family or community members to abduction and imprisonment.*
- ✓ *In arranged marriages, the parents and families play a leading role in arranging the marriage, but the individuals getting married can nonetheless chose whether to marry or not.*
- ✓ *Parents who force their children to marry often justify their behavior as protecting their children, building stronger families and preserving cultural or religious traditions.*

- ➢ ***There is no specific criminal offence of forcing someone to marry***
  - ✓ ***Dowry abuse-*** *A dowry is the money, goods, or estate that a woman brings to her new husband.*
  - ✓ *Bride price -is paid to the bride's parents, and dower which is property settled on the bride herself by the groom at the time of marriage.*
  - ✓ ***Dowry abuse*** *-occurs when the husband's family continues to press the wife's family*
  - ✓ ***Trafficking-*** *Both men and women may be victims, but Traffickers primarily target women because they are disproportionately affected by poverty and discrimination.*
  - ✓ *The trafficking of women for sexual exploitation is an international, organized, criminal phenomenon.*

CHAPTER FIVE

WOMEN AND EDUCATION

- ➢ ***Education and its importance***

- *The importance of education for individual growth of girls- Educated girls have more life choice and opportunities to participate in community life and decision-making*
  - ✓ *Educated women tend to marry later and have fewer, healthier and better-nourished children*
  - ✓ *Educated women yield the highest return in economic terms and*
  - ✓ *Educated women have more exposure to information;*
  - ✓ *Women with formal schooling resist domestic violence more likely than those illiterates*
  - ✓ *Educated women have greater wage earning opportunity*

- *Importance of women education for the society at large*
  - ✓ *reduce women's fertility rates,*
  - ✓ *lowers infant and child mortality rate,*

- ✓ *lowers maternal mortality rates,*
- ✓ *reduces vulnerability of girls to HIV,*
- ✓ *increases women labor force participation rates and earning,*
- ✓ *creates intergenerational education benefits*
  - *Is Education Right or Privilege?*

➢ ***Education as a Human Right***

- ✓ *The UDHR- Article20, "Everyone has the right to education."*
- ✓ *The ICESCR- Articles 13 & 14- everyone has the right to education and that education should contribute to the full development of the human personality.*
- ✓ *CRC- Articles 28 and 29 of the CRC deal with the right of the child to education.*
- ✓ *UNESCO Convention against Discrimination in Education- stipulates that states parties must undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and treatment, and, in particular, to make primary education free and compulsory.*
- ✓ *CEDAW- Article 10*

- ***Regional instruments****- ACHPR (article 17), PACHPRWA (Protocol to the ACHPR on the right of women in Africa Article, 13), SDGEA (Article 8), ACRWC*
- ***National Constitutions****- Article 41(3), 36(1) d of FDREC.*

  - *Content of the Right to Education and State Obligations- religious and moral*

- ✓ *Elements of the state's obligations with respect to the right to education,*
  1. *Availability,*
  2. *Accessibility,*
  3. *Acceptability and*
  4. *Adaptability.*
- ✓ *Definition of Gender Based Discrimination in Education- caused when distinction, exclusion or restriction is made on the basis of sex- the fact of being female or male*
- ✓ *Addressing Discrimination in Education with Temporary Special Measures- programs, politics, and laws that place them in a situation of comparative advantage to men for a limited period, CEDAW*

- *The justifications are on the ground of:-*
  - ✓ *compensatory justice*
  - ✓ *distributive justice*
- ✓ ***Social utility*** *(mobilizing the economic and social potential of women for the common good of society, and encouraging and facilitating the social transformation and the promotion of diversity)*
- ✓ *access to rights*

- ***Some Temporary Special Measures Taken by the Ethiopian Government***
  - ✓ *emphasis to women education by ensuring policy reform, enrollment and completion rate*
  - ✓ *has taken affirmative action to increase enrolment*
  - ✓ *rewarding individuals and institutions for their noble contribution*
  - ✓ *appropriate policy instruments and strategic measures have been initiated*
  - ✓ *The increase in the construction of school in the rural areas*

CHAPTER SIX

WOMEN AND EMPLOYMENT

- ***General overview-*** *Women's lower educational attainment due to lack of access to education and training opportunity, the existing misconception about the role and contribution of women in employment and the contribution of women in family labor.*
  - ✓ *Those women who have access to employment face many obstacles.*
  - ✓ *its negative impact on the economy of the victim, the victim's family, the victim's country and that of the world*

- ***Gender Based Discrimination in Employment***
  - ✓ *According to the 1958 Discrimination (Employment and Occupation) Convention, it is any distinction, exclusion or preference based on designated criteria such as race, color, sex, religion, political opinion, national extraction, social origin or other designated criteria which have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.*
  - ✓ *May be de facto (in reality, practice) or de jure (in law).*

- ***Right to Employment, a Human right of women , International standards***
  - ***International Standard***
    - ✓ *UDHR- Article 23(1)*
    - ✓ *ICESCR- Article 6*
  - ***Regional standard***
    - ✓ *ACHPR Article 15,*
    - ✓ *PACHPRWA Article 13*
  - ***National laws***
    - ✓ *The FDRE Cons'n Art 34*

- ✓ ***Women Right to Equal remuneration****- UDHR art 23(2), ICESCR art 7, ACPHR art 15, PACH PRWA art 13(b), Equal Remuneration Convention, 1951 Art 1&2*
- ✓ ***Maternity protection-*** *include the right to health protection, the right to maternity leave, the right to leave in case of illness and complication and the right to employment protection and non-discrimination, Article 4(5) of the ILO Convention*
- ✓ ***Sexual harassment in work place****- affects their productivity levels, and subsequently leads to their dismissal thus denying them the right to employment and livelihood.*
- ✓ *encompass acts ranging from sexual assault., display or distribution of pornography, suggestive gestures, physical contact, repeated proposition for daters or sexual favors, comments on appearance or comments of sexual nature relating to the victim to a third party.*
- ✓ ***Quid pro quo Harassment****- making conditions of employment (hiring, firing, promotion, retention etc.) contingent on the victim providing sexual favors.*
- ✓ ***Hostile Working Environment Harassment****- verbal, physical or visual has been acknowledged as affecting and unreasonably interfering with an individual's job performance or creating an intimidating, hostile or offensive working environment.*
- ✓ ***International Human Rights Standards on harassment*** *- Article 1 of the CEDAW, ICESCR art 7, ICCPR art 17, ILO Discrimination (Employment and occupation) Convention (1958), UDHR art 2,3 & 23, The 1993 UN Declaration on Violence against Women states,*
- ✓ *The Beijing Declaration and the Beijing Platform for action includes in its list of critical areas of concern "violence against women, and inequality in economic structures and policies, in all forms of productive activities.*
- ✓ *Fully implement all measures necessary to secure for women, safe, healthy and equitable working environments, prosecuting offenders.*

CHAPTER SEVEN

POLITICAL PARTICIPATION OF WOMEN

❖ ***Background***

- ✓ *Political participation refers to "women's ability to participate equally with men, at all levels, and in all aspects of political life and decision making."*

➢ ***Women's right to participate in politics as a human right***

- ✓ *International standard UDHR Article 21, ICCPR art 25, Beijing Platform for Action, Regional instrument PACPHRWA, National Instrument the FDRE Cons'n.*

- *The two main reasons that justify the promotion of women's participation in public life*

1. ***Intrinsic argument*** *- equal participation of women in politics forms the human rights perspective. Women constitute half of the world population.*
2. ***Instrumentalist line of argument*** *- stresses that women have different vision and concepts of politics owning to their sex and their gender role as a mother & assume that women in politics will bring a special caring focus and female values to politics.*

➢ ***Factors Hindering Women's Political participation***

- ✓ ***Ideological factors****- Patriarchy as a system of male domination shapes women's relationship in politics.*
- ✓ ***Political Factors****- Male domination of politics, political parties and culture of formal political structures.*
- ✓ ***Socio-Cultural Factor****- Gender role ideology only creates duality of femininity and masculinity, but also places them in a hierarchal fashion in which female sex is generally valued less than male sex*
- ✓ ***Economic Factors****- Women lack access to and ownership of productive resource*
- ✓ ***Lack of Social Capital and Political Capacities-*** *lack social capital because they are often not head of communities, tribes or kinship groups.*

- *Absence of constituency base for them and means of political participation such as political skills, economic resources, education, training and access to information.*

➢ ***Strategies for women's political participation***

1. ***Quotas Argument for and against****- gender quota is an effective tool in addressing women's exclusion and ensuring their presence in formal structure of politics.*
   - ✓ *Without addressing the structural constraints to women's political exclusion, their inclusion through gender quota cannot lead to an effective representation.*
2. ***Enabling environment for women participation in politics and development-*** *The goal of equal participation of women in politics can be achieved when socio-cultural, political and economic structural barriers are changed.*
   - ✓ *Human capacities are dependent on the availability of resources such as education, health and employment that build capabilities and enlarge human choices.*

➢ ***Participation of Ethiopian Women in Public Life and Decision Making***

- ✓ *FDRE Cons'n ratifies the CEDAW, art 38, 35 of FDRE Cons'n*

CHAPTER EIGHT

REPRODUCTIVE RIGHTS OF WOMEN

- ***Reproductive Rights** defined- Article 14 of PACHPRWA ;*
  - ✓ *Reproductive rights related to sexual reproduction and reproductive organ.*
  - ✓ *Reproductive health as "a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its function and process.*

- ***Reproductive Health Right as a Human Right***
  - ***International standard***
    - ✓ *Teheran Declaration art 16, CEDAW Article 11(1) F and (2)*
    - ✓ *The idea of reproductive health rights as part of human rights was first discussed at the United Nation International Conference on Human Rights in Teheran, 1968.*
  - ***Regional Standard***
    - ✓ *PACPHRWA ,*
  - ***National standard***
    - ✓ *The FDREC art 35(9)*

- ***Abortion as Human Rights***
  - ✓ *Women have a right to independently decide in all matters in relation to their reproductive right including the issue of abortion.*
  - ✓ *Where abortion is safe and legal no one is forced to have one.*
  - ✓ *Unsafe abortion, according to the FDRE government report, is the fifth leading cause of hospital admission and the second leading cause of death among hospitalized women in Ethiopia.*
  - ✓ *Ethiopia approved a number of legal reforms and took policy measures that aimed at promoting women's reproductive health and rights.*
  - ✓ *Under the 1957 Penal Code of Ethiopia, abortion was considered as a criminal act which is punishable unless in some stated exceptional situations.*
  - ✓ *Similarly Article 545(1) of the revised Criminal Code of 2004 considered intentional termination of pregnancy as a criminal act. However, the exceptional situations have been put in wider context.*

LEGAL PROFESSION AND ETHICS

CHAPTER ONE

- ***Introduction***
  - ✓ *The set of rules that regulate the conduct of members of the legal profession are called legal ethics.*

- ***Historical Background***
  - ✓ *Legal profession in its rudimentary form is traced back to ancient Greece. There was no special class of people who adopted advocacy as a profession in ancient Greece. The Athenian courts allowed the litigants to have the help of their relatives or friends or a person indirectly interested in the outcome of the case. They gradually began requiring fees for their service.*
  - ✓ *Ancient Rome, the origin of civil law, is renowned for the legacy of its developed legal system. Lawyers occupied foremost place in Rome. The profession of an advocate was often a passport to the higher office in the state.*
  - ✓ *In Ethiopia, legal profession existed in the customary law of different ethnic groups. Before 1934 E.C., every person could represent parties to the litigation as an advocate. There was no licensing system.*
  - ✓ *No source shows the existence of advocates' code of conduct before Regulation No. 57/1999*

- ***Ethics, Profession, Professional Ethics and Legal Ethics***
  - ✓ ***Ethics*** *is the study of the general nature of morals and of the specific moral choices to be made by individuals in his the relationship with others.*
  - ✓ ***Profession*** *is a vocation requiring advanced education and training.*
  - ✓ ***Professional*** *is a person who belongs to a learned profession or whose occupation requires high level of training and proficiency.*
  - ✓ ***Professional ethics*** *is "the rule or standard governing the conduct of members of a profession"*
  - ✓ ***legal ethics*** *is "the standard of minimally acceptable conduct within the legal profession, involving the duties that its members owe one another, their client and the court"*
  - ✓ *The relation ship between honor and dignity of legal profession to the promotion of justice- The loss of honor and dignity of profession of law results in disrespect for court and law. People lose confidence in courts.*

- ***Moral Issues and Moral Dilemmas***

✓ ***Moral issues*** *are issues that raise questions of value about rights, character and welfare of a person.*

✓ *Moral issues involve value dilemmas (moral dilemmas). Moral dilemmas involve situations in which one cannot escape deciding in which not to decide is to decide and in which doing nothing has the moral status of doing something.*

➢ ***The Theory of Moral Obligation***

- ***Utilitarianism****- an action is right if it tends to promote happiness and wrong if it tends to produce the reverse of happiness*

✓ *What is good is utility. Utility is human well-being or welfare.*

✓ *Act Utilitarianism, an act Utilitarianism holds that an action is right if and only if it produces the best consequences.*

✓ *Rule Utilitarianism, an action is right if and only if it is in accordance with a set of rules conformity which produces the best consequences. A rule Utilitarianism does not depend on its consequences.*

✓ *The Golden Rule- There is expressions of the golden rule in great religions of the world.*

CHAPTER TWO

THE LEGAL PROFESSION

✓ *Meaning and Nature of Legal Profession- Legal profession is the collective name given to lawyers & it is an occupation that requires advanced training in law.*

✓ *Legal profession is a profession, not a business, b/c business does not require training, the motive in legal profession is safeguarding liberty and attaining justice, work for the welfare of the society, no competitions & characterized by cooperation.*

➢ ***Admission to the Legal Profession***

✓ ***Canada****- legal education is typically a seven to eight year program prior to admission to practice*

✓ *A period in articles with an experienced legal practitioner, also known as articling or articles of clerkship, is a form of apprenticeship with a legal practitioner for usually twelve months.*

✓ ***South Africa*** *– the 1st stage is university education for 4 years leading to an L.L.B. degree. The 2nd stage is attendance at a practical legal training school. the 3rd stage is service of articles of clerkship under a practicing attorney & z 4th stage is employment in a public interest law firm.*

✓ ***United States****- admission to the bar and lawyer discipline has traditionally been the matters of state (regions) concern. Lawyers are not admitted to practice in the US, they are admitted to practice in a*

particular state/s. Separate rules govern admission to the various federal courts. In most states, admission to practice law is gained by graduating from law school, passing the state's bar examination, and demonstrating that you possess good moral character.

- ✓ ***Ethiopia-*** *similar to US. To practice before federal courts, any Ethiopian should hold one of the three types of licenses issued by the Ministry of Justice. Article 3 and 7 Proc No. 199/2000.*

- ***Constitutional Right to Exercise Legal Profession-*** *Article 41(2) of FDREC provides that: "Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession".*
- ***Dissatisfaction with Legal Profession-*** *the abuse of adversary system, professionals forget or neglect their ethical duty to respect their colleagues*
  - ✓ *Law schools contributed to the problem of abusing adversary system. They conditioned their students to look for a debatable issue. They do not train or teach their students to search for a just and equitable solution to legal problems or a common ground between contending parties.*
  - ✓ *Advocates turned legal profession into business.*

- ***Bar Associations and their role in Legal Profession***
  - ✓ *American Bar Association (ABA) was founded in 1878 to improve legal education, to set requirements to be satisfied to gain admission to the bar, and to facilitate the exchange of ideas and information among its members.*
  - ✓ *In recent years, the ABA has been prominently involved in the recommendation and selection of candidates for the federal judiciary, the accreditation of law schools, and the refinement of rules of legal and judicial ethics.*
    - ***The Ethiopian Bar Association (EBA) conducts three*** *activities*
      1. *Continuing Legal Education to advocates,*
      2. *Law Reform and Advocacy, and*
      3. *Legal Aid Services.*
  - ✓ *EBA participates in Advocate's Disciplinary Council, License Evaluating Committee and Advocacy Entrance Examination Setting and Competence Certifying Board.*
  - ✓ *Unauthorized Practice in Legal Profession- it is "the practice of law by a person, typically a non lawyer, who has not been licensed or admitted to practice law in a given jurisdiction"*
  - ✓ *Like other countries, unauthorized practice of law is a crime in Ethiopia, Article 31 of Proclamation No.199/2000.*

CHAPTER THREE

JUDICIAL CONDUCT

- ***Ethical Duties of Judges in Judicial activities***

1. ***Independence-*** *in judicial selection, compensation and retention of office. Independent judiciary is a pre-requisite for democratic and impartial administration of justice.*
   - ✓ *Article 78(1) of FDREC establishes independent judiciary both at federal and state level. Article 79(2) declares that judges are free from interference of any kind.*
2. ***Accountability****- Article 12 of the constitution, "any public official" or an "elected representative" is accountable for failure in official duties.*

- *According to the Australian high court judge, Michael Kirby, Judges are accountable on three grounds.*
  - ✓ *Judges render decision in public*
  - ✓ *Decision of judges is reviewed by the appellate court.*
  - ✓ *Judges are appointed by executives or legislature who is accountable to the people.*
- ✓ *FDRE Cons'n specifically empowers judicial administration council to remove a judge for violating disciplinary rules(Article 79(4)(a)). judges are immune from disciplinary proceedings.*
- ✓ *Egregious legal error is a serious legal error particularly involving the denial to individuals of their basic or fundamental rights.*

3. ***Impartiality****- Independence is the necessary precondition to impartiality and is a prerequisite for attaining impartiality. Impartiality cannot exist without independence but independence can exist without impartiality. Thus, an independent judge who is free from any influence whether from other wings of government (executive & legislature) or any other persons could be partial due to his own perception or interest.*
   - ✓ ***Subjective*** *or* ***real impartiality*** *exists when a judge has prejudice or bias towards one side or another or a particular result.*
   - ✓ ***Objective*** *or* ***perceived impartiality*** *exists when a reasonable observer is free from legitimate doubt in the impartiality of the court.*

- ***Bias*** *is a condition or state of mind an attitude, or point of view which sways or colors judgment and renders a judge unable to exercise his or her functions impartially in a particular case;*
  - ✓ *Relation with Parties or their Advocates*
  - ✓ *Relation with the Matter*
  - ✓ *social or business relationship of a judge, personal knowledge of evidence*

4. ***Competence and Diligence*** *- Incompetence and inefficiency is a ground of removal of judges as per article 79(4) FDREC.*
    - ✓ *The ethical duty of competence requires "legal knowledge, skill, thoroughness and preparation"*
    - ✓ *Diligence can be affected by the burden of work, adequacy of resources, time for research, deliberation and writing, and judicial duties other than sitting in courts.*
    - ✓ *Patience, dignity and courtesy are essential attributes of ethical duty of competence and diligence.*
5. ***Equality****- a judge shall equally treat all litigants before the courts and protect their right. (family, religion, nation, nationality, political, social or other relationship)*
6. ***Civility among Judges****- Civility is a politeness or courtesy. Intemperate criticism of a fellow judge is incivility. Incivility implies lack of respect and cooperation among judges.*

- ***Ethical Requirements of Judges in Extra Judicial Activities****-*
    - ✓ *Extra judicial activities are activities that have no connection with judicial duties.*
    - ✓ *Judges are human beings they have economic, social, political, religious, commercial and other relationship with other persons.*
    - ✓ *Federal code of judicial conduct does not prohibit particular business or other activities.*

    - ✓ ***Passive Investments****- In US, these are allowed for judges. It includes the ownership of stocks, bonds, mutual fund shares, and other financial instruments.*
        - ✓ *Passive investment is not time consuming because judges can manage passive investment either after hours or during breaks, in judicial day.*

    - ✓ ***Active Management*** *and* ***Involvement in Business*** *- In US judges are prohibited from serving as officer, director, manager, advisor or employee of any business.*

- ***Practice of Law***- *In US, what Article 2 of proclamation No. 199/2000 calls advocacy service is prohibited for judges.*
  - ✓ *Extends to minor representation of close family members. The only exception in this regard is the judges who represent themselves.*
  - ✓ *Serving as a Fiduciary - Judges are barred from serving "as executors, administrators, trustees, guardians or other fiduciaries.*
  - ✓ *The only exception to the prohibition to serve as a fiduciary is the cases of family member and close friends.*
  - ✓ *Arbitration and mediation- In Us. ABA model of code of judicial conduct bars judges from acting as an arbitrator or mediator.*
  - ✓ *Because the arbitration proceeding could come before the court on which the judge sits*
  - ✓ *Education-Judges may participate in community and/or legal education.*
  - ✓ *A judge may contribute to legal and professional education by delivering lectures participating in conference and seminars judging student training hearings and acting as examiner& as an author or editor.*
  - ✓ *Political Activities- Judges should not participate in political activities, membership in a political organization.*
  - ✓ *Memberships in Organization- Judges, like any other citizens, have freedom of association in exercising this.*
  - ✓ *Judicial Appointment- In countries with career judiciaries, the selection, appointment, and promotion of judges are made from within a judicial career system or civil service.*
  - ✓ *Non-career judicial selection and promotion procedures are made through appointment by the executive, legislature.*
  - ✓ *Judges' Tenure and Removal Mechanisms- Judges need not be assured of life-time tenure, but too limited terms of office may impair the development of judicial independence.*
  - ✓ *Judicial tenures that are too short; mandatory retirement at relatively young ages; and ad hoc, arbitrary and opaque procedures for disciplining and removing judges may undermine the prestige of judgeships and the institutional independence of the courts.*

- ***Appointment, Withdrawal and Removal of Judges in Ethiopia***
  - ✓ ***Federal Judicial Administration Council-*** *the Federal judicial administration council consists of nine members.*
  - ✓ *In Ethiopia, all the three branches of government participate in the appointment of judges to any Ethiopian court established by the constitution of FDRE.*
  - ✓ *The judiciary has no say on the appointment of the president and vice president of the regional supreme courts or federal Supreme Court (Article 81(1) & (3)) of the FDRE Cons'n.*
  - ✓ *Federal judges of any level are appointed by HPR among the list submitted by the PM. This list contains candidates selected by federal Judicial Administration Council.*
  - ✓ *State executives are less involved in judicial appointment when compared with federal government. In federal government, the Prime Minister is involved in the appointment of every federal judge. Chief executives of state can participate only in the appointment of presidents and vice-presidents of supreme courts of regional states.*
  - ✓ *All judges of the sate courts except presidents and vice-presidents of supreme courts are appointed by the state council upon recommendation of the state judicial administration council.*

- ***Criteria for Judicial Appointment***
  - ✓ *Nationality, Loyalty to the Constitution*
  - ✓ *Legal Training or Legal Skills*
  - ✓ *Diligence*
  - ✓ *Sense of Justice*
  - ✓ *Good Conduct*
  - ✓ *Consent and*
  - ✓ *Age*
  - ✓ *After the selection by the council, the chairperson of the council presents the selected candidate-judges to the prime minister.*

- ***Factors that Influence Ethical Requirement of Judges***
  - ✓ *Remuneration,*
  - ✓ *Resource of the court,*
  - ✓ *Workload and*
  - ✓ *Off bench activities.*

- ***Liability (Responsibility) for Breach of Rules of Conduct***
  - ✓ ***Disciplining Agency*** *- Federal Judicial Administration Council is vested with the power of disciplining judges that violate the Federal Code of Judicial Conduct. Ordinary courts do not try disciplinary matters. Even they have no appellate jurisdiction or power of review over disciplinary matters.*
  - ✓ ***Disciplinary Measures*** *- Oral warning , Written warning, Fine not exceeding three months salary, Demotion of the post and cut in salary, Removal from office.*
  - ✓ ***Procedures of Disciplinary Proceedings*** *- Initiation (Any person no vested interest), Investigation, Hearing*

CHAPTER FOUR

ADVOCATES' ETHICS

- ***The profession, the Justice System, Court and the Country***
  - ✓ *The first and for most duty is to up hold respect for the profession in general.*
  - ✓ *Secondly, he has the duty to serve justice; he has to cooperate for justice by showing special endeavor for the administration of the justice machinery.*
  - ✓ *He has to provide community service. The good example of these is pro bono public service. Art 20(5) of the FRDEC*
- ***Ethical Requirements of Advocates in relation to their Clients***
  - ✓ *Once the relationship is established there is an old and of course true saying that "a client is a king", which connotes that clients deserve due respect, their interest must be preserved and protected.*
  - ✓ *A high degree of tolerance, farsightedness and conscious understanding is expected from this advocate, he must be Diligent and Competent Representation, Thoroughness and Preparation, Maintaining Competence, Communication, Withholding Information, Duty of confidentiality, Contract of Advocacy, Scope of Representation, Loyalty to a Client.*

- ***Non-professional Subsidiary Activities***
  - ✓ *An advocate is not totally prohibited from involving in non-professional subsidiary activities. As any member of the society, but limited to those consistent with rules & principles of the profession.*

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR

- ***Eligibility***
  - ✓ *Age; Nationality/ citizenrieship/; Being a lawyer ;*
  - ✓ *Loyalty and acceptance of national laws of the concerned state ;especially the constitution;*
  - ✓ *Ethical requirements, mainly honesty, integrity, loyalty, impartiality, legality, diligence and having good public image;*
  - ✓ *Having no criminal record except petty offences and offences punishable upon complaint or convicted but reinstated; and*
  - ✓ *Some require experience.*
- ✓ ***Legal Basis-*** *the legal basis of activities of the public prosecutor shall be the national laws of the country concerned especially the Constitution.*

- ***Principles***
  - ✓ *Independence*
  - ✓ *Immunity (privilege or exemption from responsibility)*
  - ✓ *Confidentiality*
  - ✓ *Competence and Diligence*
  - ✓ *Loyalty and Avoidance of Conflict of Interest*

- ***In relation to the Accused, the Court and Other Institutions***
- ✓ *Whenever he conducts investigation, the public prosecutor is expected to clearly disclose the rights of the suspect recognized by the law.*
- ✓ *Where the public prosecutor has instituted a charge against a certain person suspected of committing crime, he should always be present in the court.*
- ✓ *Ethically, what is expected from the public prosecutor is that he should respect adjournments.*
- ✓ *The public prosecutor is also expected to respect the principles of adversarial debate (fair trial in that both of the parties to the case are properly heard)*
- ✓ *He should always observe the obligation of timely communication of evidences to the person prosecuted or his representative.*
- ✓ *There is no situation of enmity between the accused and the public prosecutor.*

- ✓ *In his day-to-day relations with the judges in the court, the public prosecutor should respect the independence of the judges.*
- ✓ *The public prosecutor as superior should treat ethically and should accept the fact that police his assistant especially he shouldn't harass to obey his un- reasonable order.*

- ***Engaging in Activities Outside Official Duties***
  - ✓ *He may teach, train and give lecture with regarding to the law and still can write about the law without eroding the office responsibility. But in doing so the public prosecutor should first secure the permission of the Minister of the Ministry of Justice.*
    - ***Other Ethical Considerations***
  - ✓ *The public prosecutor has to dress socially acceptable clothes, recreate in dignified places outside his office, at all the time exhibit good behavior and conduct in and outside office in order to win the respect and confidence of the public.*
  - ✓ *He should not borrow money persistently and is strictly prohibited from borrowing money or attempting to borrow money from a member of the public with whom the prosecutor has contact in charge of his official duties.*

- ***Liability for Violation of Codes of Conduct for Prosecutors***
  - ✓ *Administrative (Disciplinary) Liabilities- The simple ones are: written warning, a fine not exceeding one month's salary, and disallowance of the next increment pay. Grave disciplinary penalties; the serious ones are demotion and dismissal.*
  - ✓ *Criminal Liability- may exceed beyond this scope including restriction of liberty like imprisonment.*
  - ✓ *Civil Liability- he has to redress the loss sustained in addition to his criminal and administrative liabilities as far as they deserve it based on civil law provisions; for instance article 2027 of the Civil Code.*

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