Property Law

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UNIT FIVE - USUFRUCT

- Usufruct is
  - a real right,
  - Can be temporary or for life,
  - entitles a person called, the usufructuary, to possess, use and enjoy a thing, which belongs to another person called the bare owner, and its natural fruits,
  - with the duty of preserving its substances and restitution to the bare owner up its termination.
  - See Art 1309(1), 1328, 1347, 1348, and 1311 of the Civil Code.

- Usufruct represents a case in which the constituent elements of a right of ownership are divided or partitioned among two or more persons.
- The bare owner of the thing posses the abusus element and the usufractuary has right of possession,, use of the thing/uses/ and the right to collect and use its fruits /fructus.

On which things a right of usufruct may be created?

A right of usufruct may be created in relation to;

- Incorporeal things
- Corporeal things
- Movable things
- Immovable things

- Usufruct presupposes the possibility to use and enjoy a thing, which is its object, while preserving its substance.
- things that are consumed by their first use are not susceptible of usufruct in the proper sense of the term.
- However, French law admits things such as money, grains wine…etc. may be the object of a right called quasi usufruct.
- Art 1327 of the Civil Code of Ethiopia also recognizes this concept.

SOURCES OF USUFRUCT

- Art 1310 of the Civil Code provides that, in the absence of provision to the contrary, the rules governing the acquisition, transfer, extinction of right of ownership shall apply to the acquisition, transfer or extinction of usufruct right.
- Usufruct may arise from;

1. The law / as in the case of French law
2. Contract: Usufruct may be created by agreement or contract for consideration or without consideration. According to Art 2410 of the Civil Code, an owner may transfer the usufruct of a thing by contract for consideration. In such cases, the rules governing contracts of sale shall apply. The rules as to the form and publicity requirements for contracts shall also apply to contracts creating usufruct. Hence, contracts creating usufruct right on immovable things and special movable things shall be made in writing and registered with the organ registering immovable things or special movable things. See also Art 1723 of the Civil Code.
3. Will: Usufruct may also be created by a will of the deceased owner. The owner of a certain property may, by his last will, bequate on another person the right to possess, use and enjoy and collect the fruits of the thing after his death. See Art 912 and 929 of the Civil Code.

- Usufruct can be created in favor of a single person, or jointly and simultaneously in favor of several persons.
- Usufruct may even be created in such a manner that several persons are called to enjoy it in succession, one following the other. It may be created for a limited period of time or for lifetime of the usufructory. See Art 1322(1) of the Civil Code.
- It created in favor of bodies corporate or properties with specific destination shall terminate after 30 years or such shorter period provided by the contract or will creating it. Refer to Art 1322(2) of the Civil Code.

RIGHTS AND OBLIGATIONS OF THE USUFRUCTUARY

1. **The Conservation of the Substance of the Thing**: - The usufructory shall have the obligation to conserve the thing, its form, structure and particular identify. For example, he/she cannot change a field in to a forest, a vineyard in to yard, or change the outer or interior layout of a house. See Arts 1309(1) and 1330(2) of the Civil Code. However, the usufructory can make changes that increase the value of the thing without changing its form. However, he may not claim payment of compensation, at the time of the extinction of the usufruct for improvements, for the improvement he has brought to the thing under usufruct. See Art 1336 of the Civil Code.
2. The usufructory has the right to use and enjoy the thing, and its fruits. However, he has an obligation to exercise due care and diligence like a diligent head of family and must use the thing following the pattern established by the owner and he must follow the prior use of the thing. Hence, the usufructuary cannot use a hotel for a different purpose, or a house as a hotel. Refer to Arts 1312, 1330/2/ and 1328 of the Civil Code. Furthermore, where the bare owner can prove that the usufructuaty is not performing his duties under these Arts, the court may order the latter to furnish security, in the form of pledge, mortgage or personal guarantee, to protect the interests of the former. See Art 1324 of the Civil Code.

3. The obligation to up-keep the thing: - The usufructuary has an obligation to have regular maintenance and repair works done at his cost.

- See Art 1313 of the Civil Code. He also has an obligation to inform the bare owner where the thing requires major or considerable repairs where he is not at fault for such damage or deterioration of the thing that made such repair necessary.
- However, he will be liable for considerable or major repairs, if they became necessary because of deterioration due to his fault, i.e., damages resulting from failure of the usufructuary to have regular maintenance and repair works done.
- Considerable or major repairs are repairs that require expenses that are greater than the average annual income generated by the thing. See Arts 1337 and 1338(2) of the Civil Code.

4. The usufructuary has an obligation to pay all the charges encumbering the profits of the thing

- such as annual taxes such as land tax, building tax or income taxes and other charges that are normally payable out of the income derived from the thing.
- See Art 1314 of the Civil Code.

5. The usufractuary has an obligation to inform the bare owner about any act of interference by a third person in the rights of the bare owner.

- For instance, he must inform the bare owner of any person, whether in court or out side of a court, challenging the right of ownership of the bare owner over the thing.
- Where a usufructuary fails to comply with this provision and the bare owner loses his right of ownership, he shall be liable to compensate the bare owner as if he himself caused the loss or damage of the rights of the bare owner. See Art 1342 of the Civil Code.
- On the other hand, the usufructuary as a possessor of the thing, shall have a right to bring possessory action and to use force to protect his possession in case where any person, including the bare owner, interferes with his possession of the thing.
- See Arts 1341, 1148 and 1149 of the Civil Code. The usufructuary will also have the right of usufruct over the compensation paid in case where the thing is lost or destroyed 1319(2)

6. The usufructuary has an obligation, at the time of extinction of the usufruct, to restore or restitute the thing to the bare owner or his agent.

- He shall be liable for the loss or deterioration of the thing, where the loss or deterioration resulted from his fault, such as abuse of the thing or failure to exercise due care in the use of the thing or negligence in the use and management of the thing, failure to make necessary or normal repairs…
- See Arts 1317 of the Civil Code.

- RIGHTS AND OBLIGATIONS OF THE BARE OWNER

1. He has the duty to refrain from any kind of interference with the right of the usufructuary to possess, use and enjoy the thing and collect and use its fruits. For example, he cannot change the thing, which is subject of the usufruct nor can he use or exploit the thing or interfere with the possession of the thing.

2. He must undertake major repairs as defined under Arts 1337 and 1338, which are not result of the usufructuary's fault.

3. He has an obligation to cover extra ordinary charges. Art 1315

EXTINCTION OF USUFRUCT

The right of usufruct shall be extinguished for either of the following reasons;

1. Death of the usufructuary- a right of usufruct is some times called a personal servitude because it depends on the life of the usufructuary. In other words, the right of usufruct shall terminate up on the death of the usufructuary. See Art 1322(1)
2. Lapse of the period for which it is created. For example, a usufruct created for a period of five years shall terminate at the end of the five years. Art 1322(1)
3. Extinctive prescription – lack of exercise of any of the usufruct rights or complete absence enjoyment, use possession by the usufructuary or by his agent in relation to chattels/ ordinary corporeal movable things/ shall result in the termination of usufruct. See Art 1310 cum 1192 of the Civil Code.
4. The loss or destruction of the thing; Similar to the case of loss of ownership right, usufruct shall also be extinguished as a result of the loss or destruction of the object of property. See Arts 1319, 1310 cum 1188 of the Civil Code.
5. Consolidation or merger of the position of the bare owner and the usufructuary in one person shall also result in the extinction of usufruct right. This happens when the usufructuary acquires bare ownership (by contract or succession) or when the bare owner acquires the usufruct by contract. See Arts 1676/1/ cum 1842 of the Civil Code.
6. Forfeiture or waiver of right by the usufructuary; A right of usufruct of chattels shall be extinguished where the usufructuary expresses, clearly and unequivocally, his intention to waive his rights as a usufructuary. See Arts 1310 cum1191 of the Civil Code. Refer also to Art 1676/1/ cum 1825 of the Civil Code.

- Acquisitive prescription in favor of a third party, the right of usufruct shall be extinguished as a result of acquisition of usufruct right on the thing in favor of another person. See Art 1310 cum 1168 of the Civil Code.

RIGHT OF USE AND HABITATION

1. RIGHT OF USE

- Right of use is a temporary real right (for agreed period of time or for life the beneficiary) which entitles the beneficiary, called the user, to use a thing of another person and to receive its fruits such as profits or rents… but only with in the limits of his own and his family's needs.
- Right of use may be created by an agreement, with or without consideration, or by will.
- The right of use is not recognized under the Ethiopian Civil Code; hence we shall briefly see the rights and obligations of the user under the French Civil Code.

- The rights and obligations of the user are governed by the instrument that created the use right, but in the absence of such provisions in the instrument the user will have the following rights and obligations.

1) The user has the right to the profits or fruits of the thing proportional to his and his family's needs. He can claim the various fruits or produce only in an amount in which each kind of produce will be consumed by him and his family, i.e., spouse, children and servants. However, collateral family members and ascendants are not included.
2) The user has the same duties as a usufructuary. Please, read the discussion regarding the duties of the usufructuary.
3) The user cannot transfer, assign or lease his right, or substitute a third party, hence, the right of use may not be seized by the creditors of the user, even if it was constituted for consideration. But he can sell a portion of the fruits, which he acquired in ownership by taking them directly or having them delivered.

- ✓ The right of use is extinguished in the same manner as the right of usufruct is extinguished.

2. RIGHT OF HABITATION /OCCUPATION OF PREMISES/

- This right is merely a particular type of right of use, i.e., a right of use exercised over residential houses or premises. Hence, the rules discussed in relation to usufruct and use rights are applicable to the right of habitation or right of occupation of premises.
- Normally, the physical scope of the right of habitation is determined by the instrument creating it.
- Unless there are restrictions or reservations in the instrument, the right of habitation includes the whole house, which is its object and all its accessories.
- However, the beneficiary must not exercise his right beyond the needs of his and his family's residence.
- Art 1353 of the Civil Code defines the right of habitation or right of occupation of premises as a right to live in a house or part of a house belonging to another person.

- The beneficiary of the right of habitation has the right to live in the house with his/her spouse, direct ascendants, descendants and servants.
- The beneficiary of right of habitation whose right is limited to part of a house also has the right to use parts of the building/house and the compound that are intended for the common use of all occupiers of the building. See Art 1355 of the Civil Code.
- The beneficiary of the right of habitation has an obligation to cover costs required for regular repairs and maintenance of the house in which he lives.
- However, where his right is limited to part of the building and the owner occupies the other part of the building such expenses are to be covered by the owner of the house. See Art 1356 of the Civil Code.
- Similar to the rights of usufruct and use, a right of habitation is personal to the beneficiary and hence cannot be transferred and may not pass to his heirs. See Art 1357 of the Civil Code.

UNIT SIX- SERVITUDE

- Servitude is a right in rem / real right/ over a definite plot of land, called the servient tenement and annexed to another plot of land, called the dominant tenement. In other words, it is a property right vested in the owner/holder of one plot of land to use a land belonging to another for certain purposes.
- Servitude is a right that can only exist in relation to two or more plots of land belonging to two or more persons. However, these lands are not required to be adjacent. French and German Laws do require that the servient and dominant tenements be adjacent. See Art 1359(1) (2) of the Civil Code.
- Servitude may also be defined as an encumbrance or restriction on the right of ownership of the owner of the servient tenement for the benefit of the owner of dominant tenement.
- Furthermore, it is held that the right of servitude may be created only for the benefit of another land. This is intended to prevent creation of servitude for the benefit if of an individual or group, which could consist of an obligation to perform positive acts. Note that an obligation to perform personal services or positive acts cannot be made the subject matter of servitude. See Art 1360 and 1373 of the Civil Code.

- As any real right, not only the burden of servitude runs with the servient land its benefit also runs with the dominant land. This is the essence of a real right (servitude) as opposed to personal servitudes, such as the right of usufruct, use and habitation that are also called personal servitude. See Art 1361 of the Civil Code.
- Servitude creates an obligation, on the owner of the servient tenement, only to refrain from preventing the owner of the dominant tenement to do certain acts that the latter would not have been able to do otherwise.
- In other words, servitude shall not create an obligation to perform positive acts on the owner of the servient tenement. See Art 1359/2/ of the code. One exception to this rule is provided under Art 1360 and 1373 of the Civil Code, which allows the parties to make an agreement in which the owner of the servient tenement undertakes to perform works necessary for the enjoyment and preservation of the right of servitude. Such works may be construction and maintenance of pavements used by the owner of the dominant tenement to exercise his right of way, installation or repair of pipelines to enable the owner of the dominant tenement to have access to water ...etc.

- **PURPOSE OF SERVITUDE**
- A person may be unable to make the most advantageous use of his land or building without some rights over the land belonging to his neighbors.
- The main purpose of servitude is to enable the owner of the dominant tenement to derive the best possible use and benefit from his land by giving him certain rights on the land belonging to another person, called servient owner.
- However, unless the servitudes that may be created on a land are restricted in number and extent, it may hamper the profitable use of the servient land and gravely diminish its value, and this will ultimately injure public interest.
- This is because the owner/holder of such land can not use his land in the manner he desires and other persons will not be interested to acquire such land as their right of ownership is limited or encumbered by the servitude or the right of another person.

Therefore, the law tries to restrict the number and extent of encumbrances or servitudes on the servient tenement in the following ways.

1. Servitude should be used exclusively for the purpose of using or exploiting the dominant land and it must be used exclusively for that purpose. In other words, the owner of the dominant tenement may not use the servient tenement for the purpose exploiting another land that is not part the dominant tenement.

- This is because servitude is created on one land for the purpose of using and enjoying another land/ the dominant tenement/, and not for the general benefit of the owner of the dominant tenement.

2) The law also limits the rights of the owner of the dominant tenement to use the servient tenement only to purposes for which the servitude was created at its inception.

- In other words, it cannot be used for new purposes that may arise after the creation of the servitude.
- For instance, a servitude of created to cross a land on foot cannot be used to use cars where the owner of the dominant tenement purchases a car, because this increases the burden of the owner of the servient tenement. See Art 1376 of the Civil Code.
- The law also imposes various obligations on the owner of the dominant tenement with the intention of the preventing him from increasing the burden of the servient tenement.
- Refer to Arts 1375, 1377, and 1380 of the Civil Code.

3) The owner of the servient tenement has the right to redeem the servitude where the benefits or advantages it provides to the dominant tenement are lesser than the inconveniences or damages it causes to the servient tenement. See Art 1383.

4) The owner of the servient tenement cannot be required to do positive acts; he may merely be required to abstain from doing something or to permit the owner of the dominant land to do something on the servient land. For instance, the owner of the servient tenement may be required;

- To abstain from building or planting trees so as not to obstruct view from the dominant land, or
- To allow the owner of the dominant tenement to walk or drive across his land, or
- To allow the owner of the dominant tenement to take water or sand or chalk from his land.

5. In order to prevent unfair and excessive burden or damages to the servient tenement, the law under Art 1365 of the Civil Code, provides that where it is not clear as to whether the provisions of a contract create a servitude running with the land or a personal obligation on the owner of the land, such doubtful provisions shall be interpreted to have created a personal right or obligation and not a servitude.

   Also Art 1369.

- SOURCES OF SERVITUDE

The right of servitude may arise from a contract, a will, acquisitive prescription or the provisions of the law.

1. Servitudes arising from contracts; According to Art 1362/1/ of the Civil Code, a servitude may be created by an agreement or contract concluded between the owner/holder of the dominant tenement and the owner of the owner/holder of the servient tenement.
2. Servitude may also arise from the will of the deceased person who divides his land holding between two or more persons. In other words, the testator who owns/holds a land may burden one of the lands with servitude of a certain type for the benefit of the legatee of another plot of land. See Art 1362/2/ of the Civil Code.
3. Acquisitive Prescription; According to Art 1366 of the Civil Code, servitude may arise from enjoyment of the servient tenement for a period of ten years. See Art 1366/2/ and 1367 of the Civil Code. However, a servitude acquired through acquisitive prescription shall not affect third parties unless its acquisition is registered in the register of immovable properties. For instance, the owner of the dominant tenement cannot exercise his right against the transferee of the servient tenement unless his rights are entered in the registers of immovable properties. See Art 1368 /2/ of the Civil Code.

4. Servitude arising out of the provisions of the law. The contiguity of land belonging to different owners or occupied by different persons creates conflict if either or both of them wish to enjoy their lands without any consideration for the damages or annoyance caused to the other. These conflicts can be eliminated only by limiting the powers that the right of ownership usually involves. Specific provisions of the Civil Code, which determine what is allowed and what is prohibited, are intended to prevent some of these potential conflicts. Refer to the provisions of Art 1217, 1218, 1219, 1220, 1221-1224, 1245-1254, 1372/2/ of the Civil Code.

RIGHTS AND DUTIES OF THE PARTIES

- The rights and duties of the owner/holder of the servient tenement and the owner/holder of the dominant tenement shall be determined by the instrument creating the servitude, where the servitude is created by contract or will.
- However, where it is created by acquisitive prescription, the rights and duties of the parties shall be determined by the manner in which the servitude is created or enjoyed in good faith over a long period of time, i.e., usage.
- Furthermore, where the instrument creating the servitude does not contain provisions dealing with the rights and duties of the parties, or where such provisions are not valid or where the manner of its creation and enjoyment is not clear, the provisions of the Civil Code shall determine the rights and duties of the parties. See Art 1370 of the Civil Code.

RIGHTS AND DUTIES OF THE SERVIENT OWNER/HOLDER

1. The owner/holder of the servient tenement shall have the obligation to allow the owner/holder of the dominant tenement to use his land for the purpose for which the servitude is created and refrain from exercising certain rights such as the right to prevent other persons from entering his land or using his land. See Art 1359 of the Civil Code. He must also refrain from acts that reduce or impair the use of his land for the purpose required by the owner/holder of the dominant tenement. For example, he may not construct buildings or plant trees that impair the view or way of the owner of the dominant tenement. See Art 1379 of the Civil Code.
2. He also has the obligation to perform works related to the construction, maintenance and repair of the means necessary for the exercise of rights of servitude by the owner of the dominant tenement, where under the instrument creating the servitude, he has undertaken such obligation. See Art 1373/2/
3. The owner/holder of the servient tenement has the right to redeem the servitude where he can prove that the damages or inconveniences caused by the servitude are way higher than the benefits or advantages derived by the owner of the dominant tenement. See Art 1383 of the Civil Code.
4. The owner/holder of the servient tenement may require that the servitude be exercised on such other part of the servient tenement as will be equally convenient to the owner of the dominant tenement. See Arts 1380,1220(3)

RIGHTS AND DUTIES OF THE DOMINANT OWNER/HOLDER

1. The owner/holder of the dominant tenement must exercise his rights in a manner, which causes minimum inconvenience or damage to the servient tenement. In addition to this, he may not make any alteration that would increase the burden of the servient tenement. See Art 1375
2. Where the dominant tenement is divided, the right of servitude shall continue for the benefit of the owners/holders of each parcel of land. However, such division shall not increase the burden of the servient tenement, and the owners/holders of the divided parcels of land shall exercise their rights, for instance right of way, using the same area or piece of the servient land. See Art 1377.
3. where the servient tenement is divided, the owner/holder of the dominant tenement shall have the right of servitude on each of the new parcels of land. See Art 1378.

TYPES OF SERVITUDE

1. URBAN SERVITUDES AND RUSTIC/ RURAL SERVITUDES

   - Urban servitudes are servitudes created and enjoyed in urban areas. They include right of view, right of way and the various other servitudes arising out of the law such as the right to install water, gas or electrical lines.
   - Rrural or rustic servitudes are those types of servitudes created and enjoyed in rural areas such as right of way or right to cross a parcel of land on foot, with animals, during the dead season, across fields, rights of pasture, watering animals, wood-cutting, irrigation.
   - Art 1371 of the Civil Code.

2. CONTINUOUS AND DISCONTINUOUS SERVITUDES

   - A continuous servitude is a servitude that continues without continuous human intervention. For example, Servitudes of view and drawing water are considered as continuous servitudes.
   - Discontinuous servitude is a servitude that cannot exist without a continuous human intervention. Therefore, for such kind of servitude to continue to exist, the beneficiary must continue to use /exercise the right created by it. Servitudes of way or passage, pasturing cattle and servitude of extracting quarry are examples of discontinuous servitude.
   - See Art 1382 of the Civil Code,

3. **APPARENT AND NON-APPARENT SERVITUDES**

   - Apparent servitudes are servitudes that are manifested by external works such as ditches, pipelines or an aqueduct, roads (means of enjoyment). Servitude of drawing water, way… etc are examples this type of servitude. See Art 1366(1) and (2) of the Civil Code.
   - Non-apparent Servitudes are servitudes whose existences are not manifested by external works necessary for their enjoyment by the owner of the dominant tenement. Servitudes of pasturing animals, cutting wood, and extracting quarry… etc are examples of non-apparent servitudes. See Art 1367 of the civil Code.

EXTINCTION OF SERVITUDE

- **Waiver /release by the owner** of dominant tenement. This ground of extinction is applicable to any kind of servitude. Waiver or release by the dominant owner/holder shall extinguish servitude only where it is made in writing and where the right that was registered in the register of immovable properties is cancelled or stricken out. See Art 1381(1) and (2) of the Civil Code.
- **Disappearance of the apparent signs** in cases of apparent servitudes or failure to exercise the right arising out of the servitude, and the cancellation of the entry of the servitude in the register of immovable properties up on the application of the owner/holder of the servient tenement. See Art 1381(3) and (1) and Art 1366 of the Civil Code.
- **Redemption of the servitude** by the owner of the servient tenement; According to Art 1383 of the Civil Code, the owner/holder of the servient tenement may buy the servitude back where the continuation of the servitude damages the value of the servient tenement and, hence, is contrary to the national economy or public interest or where the benefits deriven by the owner/holder of the dominant tenement are lesser than the damages it causes to the servient tenement. See Arts 1384 and 1385 of the Civil Code.
- **Surrender of the servient tenement to** the owner of the dominant tenement; Servitude shall be extinguished where the owner/holder of the servient tenement has an obligation to perform positive works such as construction, maintenance and repair of means of enjoyment and is not able or willing to cover the costs, and surrenders the sevient tenement to the owner of the dominant tenement. See Art 1374.

UNIT SEVEN

RIGHT OF RECOVERY AND RESTRICTIONS ON THE RIGHT TO TRANSFER CERTAIN THINGS

RIGHT OF RECOVERY

- Right of recovery is a right of a person to recover a thing sold by an owner from the buyer by paying the price and costs the latter has incurred.
- Art 1386 of the Civil Code.
- Right of recovery is a right where by its beneficiary can force the buyer of a thing to sell it to him.
- The right of recovery is intended to keep things within a certain group of persons, such as a family or joint owners.
- It is intended to keep the thing among persons having a blood relationship because of the economic or social value immovable things have among the society.
- It is also intended to keep a property among persons who have close relationship, in cases of joint owners, and keep strangers out there by securing peace and co-operation.
- This right is always the result of legal provisions and this right may not arise from contract, will or any other source.
- It is a right personal to the beneficiary and hence cannot be transferred to another person, nor can creditors of the beneficiary exercise it on his behalf.
- Arts 1387 and 1397 of the Civil Code.

PERSONS HAVING A RIGHT OF RECOVERY

1) Relatives by consanguinity;

- According to Arts 1389 and 1394/2/ of the Civil Code relatives by consanguinity of the seller of an immovable thing have the right to force the purchaser of such immovable, against payment of the price he has paid, to sell it to them.
- See also Arts 1124 and 1125 of the code. Such right shall be exercised according to the degree of relation they have with the seller. Hence, persons who have a first-degree relationship with the seller have a priority right over those having a second-degree relation ship. \
- See Art 1391 and 842-851 of the Civil Code. Where the beneficiaries have the same degree of relationship, they shall exercise the right of recovery together and shall become joint owners of the immovable recovered.
- See Art 1393 and Art 1392 of the Civil Code.
- Art 1396 excludes right of recovery of relatives where the immovable transferred is situated in urban area/ town planning area/ or where it mainly consists of a dwelling house or some other building. See Arts 1390 and 849 of the Civil Code.

2) Joint Owners shall have a right of recovery

- where one of the joint owners sells his share of right in thing jointly owned.
- See Art 1260, 1261, 1388 and 1394 of the Civil Code.
- Joint owners exercise their right of recovery jointly and acquire equal rights in the share recovered.
- However, where one or more of the joint owners are not willing to exercise a right of recovery, such right shall accrue to the other joint owners.
- See Arts 1393 and 1262 of the Civil Code.

CONDITIONS FOR THE EXERCISE OF RIGHT OF RECOVERY

- The beneficiary of a right of recovery must declare his intention to buy the thing or usufruct within two months from the date he is informed of the transfer of ownership or usufruct to a new owner or usufructary, (if he is notified). Art 1400.
- However, if he is not notified, then he may exercise his right with in a period of one month from the date the joint owners knew of the transfer.
- On the other hand, where the right is exercised by relatives, the beneficiary must declare his intention to exercise his rights within six months from the date of transfer of possession.

- Such declaration of intention to buy/ exercise a right of recovery/ must be accompanied by securities, which may be in the form of pledge, mortgage or personal guarantee to secure the payment of the price and other expenses. See Art 1403.
- According to Art 1398 of the Civil Code, a right of recovery may be exercised where the owner sells the thing or where creditors of the owner attach the thing.
- Art 1407/1/ indicates that right of recovery may be exercised even where the thing is transferred without consideration. Furthermore, excluding right of recovery in cases where the thing is transferred gratuitously will also be against the purpose of granting right of recovery discussed above. Hence, it does not seem that the legislator intended to exclude right of recovery in such cases.

However, a right of recovery, whoever the beneficiary may be, cannot be exercised in the following circumstance;

1. Where the buyer is himself a beneficiary of right of recovery, i.e., where the property is sold to a blood relative of the seller or a joint owner. See Art 1395 and Arts 842-851 of the Civil Code.
2. Where the immovable sold is situated in a town planning area or it consists mainly of a dwelling house or building. This prohibition particularly applies in cases of the right of recovery of relatives. See Arts 1535, 1536 and 1396 of the Civil Code.
3. Where the thing is expropriated. According to Art 1399 of the Civil Code, a beneficiary of a right of recovery cannot force a public authority or any other organ that has a power to expropriate private property for public purposes. See Also Arts 1460-1488.

EFFECT OF RIGHT OF RECOVERY

- The new owner or usufructuary shall transfer the thing or usufruct to the beneficiary of right of recovery up on of receipt of the price where he acquired the thing for consideration or the value of the thing where he acquired the thing on donation. See Arts 1406, 1407, 1408 and 1409 of the Civil Code.
- The person who is forced to transfer a thing to the beneficiary of right of recovery shall also have the right to be reimbursed with;
- -Expenses of purchase and legal interest. /Art 1408/1/
- -Legal interest on the price or value of thing from the date of payment of the price and or incurring of expense. /Art 1408/2/

LOSS OF RIGHT OF RECOVERY

- The right of recovery shall be extinguished where the beneficiary fails declare his intention to exercise his right, to recover the thing, within two months from the date when he is informed of the transfer of ownership or usufruct, if he was informed, or within one month from the date he knew of the transfer, where the beneficiary is a joint owner. See Art 1401/1/ of the code.
- Relatives who have a right of recovery shall lose their right where they fail to declare their intention to exercise the right within a period of six months form the date they knew of the transfer. See Art 1401 (2) of the code.

Other Restrictions as property rights

PROMISE OF SALE, RIGHT OF PRE-EMPTION and PROHIBITION OF ASSIGNMENT or ASSIGNMENT

- These restrictions are contractual.

1. A Promise of Sale-
   - is a contract where by the owner of a thing undertakes to sell it to the promisee or another person specified if and when the promisee or such other person decides to buy it. (See Arts 1410 (1), 1416 and1417).
   - A promise of sale, constitutes a restriction on the right of the promisor / the owner/ to dispose of the thing because he is obliged to sell the thing, at the price fixed in the agreement creating the promise, only to the beneficiary of such right and when the latter whishes to buy it.
   - In other words, the owner cannot sell the thing to another person who might have offered a better price, nor can he refuse to sell the thing to the beneficiary of the promise, which, an owner under normal circumstances is entitled to do, provided that the beneficiary has made his decision to buy the thing within the time agreed up on the contract.

2. Right of Pre-emption,

- is a right arising out of a contract where by the owner of a thing is obliged to sell it to a specified person if and when he/the owner/ decides to sell it. (Arts 1410(2) and 1418).
- Though the owner has the right not to sell the thing, his right to sell thing to any person who comes up with the best deal ceases to exist with the conclusion of the contract creating right of pre-emption in favor of the beneficiary.
- In other words, if the owner decides to sell the thing with in the period agreed up on in the contract, he can sell it only to the beneficiary and at the price determined in the contract and his right to chose among potential buyers is restricted.

- Promise of sale and Right of pre-emption represent a restriction on the right of ownership of a person and a property right of the beneficiary of the rights only if they are made in relation to immovable things or special movable things in respect of which there is a requirement of registration.
- Contracts creating these restrictions in relation to chattels or ordinary movable things shall not constitute a restriction on a right of ownership of a person nor a property right /real right or right in-rem/ in favor of the beneficiary.
- Hence, the rights and duties arising from these contracts are governed by the law of contracts or obligations and not by property law. See Art 1411, 1426, 1427, 1428 and 1430 of the Civil Code.
- The period with in which such right may be exercised cannot exceed a period of ten years.
- Where the period fixed in the contract exceeds ten years, it shall be reduced to the maximum period provided by the law, i.e., ten years. See Art 1413 of the Civil Code. The rights arising from such agreements cannot be transferred by contract or inheritance and the creditors of the beneficiary cannot exercise them. See Art 1415 of the code.

RIGHTS AND DUTIES OF THE PARTIES

A. PROMISE OF SALE

- The maker of the promise/ the owner of the thing/ may not alienate or sell the thing or charge it with real rights /rights in-rem/ such as usufruct in the period for which the promise is effective. However, he may pledge or mortgage it for an amount not exceeding the price fixed in the contract creating the promise. See Art 1416
- Where the thing is attached by court order, the owner must notify the promisee of such proceedings. (See Art 1417)
- Where the owner sells the thing to a person other than the beneficiary, the latter shall have the right to force the buyer of the thing to sell it back to him at the price agreed up on in the contract creating the promise.

RIGHT OF PRE-EMPTION

- The owner has the right to create any kind of right in-rem on the thing, but he may not sell or transfer it to another person. Where he decides to sell the thing, he has the obligation to inform the beneficiary of his intention to sell the thing and the chargers/ such as mortgage, usufruct, and servitude etc/ on the thing. See Art 1418 /1/ and/2/.
- In case of attachment, the owner of the thing must notify the situation to the beneficiary. See Art 1418 (3)
- The beneficiary must exercise his right within two months from the date he received the notice. However, this period of notice may be extended to a period not exceeding one year. Where the period is extended for more than a year, it shall be reduced to one year. See Art 1419.
- The beneficiary must exercise his rights before the thing is sold by auction in case of attachment. See Art 1421.
- In case the thing is sold to a third party in violation of the contract creating the right of pre-emption, the beneficiary may recover it from such third party against payment of the price determined in the contract creating right of pre-emption. See Art 1422.

EXTINCTION OF RIGHTS OF THE BENEFICIARY

- Failure of the beneficiary to exercise the right within the period fixed by the contract or 10 years where no period is agreed upon in the contract. See Art 1413 of the Civil Code. The rights arising from a contract creating a right of pre-emption shall be extinguished if the beneficiary fails to exercise his right with in a period of two months form date of notice given by the owner or with in the period agreed up on in the contract. See Art 1419 and 1420.
- Failure to buy the thing before it is sold by auction in case of attachment. See Arts 1417 (2), (3) 1419 (3), and 1421.
- In cases where the thing is sold to a third party in violation of the contract, the right of the beneficiary will be lost if he fails to require such party to surrender the thing to him within six months of the date when the third party has taken possession of the thing. See Art 1425 (2)

PROHIBITION OF ASSIGNMENT OR ATTACHMENT

- Prohibition of assignment or attachment arises from a contract or will where by certain things are transferred and where by the transferor prohibits the transferee from assigning or transferring the thing to another person.
- The producer, maker, seller or owner of such thing may impose these prohibitions. See Art 1426 of the Civil Code.
- Such restrictions may freely be made with respect to ordinary movable things (chattels). However, such restrictions will bind only the person who accepts them and hence, it does not create a real right that can be raised against third parties. See Art 1426/2/ of the Civil Code.
- Prohibition of the right of attachment or assignment with respect to immovable things is possible only in cases allowed by the law.
- According to Art 1427, 1428 and 929-936 of the Civil Code, the transferor or assignor of an immovable thing or the testator may prohibit the transferor or the holder in tail from assigning an immovable to another person. He may also stipulate that the thing shall not be attached in the hands of the transferee or the holder in tail. See also Art 2460 of the Civil Code.
- Art 1416 (1), such restriction with regard to chattels will have no real effect on third parties, unless they knew of the restriction. It also tries to minimize the negative consequences of the restrictions by limiting the period for which it can be made.
- Restrictions can be made on immovable things with real effects in cases expressly allowed by the law for the purpose of protection of a serious interests, for instance, keeping an immovable with in a family.

FORMAL REQUIREMENTS"

- A provision prohibiting assignment or attachment shall be of no effect unless it is made in writing and it specifies the duration of the prohibition, which may not exceed 20 years or the life of the transferee. See Arts 1430, and 1431.
- It must also be registered in the register of immovable things where such provision is made in relation to immovable things. See Art 1432.

RIGHTS AND DUTIES OF THE PARTIES

- A property that is subjected to a provision prohibiting assignment or attachment cannot be sold or transferred. If it is sold in violation of the provision, the person stipulating it may recover it form the buyer. See Art 1440 (2), 1442 and 1438.
- The person making the provision may prohibit the acquirer from assigning or selling it for a period not exceeding 20 years. See Art 1431.
- The person who made the provision prohibiting assignment has the right of recovery against the buyer. Such right has to be exercised within two years from date of the assignment or from the expiry of the period fixed in the contract. See Arts 1442 (1) and 1441.
- In cases of attachment, the person making the provision must exercise his right prior to the attached immovable thing being sold by auction where he has been informed of the attachment. However, where he is not informed of the attachment, he must exercise his right with in a period of two years from the sale of the immovable by auction. See Art 1437.

UNIT EIGHT-COLLECTIVE EXPLOITATION OF PROPERTY

PUBLIC DOMAIN

- Not all property of the state, and its various administrative units and the municipalities are subject to the same rules. Some of them form part of the public domain while others form the private domain of the state.
- Things or property forming part of the private domain of the state are treated in the same manner as the private property of individuals and are governed by the rules governing privately owned property.
- On the other hand, property forming part of the public domain of the state are governed by the rules dealing with collective exploitation of property rather than the rules governing privately owned property.
- Art 1445 of the Civil Code, defines public domain as a property belonging to the state or its various administrative units or organs and which is directly placed at the disposal of the public or which is destined to public service.

- Arts 1446, 1147 and 1148 enumerate things that are considered as public domain where they are owned by the state;

  - Roads, streets, canals and railways and public parks;
  - Seashores, port installations and light houses;
  - Buildings specially adapted for public services such as fortifications, bomb shelters, museums, halls, churches and mosques;
  - Waterways, lakes and underground accumulations of water
  - Land and other natural resources/ Art 40 of the Constitution of the Federal Democratic Republic of Ethiopia/
  - Movable things that are placed at the disposal of the public by a public service or entrusted to the custody of a public service such as city buses, manuscripts, artifacts and various other chattels of historical and archeological importance kept in museums
  - National libraries and museums, manuscript collections, books, medal, stamps, paintings, statuses & other movables are also considered as public domain.

Characteristics of Public Domain

- Properties forming part of the public domain are inalienable: they cannot be transferred by sale or inheritance or donation or any other mode of transfer unless they are declared that they no longer form part of the public domain. See Art 1454 of the Civil Code.
- They main may not be acquired by possession in good faith or usucaption or acquisitive or extinctive prescription. See Art 1455 of the Civil Code.
- Properties forming part of the public domain may not be occupied by a private person without the authorization of a competent public authority. See Art 1456 of the Civil Code.

EXPROPRIATION

- Most Civil Law countries including Ethiopia use the term expropriation, while most Common Law countries including the US and the UK use terms such as eminent domain, compulsory sale or condemnation.
- Is defined as the power of a sovereign state to take or authorize the taking of private property for public purpose or use without the owner's consent but conditioned up on payment of commensurate/just compensation in advance.
- This power of the state is said to be the natural extension of its sovereignty and derived, according to the contractarians/ the proponents of the social contract theory of the state/, from the will of the people/ citizens which transferred some of their rights to the state for purpose of achieving peace, order and security of life and property.
- Here it is important to distinguish expropriation from police power, which is a power of the state to make sure that private property is used /enjoyed in accordance with rules and regulations intended to ensure public safety, peace and health. In addition, this power is exercised without payment of compensations as opposed to expropriation, which presupposes compensation.
- Art 1460 of the Civil Code defines expropriation

- Art 1460 of the Civil Code defines expropriation as a proceeding whereby the competent authorities compel an owner [against payment of commensurate compensation in advance see Arts 1470-78 of the code] to surrender the ownership of immovable required for public purposes.
- It can also be used to acquire or extinguish usufruct, servitude or other property rights /rights in rem/ on an immovable or it may be used for terminating, prior to the agreed term, a contract of lease relating to an immovable owned by public authorities.
- According to Art 40(8) of the FDRE Constitution private property shall not be taken or expropriated by the state unless it is required for public purposes or use and unless compensation that is equal to the value of the property is paid in advance. This provision prohibits even equivalent exchanges unless the government is acting for a public use.

INDIRECT EXPROPRIATION

- Where the work or project intended does not seriously impair the rights of the owner or the possessor or does not notably reduce the value of the immovable, for example installation of underground pipes, aerial lines, electric or telephone poles, the competent authorities may use indirect expropriation.
- In other words, such authorities or service providers may undertake such works without the need to follow the procedures required for expropriation. However, the competent authorities may not use indirect expropriation to acquire or extinguish ownership of dwelling houses.
- The person whose right is affected by this procedure has the right to claim; with in a period of three years of the completion of the work, a compensation for the damages he suffered as a result. See Arts 1485-1488 of the civil code.
- Generally, there are two main views as to what the concept refers to.

PUBLIC PURPOSE

- Public purpose is a crucial element/requirement before the expropriation of private property.
- It is a requirement of due process of law in the context of expropriation, and failure to comply with it may render the taking of private property unlawful and unconstitutional. See Art 40/8/ cum 9/1/ of the FDRE Constitution.
- Taking of private property for purposes other than "public purposes" leads to violation of the right to property of individuals and abuse of the power by the government that in turn creates insecurity and ultimately discourages investment and commerce.
- This is because individuals will be discouraged from acquiring and improving property, expanding their holdings and investment if a government is free to force owners to surrender their properties for any purpose including, the benefit of another individual.

- **The first view holds that public purpose** is equivalent to public benefit, utility or advantage. Hence, any taking which tends to enlarge resources, increase industrial energy and productive power of any substantial number of inhabitants or a section of the state or a purpose which leads to the growth of towns and creation of new resources for the employment of capital and/or labor, which contributes to the general welfare and prosperity of the whole community serves a public purpose and is justifiable.
- According to this view, expropriation of private property is justified if the undertaking for which the property is taken produces direct or indirect benefits to the public at large or to the section of the community.
- However, this view may open the way for unlimited interference by the government in the property right of citizens.
- **The second view holds that public purpose** exists only where the undertaking for which the property is to be expropriated is to be directly used or enjoyed by the public, Such as schools, hospital, roads etc.
- Unlike the first view, this view proposes a strict interpretation of the concept and requires the public to be the direct beneficiary of the proposed undertaking and to which it shall have equal and direct access. In other words, expropriation for a purpose, which may indirectly benefit the public is not justifiable or is unlawful.
- Hence this view tends to limit the power of the government in expropriation private property.

- the civil code does not provide the concept of public purpose.
- However, it clearly provides that the state may not expropriate private property solely for the purpose of generating income or financial benefits.
- Hence, generating revenue for the government does not constitute 'public purpose' and taking private property on this ground would be unjustifiable and unlawful. See Art 1464/1/ of the code.
- However, where the project for which the land is required would also benefit the local community/ the public/ by increasing the value of properties in the area the project shall be deemed to serve public purpose and expropriation is possible. See Art 1464/2/ of the code.
- It is also possible to argue that a proposed project would serve public purpose where it benefits the local community by creating job opportunities, creating market for raw materials…etc. In other words, indirect public benefit from the proposed project constitutes public purpose under the civil code.
- According to Article 1463 of the Civil Code, the competent authorities must determine whether the project for which the land is required serves public purpose or not and a notice to this effect has to be published.
- In certain circumstances, public inquiry may be necessary before such declaration is made and published, i.e., the declaration will only be made after the public is consulted and interested person have expressed their views regarding the project. See Art 1465 of the code.

EXPROPRIATION PROCEDURES UNDER THE CIVIL CODE

1. To determine as to whether the proposed project serves a public purpose or not as we have seen in the preceding section.
   - The competent authorities that are authorized by law to expropriate private property make the determination or declaration of public purpose.
   - The competent authorities may hold, where it appears necessary, a public inquiry as to whether the proposed project serves public purpose.
   - See Arts 1463 and 1465 of the code.
2. According Article 1466, after the declaration of public interest, the competent authority shall determine the land required for the implementation of the project, and personal notice shall be given to the owners, bare owners, usufructuaries of the immovable he intended expropriation.
   - They are entitled to express their views on the necessity of such expropriation within a reasonable period of time.
   - Where there is no opposition or the opposition is not accepted, the competent authorities shall make or issue the expropriation order.
   - The order shall transfer the ownership and other rights on the immovable, free of any charge o r encumberance, to the competent authority concerned. Art 1467 of the code.
3. Expropriation orders, issued by the competent authorities, must be served on the owner of the immovable and other persons, if any, whose rights on the immovable are entered in the register of the immovable to be expropriated, i.e., the dominant owners who have servitude rights over the immovable, the usufractuary, the mortgagee, lessee…etc. See Art 1468 of the code.

4. The person whose property right is affected by the expropriation shall notify the competent authority the amount of compensation he claims for such rights with in a period of one month from the date of service of the order. However, any interested person, such as a creditor, may object to the amount of compensation fixed below a certain amount or may oppose the payment of compensation in fraud of his rights. This opposition or objection shall be made within the period of one month from the date of service of the order. See Arts 1470 & 1471 of the code.
5. If the competent authority does not agree with the amount of compensation claimed by the person entitled, the amount to be paid shall be fixed the Arbitration Appraisement Committee, which shall be constituted according to rules to be enacted. /Art 1472 and 1473/1/ of the code.
6. The committee will have the duty to fix the amounts of compensation but it cannot decide on disputes regarding the right giving rise to compensation.

- The amount of compensation or the value of replacement land shall be equal to the actual damage, which shall be assessed on the day when it makes the decision. See Arts 1473-1474 of the code.
- The committee shall take in to account, in fixing the amount of compensation or the value of the land to be given replacement of the expropriated land, the claim or statement made by interested parties regarding the value of the properties or rights to be expropriated, and the increase of the value of the property as a result of construction of public works in the area.
- However, the committee shall not take in to consideration any improvement or buildings on the land, which are made after the service of the expropriation order and any speculation of increase in the value the immovable resulting from the proposed public work. See Art1475 and 1476 of the code.

7. The competent authority or/and the person who is entitled to payment of compensation may appeal to a court, with in a period of three months from date of service of the decision of the committee, against such decision. See Art 1477 of the code.

8. The authority shall take possession of the land only after paying the compensation. In case of appeal by the person entitled to the compensation against the amount fixed by the committee, it shall take possession of the immovable only after it has paid the fixed amount to the owner. See Arts 1478/1 & 2/ of the code. The court may not reduce the amount of compensation fixed by the committee. Where the court increases the amount of compensation, the competent authorities shall pay the additional amount. See Art 1478/3/ of the code.

9. Where the expropriated person is to be given a replacement land, with or without monetary compensation, the competent authority shall take possession of the land only after it hands over such land to the person. Where the appeal is ledged by the authority, the owner shall remain in possession of the land until the court gives the decision. If the decision is not given with in a period of one year from the date of appeal and compensation is not paid, the expropriation order shall be invalid and the owner is not required to comply with it. See Art 1478/4/ of the code.

10. The court may increase the amount of compensation or order payment of additional compensation, in cash in case the owner was given replacement land. Such additional payment has to be made within a period of one month from the date of judgment. See Arts 1478-1479 of the code.

UNIT NINE- REGISTRATION OF PROPERTY

NATURE AND TYPES OF REGISTRATION

- Registration of properties refers to a system, established and managed by appropriate state organs, in which various property rights are entered.
- The main purpose of registration is to provide security to the right holder and to other persons to whom the property will be transferred.
- Prior to the emergence of use of documents in contracts, people tried various techniques intended to ensure security of property rights.
- For instance, the seller of land used to transfer ownership and guarantee the buyer by handing over a handful of earth from the land to the latter in the presence of neighbors.
- Similarly, Owners of land used to declare their right to it using various signs, such as enclosures and inscriptions on trees.
- With the emergence and prevalence of documents, people tried to ensure security by developing customs, which require the deposit of acts creating or transferring rights on immovable things.

- The state, through its agencies, is responsible for its management and guarantees a person who may suffer financial loss due to lack of proper management of the system.
- Property registration systems may be ‘documents or deeds’ registration system or ‘title or ownership’ registration system.
- Under a documents registration system, documents or acts creating or transferring rights on immovable things are field or kept systematically to give notice interested parties a notice of the transactions involving the immovable concerned.
- However, registration of documents does not constitute a conclusive evidence of ownership on the immovable as the contracts or acts creating or transferring the right may be invalid, or the transferor may not be the true owner and cannot transfer a genuine right of ownership.

- Ownership or title registration systems register ownership or other right, such as usufruct, servitude or mortgage rather than the acts or contracts creating such rights.
- Registration under this system is a conclusive proof of the right unless the person registered as owner acted fraudulently.
- In other words, a person who, in good faith, acquired an immovable from a person who is registered as an owner and have his right registered will acquire a genuine right of ownership even where the transferor was not a true owner or the transferor acquired the immovable under an invalid contract.

PURPOSES OF REGISTRATION

- Creating security of property rights by recording the rights and encumbrances relating to the thing and providing evidence to the right holders. The existence of a system of registration provides the owner of an immovable or a special movable thing with security or guarantee that his right of ownership is recognized and protected against any claim or interference by other persons. An owner of a thing whose right is registered can fend off any contrary claim of title by other persons by the mere fact of such registration and the deeds issued there under. See Arts 1195-1198 of the Civil Code.

- Enables a potential buyer or mortgagee to ascertain that he or she is dealing with a person who is entitled to sell or mortgage the thing, i.e., the owner and acquire a legally enforceable right of ownership or mortgage. In the absence of a system of registration a person who intends to buy or secure his rights with mortgage will not be able know whether the person he is dealing with an actual owner and runs the risk of dispossession or eviction or inability to enforce his mortgage. See Arts 2884 and 3049 of the Civil Code.

1LEGAL AND ECONOMIC SIGNIFICANCE OF REGISTRATION

1. **Creates security of property rights by recording the rights and encumbrances relating to the thing and providing evidence to the right holders.**

   - The existence of a system of registration provides the owner of an immovable or a special movable thing with security or guarantee that his right of ownership is recognized and protected against any claim or interference by other persons.
   - An owner of a thing whose right is registered can fend off any contrary claim of title by other persons by the mere fact of such registration and the deeds issued there under. See Arts 1195-1198 of the Civil Code.

2. **It also enables a potential buyer or mortgagee to ascertain that he or she is dealing with a person who is entitled to sell or mortgage the thing, i.e., the owner and acquire a legally enforceable right of ownership or mortgage.**

   - In the absence of a system of registration a person who intends to buy or secure his rights with mortgage will not be able know whether the person he is dealing with an actual owner and runs the risk of dispossession or eviction or inability to enforce his mortgage. See Arts 2884 and 3049 of the Civil Code.

3. **Plays significant economic roles by facilitating commercial transactions and creating capital necessary for investment and economic**

THINGS REQUIRED TO BE REGISTERED

- The requirement of registration applies to immovable things and special movable things, because of their high economic and social value and they are easily identifiable, and various acts, public or private, which are intended to recognize, create, modify, transfer or extinguish rights related to them.
- This is because registration of everything that can be the object of property is impossible and even if it is possible to do so, commercial transactions will be greatly affected as a buyer has to check registers to be sure that he is transacting with the owner of the thing.
- The law addresses this concern by presuming a possessor of a chattel to be a lawful owner and by allowing a person who acquires a chattel in good faith to become an owner even where the transferor was not the lawful owner of such chattel. See Arts 1193 and 1161-1167 of the Civil Code.

1. IMMOVABLE THINGS

- Art 1553 of the Civil Code provides that keepers of registers of immovable property shall keep registers of immovable property in Awradja Guzat.
- Each area of conservation and each district shall keep two types of registers, i.e., a register of property and a register of mortgages.
- However, where the district does not have a cadastral survey plan, which allows the adoption of such systems, there shall be a register of immovables. Furthermore, where there is no cadastral survey plan, which allows the adoption of register of immovables, the district shall have a register of owners. In other words, a register of property and a register of mortgages and register of immovables shall depend on the existence of appropriate type of a cadastral survey plan in the district. See Arts 1553-1558.

REGISTER OF PROPERTY

- Register of property is a register in which all acts, i.e., contracts or wills, or judgments, or compromises, intended to recognize, create, transfer, modify or extinguish the right of ownership, usufruct, use, habitation, servitude of one or more persons on an immovable, are registered.
- Legal actions intended to obtain a judgment recognizing, transferring ownership or other property rights over an immovable shall also be registered in the register of immovable.
- It is also a register in which acts by which an heir accepts a succession or legacy, a contribution is made in a partnership, a dwelling house or apartment is leased for a period exceeding five years, creating restriction of right of ownership or usufruct…etc are registered.
- See Arts 1567-1572.

REGISTER OF MORTGAGES

- Is a type of register in which all acts intended to create, modify, or extinguish a right of mortgage, or to transfer a debt secured by a mortgage or assign the right of priority arising from mortgage are entered.
- Legal actions, by the mortgagee or any other creditor, for the attachment of immovable things shall also be registered in the register of mortgages. See Arts 1573 and 1574.

REGISTER OF IMMOVABLES

- Is a register, which shall be kept where the district in question does not have a cadastral survey plan, which makes keeping register of property and register of mortgages possible.
- In other words, it is an alternative system of registration.
- Under this type of registration, all immovable things situated in a district shall be registered in the register of immovables under its number in the cadastral survey plan and a separate leaf shall be assigned to it.
- The register shall contain a summary of the description of the immovable in question on each of its leaf.
- The registration and descriptions should be in conformity with the indications and measurements of the immovable in the cadastral survey plan.
- It shall also contain a brief description of all acts, which are required to be registered. See arts 1575-1582.

REGISTER OF OWNERS

- Is used where the district does not have a cadastral survey plan that is needed to implement the three types of registration discussed above.
- It is a register that contains, in alphabetical order, the name of owners of immovable things situated in the district. Where several persons jointly own an immovable thing, a separate leaf shall be assigned to each owner in the register.
- On the hand, where a person owns several immovable things, separate leaves shall be drawn for each immovable he owns.
- The register shall also contain a brief description of the acts that are required to be registered and that involve the immovable in question. See Arts 1583-1386.

REGISTRATION PROCEDURES

- Registers of property and mortgages shall consist of files made up of printed forms that are prepared and supplied, free of charge, by relevant state organ to the keepers of registers.
- The forms are made available to persons requesting registration. Any interested person may make a request for registration up on payment of the prescribed fee. The request shall be made by filling out the forms, in two copies, with necessary information and signing it.
- Up on receipt of the completed and signed forms, the keeper shall assign a serial number to the request that corresponds to the register. The keeper shall countersign and seal the forms with the seal of the place of conservation and return one copy to the person requesting registration. The other copy of the form shall form part of the register to which it is related. The insertion of the forms in the register shall be made in the order in which they are made. See Arts 1587-1601.
- However, Art 3363 of the Civil Code provides that the provisions of the civil code discussed so far shall not be operational until a date to be fixed by an order to be published in the Negarit Gazeta.
- Such order has not been issued yet and hence the provisions of the civil code dealing with registration of immovables, i.e., Arts 1353-1646 have not come in force. However, various municipalities have been registering immovables and issuing title deeds.

SPECIAL MOVABLE THINGS

- Special movable things that are required to be registered by the law include ships, airplanes, motor vehicles, businesses and aircrafts.
- **Ships-**
  - According to Art 45/3/ of the Maritime Code, every Ethiopian ship should be registered at the port where her owner is domiciled or has his address for service.
  - Registers shall be kept at ports designated by the Ethiopian government for the purpose of registration Ethiopian ship. See Arts 45-52 and 1-8 of the Maritime Code.
  - Moreover, mortgages and rights in rem that may exist in relation to ships shall be entered in the register of ships.
  - See Arts 36, 37 and 45 of the Maritime Code.
- **Vehicles-**
  - Art 3/9/ of the Road Travel and Transport Proclamation No 256/1967 defines a vehicle as any wheeled vehicle constructed or adapted for use and used primarily on roads and includes carriages, bicycles, motor vehicles, semi-trailers, trailers and trains.
  - A motor vehicle, according to Art 3/9/ of the same proclamation, is a vehicle propelled mechanical or electrical power and may be a commercial vehicle, motor cycle, private motor car, public service vehicle, hackney or truck tractor.
  - Art 6/1/ of the same proclamation provides that no vehicle, except a bicycle, may be driven or operated unless it has been registered at the Road Transport Authority.
  - Furthermore, the Motor Vehicles and trailers Identification, Registration and Inspection Regulations No 360/1969 as amended by Regulation No 74/2001 prohibits the use or operation of motor vehicles or trailers in Ethiopia without a valid annual registration sticker which has to be properly displayed on the motor vehicle or trailer. See also Art 42-45 of the same regulation.

- Aircrafts-
  - Art 7/14/ of the Civil Aviation Re-establishment Proclamation No 273/2002 provides that the authority shall have the power to register all civil aircrafts and any right related thereto.
  - Art 20 the same proclamation provides that the Registration of Aircrafts Regulations No 306/1965 /as amended/ shall continue in force.
- Businesses-
  - Art 5 of the Commercial Registration and Business Licensing Proclamation No 980/2016 provides that a person may not engage in any commercial activity in the country without being registered in the commercial register and after receiving license from the Ministry of Trade or the Trade Bureau
  - the registration of contracts creating mortgage on businesses are also required. However, there is no clear provision requiring registration of other contracts in relation to businesses such as sale and lease. See Arts 142-147 and Arts 164-170 of the Commercial Code.

END OF THE COURSE