Article 1678/a reads as the parties are capable of contracting and give their consent sustainable at law. There is a difference between giving consent and the given consent being sustainable at law. By consent sustainable at law, we mean that the given consent has to be free of defect or it has not been vitiated. Among such things that can make consent defective or unsustainable are vices. The effect of being affective or vitiated may possibly lead to invalidation of contract. These vices are defined under 1696 of the civil code.

Article 1696 reads as "A contract may be invalidated where a party gave his consent by mistake or under deceit or duress". According to this article, vices are mistake, deceit and duress.

By mistake, we mean that a party has given his consent forcibly about something or the subject-matter, quality, quantity, identity and the likes of a thing under consideration. The party who has been mistaken cannot obtain what he has intended to get. On the other hand, this means that there is a difference between what he has intended to get and what he has actually obtained from the contract. In this case, we say that there is a mistake. This mistake is categorized into 2, fundamental non-fundamental. For a certain mistake to lead to invalidation, it has to be fundamental. By fundamental mistake, we mean that the mistake has to be related to the fundamental or essential quality of the subject-matter or the object, substance, nature and identity of the thing under consideration. We say it fundamental; because, had the mistaken party thought or known that this was the case at the time of the bargain, he would not have entered into such contract. Such fundamental mistake can lead to the invalidation of a contract if the terms or subject-matter are fundamentally different from that reasonably believed by the mistaken party at the time of the bargain. The Burdon of proof lays of course, up on the party who alleges that he has been mistaken. By non-fundamental mistake, we refer to mistakes that cannot lead to the

invalidation of a contract because of the fact that it does not affect the fundamental substance of the contract. For example, arithmetical error occurred during calculating about what a party has bout or sold is a non-fundamental error and it can be easily corrected.

Motive is another example of non-fundamental error and it is undisclosed intention or something in one's mind triggering him to do something. For example, after a seller sells something to a buyer, he may use the money to cover his debt. But, he may not tell the buyer such intention. So, if a person's mistake has got to do with his/her motive, it does not lead to invalidation of a contract. Article 1680/2 has got to do with motive and reads as "(2) Reserves or restrictions intended by one party shall not affect his agreement as expressed where the other party was not informed of such reserves or restrictions". Imagine that abele wanted to buy a watch to his sister and went to market thinking that she had no watch. He simply bought such a watch from a seller without expressing what he thought (his motive) and took it for his sister. But, he found that his sister had a watch and wanted to return it. In this case, he cannot obtain the invalidation of the transaction he made with the seller since he did not already tell him what he intended to do making it conditional if he found his sister having watch. Imagine that someone bought a weeding dress thinking that his daughter is going to get married. Unfortunately, the weeding was cancelled. Then, he went back and told the seller that he wanted to return the weeding dress since the weeding has been cancelled. In this case, he cannot obtain the invalidation of such contract for the fact that what he had done has got to do with motive. In general, non-fundamental mistakes cannot lead to the invalidation of a contract.

Object, nature of the contract and identity or qualification of a party are the 3 important matters regarding a contract. By the object of the contract, we mean the undertakings of the parties. What a party is taking may be basically different from what he has thought. Thinking that it was gold, if a

seller sells a siliber, this is a fundamental mistake. Thinking that it was sliver, if he gave the buyer gold, then it is also a fundamental mistake. Fundamental mistake may also relate to quality. For example, if someone bought a cow thinking that it can breed while it cannot, then it is a fundamental mistake related to quality. In all cases, the court shall take the circumstances into account to insure weather the alleged mistake occurs and is fundamental too. The court may determine the fundamentality of a mistake by thoroughly looking into the situations of the mistaken party with such vitiated object of the contract. For instance, if a certain farmer went to market and bought wheat thinking it to serve for seeds while it does not, then it is a fundamental mistake. Because, the livelihood of, a farmer is dependent upon the wheat used for seed. But, if non-farmer wants to obtain the invalidation of a contract with the same case, it is questionable. A person may buy a certain valuable good. But, he may end up in getting the copied while he needs the original one. Or he may end up in buying the latest while he needs the old ones. He may also end up in purchasing sulfur fertilizer while he was in need of sulfur medicine. Parties may also be mistaken with regard to the existence of the thing. The thing with which parties may enter into to sell and to buy may have been perished at the time of the bargain. In short, parties may be mistaken weather or not the thing existed at the time of the bargain. All these may be fundamental mistakes related to the object of the contract depending upon the interest of the mistaken party.

Parties may also be mistaken with regard to contract. There is a difference between the contract of sale and lease. But, if someone thinks that he is letting his house to another person while such person thinks that he is buying the house, there is a fundamental mistake with regard to the nature of the contract. If someone found himself to have been a guarantor while he was thinking to have been a witness due to the signature he mistakenly put, then there is a fundamental mistake with regard to the nature of the

contract. Because, if the borrower become unable to pay his debt, the guarantor would pay the debt.

The other one is the fundamental mistake relating to the identity and qualification of the party with whom the other party entered into a contract. Of course, the identity of the person usually does not matter when a seller sells certain things to a buyer. But, in the other cases such as contract of donation, the identity of the person does matter. For example, Atto Abele intended to donate certain thing to Bekele who has done a favor for him. But, there may be another Bekele who seems to be the first to get the thing. The mistaken donor, therefore, gave the donation to the latter believing that he was the true Bekele he intended. This is the fundamental mistake with regard to the identity of the person. Qualification of the person and breach of trust also matters. For example, if a person employs someone believing that he is a surgeon while he is not, then it is a fundamental mistake. In All these cases, the party who has been mistaken may request the invalidation of the contract.

Imagine that a party went to a shop to buy civil code. But, he mistakenly took criminal procedure code in stead. Then, he went back and told the seller that there was a mistake and he was, rather, in need of civil code. But, even if the other party is willing to correct the mistake, the mistaken party refused to accept and did not want the contract. Can he say so? No, he can’t. And this is bad faith of the mistaken party. The mistaken party cannot, in bad faith, say that he does not want the contract as long as the innocent party is, in good faith, willing to correct the mistake and did not know of the mistake which is unilateral. But, if the other party is not willing or has no way to correct, he can obtain the invalidation of such contract. Imagine that a contract was entered into by parties, 1 mistaken and the other innocent. The innocent party has relied on the contract and has incurred certain expenses. Because, he did not know of the mistake of the other party. So, when the mistaken party requests invalidation of the

contract, what is going to happen to the expenses he incurred? In this case, there may be 2 persons, a person who should have known or knew the mistake in fact and the other who did not know of the mistake just like the person in the above case. In the latter case, the mistaken party will have to compensate the expenses incurred by the innocent party who did not know of the mistake of the other party. But, if the other party knew or should have known the mistake, he would not be compensated and only the contract will be invalidated. There were neighbors living here in Janmeda. One of them had a horse that cannot serve for the purpose of cart. The other one was in need of buying a horse which can serve for the purpose of cart. Then, the person with that horse asked him to buy his horse. He bought and later asked compensation and invalidation of the contract. In this case, the contract may be invalidated; but, there may be no compensation since the buyer knew or should have known the mistake of the other party.

Fraud or deceit

Both in case of fraud and mistake, there is a mistake. But, if the mistake is made by fraud, it is said to be fraud induced mistake. In the case of fraud, the person has done something or there has to be active concealment a certain quality or a certain acts of doing something which has induced the other person to enter into a contract which he would not have entered had such inducement not been there. An American woolen suit is made up of cotton 100%. And it has the clause “is made in America”. But, a seller wrote such clause on a chins woolen suit in a manner it cannot be detected and sold it. This can be taken as an example of active concealment.

A person made an application for employment using forged CV at the University of Addis Ababa and he was able to be employed. Letter on it was found that he used forged document. In this case, the act made by the fraudster prior to his application made the University to enter into such

contract. If a person also entered into a contract with an insurance company concealing his age and bad health status, then it will be a fraud induced mistake. And such kind of things can lead to invalidation of a contract.

A party cannot request the invalidation of a contract by invoking that he was deceived by a third party. But, he may obtain the invalidation of the contract if the other contracting party knew or should have known of the fraud on the making of the contract and took advantage thereof. A party may say certain thing which is not correct about the quality or the thing he is selling such as that in advertisement. This cannot cause the invalidation of a contract unless the seller directly gives warrantee as to the existence of such quality and so on.

But, in certain cases, false statement between certain groups of people may lead to invalidation. This is the case where the individuals have special kind of relationship such as in relatives or couples or special confidence and where the party is expected only to tell the truth for the other party such as a lawyer, spiritual father, physician and etc. In such a case, the law is not tolerable among such kind of persons since it believes that the thing expected must be existent. Not only the false statement, but also silence of such persons may also lead to invalidation if they are beneficiary of such contract. For example, 2 persons seating by a government official were talking that government was to confiscate cattle's of persons who have more than a certain amount. Then, the fearful person sold such cattle's for that government official who was seating by them. In this case, such contract can be invalidated because the official knows of what the government does and has to tell the fact.

Duress

Duress is a threat or violence. A party may enter into a contract as a result of threat caused by one of the party with a view of preventing the immanent and serious danger that may sustain against him or his life or property, his

descendants, ascendants or spouse. Abele may agree to give any amount of money for Asfaw which he did not intend to actually give since a gun was pointed at him. If a person threatens someone to defame his good name or reputation by alleging that he has fathered to a child from another woman out of his wedlock, the threatened man may enter into a contract and the contract can be invalidated. In this case, the contract is going to be invalidated.

During duress, 2 conditions must be fulfilled; the danger must be imminent or no time given. The danger must also be serious; the seriousness should have got to do with the gravity of what the threatened party is going to lose as a result of such danger. The age and position of the person who is said to have forced the other contracting party must be taken into account. But, sex does not seem to be relevant in this case even if it is included under sub-article 3 of 1706. For example, if a person with 50 years of age requests the invalidation of a contract by alleging that he was forced by a child with 8 or9 years of age, then the contract may not be invalidated.

Duress by a third party may also lead to invalidation of a contract. Abele entered into a contract of donation with Asfaw. Abele was threatened by Bekele, a third party, to enter into such contract with Asfaw. On the other hand, Asfaw who was not aware of such threat against Abele by a third party has incurred expenses in connection with such contract. In this case, the contract will be invalidated; but, Asfaw will be compensated for the loss he has incurred as a result of such contract as long as he proved that he did not know or should not have known such duress.

Threat to exercise a right may not be ground for invalidation of a contract. For example, Abele has lent 2000 birr to Asfaw. Then, if Abele threatened Asfaw by alleging that if Asfaw doesn’t pay his debt, he would take him to court, such threat cannot cause the invalidation of the contract. A boy may have borrowed 300 birr from a bank. Then, the bank asked his father to pay

500 birr and otherwise that it would take him to court. In this case, the contract may be invalidated since the bank used such threat to gain excessive advantage.

Reverential fear is akin to undue influence. There is nothing wrong with entering into a contract with superiors such as father and boss. But, if the superior is going to get excessive advantage using his position, then the contract will be invalidated. For example, a daughter may lend 3000 birr to her father and the father may tell her that he will pay only 300 birr during the maturity date. In this case, the contract will be invalidated because of the fact that the superior has gained excessive advantage from such contract.

In case of unconscionable contract, there is a vice of consent that has nothing to do with mistake, fraud or duress. When 2 parties entered into a contract, one of them may be more favored than the other party depending on the possibility of price change immediately after the execution of transaction in favor of the buyer or one's bargaining. In this case, the contract may not be invalidated. If it happens to the contrary, the security of the market will be endangered. But, under exceptional circumstances and when justice requires, even if there is no mistake, fraud or duress, the court may accept invalidation of a contract especially where the consent of the injured party was obtained by taking advantage of his want, simplicity of mind, senility or manifest business inexperience.
A person was seriously ill and the doctor ordered to him some medicine to save his life. Unfortunately, that medicine was found only in a few pharmacists in the city. The sick man who was in need of such medicine wondered and wondered about the city and finally found it in a shop. He told the pharmacist how much he needs that medicine. Then, the pharmacist who realized the want of such man asked him to pay 2000 birr for the medicine which would coasts 200 birr. In this case, the contract will be invalidated. Sometimes, the person may be too old to understand the

value of things. In this case, if the other person exploits the age or senility of such person, then the contract may be invalidated. The manifest business inexperience may happen to any one of these since it depends on a particular thing the person is looking for. For example, all persons may not have equal knowledge about the price of cars or gold. So, many of the buyers may easily be deceived in this case. Want, simplicity of mind, senility or manifest business inexperience are usually subjective and the court must carefully look into such situations.

Effect of defect in consent

Let's imagine that a party was mistaken, deceived or forced or there is unconscionability to enter into a contract. In this case, the effect will be invalidation. By invalidation, we mean challenging a contract by the mistaken or deceived or threatened party not to be considered valid or to be cancelled or to be irrelevant in order not to be bound by such contract. The invalidation should be asked only by the mistaken, deceived or threatened or in the case of impossible contract, by the injured party.

There is a difference between invalidation and cancellation. Invalidation has got to do with the problem of formation of a contract. It is raised when there is a problem with regard to formation of a contract. But, cancellation is the issue we raise when there is a problem in connection with non-performance of obligations.

Articles 1808 and 1696 should be read together. Article 1808/1 reads as "A contract which is affected by a defect in the consent or by the incapacity of one party may only be invalidated at the request of that party". Here we are talking about voidable contract. By voidable contract, we refer to a contract which is valid until it is attacked, whose invalidation is asked by the party whose consent is vitiated, which is prescriptable (the party who is entitled to ask for invalidation can bring the action within 2 years from the ground for invalidation having disappeared) and which is

conformable. By confirmable, we mean that basically, in case of mistake, parties are entitled to bring an action with a view to request for invalidation. As a right holder, the party can say no as well and accept the contract. For example, if a person who went to buy civil code brought criminal code instead, he may wave his right to request for invalidation and confirm the contract by paying the price of the civil code.

On the other hand, a void contract is a contract which, legally speaking, did not come into existence or there is no contract from the very outset. A contract may be void when it is not made in a special form while it had to, where there is no object, and where the contract is unlawful. Unlike voidable contract, In this case, any contracting party or any interested person such as public prosecutor can ask for its invalidation. Void contract is imprescritable. This means that the lapse of time never avoids the invalidation of such contract. It is also non-conformable. In short, voidable contract which has to do with vice of consent is related with article 1808/1 and void contract of which connection is with problem of form, object, morality and etc is related with article 1808/2.

Object

Object refers to undertakings or obligations between the parties. By object of the contract, we are not talking about the thing but about the obligations what the parties have undertaken to do (services), to give(contract of sale), or not to do. For example, parties may enter into a contract of delivery of thing. In this case, not the thing but delivery of the thing is the object of the contract. Parties are free to determine the object of the contract. But, they are subject to such prohibitions and restrictions as provided by law. For example, parties can never agree to sale and buy narcotic drags since the traffic or sale and purchase of such drags is prohibited by law.

Obligations to do are categorized into 2: obligations of diligence and obligations of result. Obligation of result is to procure a specific thing. For instance, someone may undertake to make a table with specifications. Now, the debtor has to come up with the table exactly as it as stated in the contract. Any failure in this case, may result in non-performance. That is why it is called obligation of result. Obligation of diligence is different from obligation of result. In this case, the contracting party does his best to bring the required result. But, he does not undertake to bring the required result exactly. For instance, if a doctor enters into a contract to cure a patient, he is not definitely sure to bring about the required result since there may be something beyond his control or unknown to him. If a lawyer enters into a contract to win a case, he is not sure to bring about the required result since he is not aware of the evidences in the hand of the other party and the way in which the judge is going to act. But, this does not mean that doctors and lawyers are not liable if there is any professional fault.

Even if Terms of a contract may be stated expressly, some parts of the contract may be stated impliedly. And parties may not necessarily include all parts of the obligations into such contract. For instance, a party may sell his business to a person. After the sale of such business, the seller cannot open similar business near by such business to avoid unfair competition even if it is not included in the contract.

The object of the contract has to be sufficiently defined, possible and lawful. Because, the court may not make a contract for the parties owing to interpretation.

For example, if a person having several cars entered into a contract with a person by saying that he will sell a car, then the object of the contract is deemed to have not sufficiently been defined. If a person says that he will sell 100 quintals of coffee to a person, the object of the contract is not sufficiently defined as well. Because, there is different type of coffee in

quality such as that of jimma, Sidama and the likes. Obligation to do must also be defined as well. A person may enter into a contract by saying “I will work for you” Without expressing what to work. In short, if a contract is not sufficiently defined, then such contract is not considered to have been made in the eyes of the law.

The other thing with regard to defining is the issue of determinability. The obligation parties have undertaken may not be determined at the time of the bargain. For example, a person may ask another party to provide with sufficient amount of soft drinks without specifying the number of the unit since he does not exactly know how many people will come to his invitation. In this case, the fact that the number of the soft drinks has not been determined does not affect the validity of the contract. The unit price is already known and the number of the unit of the soft drinks is also determined by the number of guests that may attend the invitation.

The other one is that the object must be humanly possible. In this case, possibility does not mean physical or monetary ability. The law does not accept the validity of a contract if a person entered into a contract for doing something humanly impossible. For example, a person may agree with another person to make bread from cement. The other impossibility may be related with the existence of the thing. The thing someone has undertaken to deliver to the other party may have already perished at the time of the making of the contract. A person may enter into a contract to sell a horse to another person. But, that horse has already died before the making of the contract. In this case, they are dealing with non-existent thing. And the contract is invalid. Because, the horse cannot be humanly made. For example, if a shoe factory enters into a contract with an organization to supply leather shoe, the contract may be valid even if the shoe is not made at the time of the making of the contract.

The other impossibility is related with the law. For instance, a party may enter into a contract to sell narcotic drags or guns to another party. This is, however legally impossible. A person may also enter into a contract with a party to hit his quarrelsome and receive money. In short, article 1716 is the exception of article 1711.

The other one is that the object of the contract must not be morally impossible. Everyone has an obligation to refrain from hitting another person. But, a person may enter into a contract with another person to abstain from hitting him thereby getting money from him. A person may abduct a girl and ask payment from her family. A person may also receive bribe from another person and exploit public property. In general, what is legally obligation cannot be the object of a contract between persons. And this is both illegal and immoral. This is what article 16/2 is talking about.

The motive for which the parties entered into a contract may not also be taken into account in determining the unlawful or immoral nature of their obligations. For example, a person may go to a shop and ask to purchase poison. This person may have thought to kill someone with such poison. In this case, the contract between the seller and the buyer shall not be affected because of the fact that the motive is something which is behind the contract and was not part of the bargain. This situation has exception under article 1718. For example, a person may enter into a contract to let his house to another person who wants the house for gambling. But, this person did not deliver the house at the agreed time and they may go to court. During litigation, the court may understand that the house is needed for gambling either from the terms of the contract or the documents produced by a party who requires the performance of the contract. In this case, the court cannot order such contract to be performed as if it were valid.

We have already said that lawfully made contract shall be binding on the parties as though they were law. The contract parties entered into is binding only with respect to an object or the subject matter thereof. Unlike other laws, contract is made by the parties and hence it private law of the parties. So, the court or the judge should try to apply such private law as it has been made by the parties. Interpretation has got to do with ascertainment of terms of the agreement made by the parties or determination of intention of the legislators, the parties. It is needed only when the terms of the contract are ambiguous. By ambiguous, we mean that the terms of the contract have two or more meanings or are contradictory to each other. In such a case, one of the parties may wish the first kind of interpretation and the other may wish the second type of interpretation. Hence, there has to be a certain framework with which the interpretation goes on. But, when the terms of the agreement are clear, they must be applied as they are. Because, the parties are governed by what they stated or expressed in the contract and the court should not make a contract for the parties under the guide of interpretation (art 1680, 1714/2 and 1733).

Art. 1733. Limits interpretation. Where the provisions of a contract are clear, the court may not depart from them and determine by way of interpretation the intention of the Parties. Before going to interpretation, art 1714/2 also serves the court as a guide. Art. 1732. Interpretation in accordance with good faith. Contracts shall be interpreted in accordance with good faith, having regard to the loyalty and confidence which should exist between the parties according to business practice. We have already said that contracts are enforceable promises. When one party freely makes promises, the other party tends to rely on what the other party said or promised and vice versa. So, if one party tries to find any excuse through which he can escape from liability, the court does not normally allow it. The assumption is that parties are serious and not joking when they deal with a business or enter into a contract. Hence, interpretation is required to

achieve the objective of the contract. Words are usually found having their ordinary meanings and not technical meanings which is invalid terminology by its very nature.

Art. 1734. Common intention of the parties. (1) Where the provisions of a contract are ambiguous, the common intention of the parties shall be sought. (2) The general conduct of the parties before and after the making of the contract shall be taken into consideration to this effect. When a certain term or phrase is ambiguous, what the legislator does is to seek the common intention of the legislators, the parties. The common intention of the parties can be obtained by looking for documents or what has been written by the parties, what they have done before and after making of the contract.

Art 1735 has got to do with cases where parties include certain general terms in their contract. Art. 1735. General terms. A contract shall be deemed to relate to such matters only on which it appears that the parties intended to contract, however general the terms used. When a certain term is general, the scope of items which are going to be included in the contract becomes broader. So, during interpretation, the party should not accept that general term as though it included those things which should not have been included in the contract. Rather, it should be interpreted narrowing the scope of its application to what the parties have intended in common. A person entered into a contract with another person to sell all his movables. The buyer claimed that the word “movables” includes money in the bank and hence it should belong to me. In this case, the word “movable” should be interpreted narrowly in a manner that it includes only those items in the house of the seller. The meaning of a word should also be judged by a company it gives.

Art. 1736. Interpretation in accordance with the context. (1) The provisions of a contract shall be interpreted through one another and each provision

shall he given the meaning required by the whole contract. (2) Ambiguous terms shall be given such meaning as is the more likely, having regard to the subject matter of the contract. Words which are put together are either subsequent or antecedent. In this case, the subsequent may explain the antecedent one and vice versa. If a seller who is dealer of computers entered into a contract to sell a mouse, it should not be interpreted as if he were selling an animal.

The other point that must be raised here is the issue of positive or effective interpretation. By positive or effective interpretation, we refer to an interpretation which gives effect to the agreement entered into by the parties other than interpretation which tends to make the contract ineffective. Art. 1737. Positive interpretation. Provisions capable of two meanings shall be given a meaning to render them effective rather than a meaning which would render them ineffective. According to this provision, in a certain contract, there may be two interpretations 1, which makes the contract effective and the other which makes the contract ineffective. In such a case, the court shall take the one which tends the contract to make effective. In a contract of insurance, the insured has undertaken to inform or notify accidents to the insurer with in two months as of the date when the accident occurred. The same document, at the bottom, states that if the insured does not notify the accident immediately to the insurer, the insurer is not obliged to pay the agreed sum. Finally, the insured notified the accident to the insurer on the 58th day as of the accident when the accident occurred. Then the insurer refused to pay the agreed sum by alleging that the insurer did not notify the occurrence of the accident immediately. In this case, the insured should win the case for the fact that even if the contract has two provisions 1 which makes the contract effective and the other which makes the contract ineffective, the one which makes the contract effective should be applied.

Article 1738 deals with adhesive contract. Art. 1738. Interpretation in favor of the debtor. (1) In cases of doubt, a contract shall he interpreted against the party who stipulates an obligation and in favor of the party who assume it. (2) Stipulations inserted in general provisions, models or forms of contracts prepared by one party shall be interpreted in favor of the other party. In adhesive contract such as contract of insurance, the instrument is always drawn by the stipulator and the other party simply accepts what has been drawn by the stipulator. In such contracts, the law favors the one who assumes the obligation. Hence, interpretation shall be made against the one who has stipulated or drawn the terms of the agreement. Because, there is a possibility for the stipulator to draw the terms of the agreement in a manner which enables him to escape liability. The other thing is that the party who assumes the obligation should not be responsible for the negligence of the stipulator. In a Beal of leading, a person entered into a contract with another person so that the latter transports the goods without interruption and reaches them to their destination. The debtor performed his obligation on the basis of the contract. But, the creditor refused to perform his obligation by alleging that the debtor did not bring or transport the goods without interruption. That is he was sleeping in nights and was wasting of time by taking a rest.

The other one is gratuitous contract. By gratuitous contract, we mean a contract performed by one party for free. Art. 1739. Gratuitous contracts. The obligations assumed by a party who derives no advantage from the contract shall be construed more narrowly. In any gratuitous contract, the provisions of such contract should be interpreted very narrowly in a manner favoring the debtor who derives no advantage from the contract. Sisay entered into a contract with Yohannes so that the latter keep an item of Sisay. Then, Yohannes did his best and kept that item some where he keeps his own goods. Unfortunately, the deposited item was destroyed by mice. In this case, unlike a party who performs for consideration, he is not made

liable for the loss occurred against the creditor. But, if he caused the distraction of the good due to his negligence such as by keeping the good outside of his house apart from his own item, he is going to be liable for his negligence.

Performance of contractual obligation

In any contract, the debtor is required to perform his obligation (art 1740). Art. 1740. Performance by who made. (1) The debtor shall personally carry out his obligations under the contract where this is essential to the creditor or has been expressly agreed. (2) In all other cases, the obligations under the contract may be carry out by a third party so authorized by the debtor, by the court or by law. When we talk of the debtor performing his/her obligation, there are two scenarios. In some cases, the debtor is required to perform his obligation in person. But, in other cases, the debtor or others on his behalf can perform his obligation. The debtor should perform his obligation in person when it has expressly agreed or when it is essential to the creditor or when the special skill of the debtor is involved or needed. By special skill, we mean that the skill is obtained only from that specific person, the debtor, and no other person can be substituted to perform it in place of such debtor. If a person entered into a contract with a painter having interested with his special skill to have something painted, the painter should perform his obligation in person. Because, the quality that can be obtained from such painter cannot be obtained from another person. Some times, even if the special skill is not involved, if a party has expressly agreed to deliver 100 quintals of tef in person, then the debtor should perform his obligation in person as it has expressly agreed in the contract. In all other cases, the debtor or any person authorized by the debtor, by the court, or by the law can perform the obligation assumed by the debtor.

When there is an accident for which one of the 2 or more persons is liable, the one who is going to be determined by the court as a debtor shall

perform the obligation. If the debtor is a minor, the tutor or the guardian of the minor authorized by the law shall perform the obligation.

Money as fungible thing does not have quality. As a rule, if a debtor has undertaken to pay 1000 birr for an item he took, he is expected to pay a local currency which is a legal tender at the place of payment (art1749). Art 1749. Money debts. (a) A debt consisting in a sum of money shall be paid in local currency. (2) The sum of money owed by a party may he fixed by reference to the price of raw materials goods or services or any other element whose value can be ascertained. The value or purchasing power of birr a debtor is going to pay may change through time. For example, 100 birr of today may not continue for ever having the current purchasing power. Parties, in order to protect themselves against depreciation or, inflation, may arrange or fix the money debts by a reference to a certain item such as gold. Imagine that a party has borrowed 1000 birr the maturity date of which is 10 years later from another party in 1990. The 2 parties have agreed that such money debt should be fixed by reference to gold. At that time, such amount of money had the power of purchasing 20 grams of gold. But, ten years later, in 1999, 20 grams of gold coasts 3000 birr. In this case, the debtor, as fixed by reference to gold in the contract, is going to pay not the original amount of debt, 1000 birr, but 3000 birr. It must be noted that it is advisable to pick an item whose value is rarely going to change.

What a party has undertaken to pay may not some times be a local currency. Art. 1750. Currency not legal tender. Where under the contract a debt is to be paid in a currency which is not legal tender at the place of payment, the debt may be paid in local currency at the rate of exchange on the day when the debt falls due, unless the contract contains the words "actual value" or any other provision of the same nature imposing literal performance of the contract. Imagine that a debtor, even if the place of payment is Ethiopia, has agreed, in lue of birr, to pay 2000 U.S $.

The date of payment has also been fixed to be on November 14 2011. On the other hand, the exchange rate of $ on such date is 18 Ethiopian birr. In this case, the debtor is going to equate such amount of $ to the exchange rate of November 14 (18 Ethiopian birr) and convert it by multiplying it thereby. Then the amount of birr which is equivalent to 2000 $ on the maturity date or products of multiplication per 18 Ethiopian birr will be paid in local currency to the creditor unless the parties have agreed the payment to be paid in actual U.S $ or actual value.

The other point that must be raised here is the issue of money debt which is to be paid with interest. Art. 1751. Legal interest. The rate of interest shall be of nine per cent per annum where interest is due and the rate has not been fixed. Imagine that someone has borrowed some amount of money which he has undertaken to pay with interest. But, the rate of interest has not been fixed in the contract. In this case, as per art 1751, the rate of interest shall be 9 % per annum as far as the parties did not set it aside (art 1731/1). Because, this article is a permissive provision.

Art 1752 deals with appropriation of payment. Art. 1752. Appropriation of payments. 1. Costs, interest, principal. Where a debtor is to pay costs and interest in addition to the principal, any part payment made by him shall be appropriated firstly to the costs, secondly to the interest and eventually to the principal. In the case of appropriation of payment, there are 2 cases. The first one is the existence of a single debt between a single debtor and a single creditor. Despite a single debt, it may be divided into principal, interest and coast. For instance, a debtor has borrowed 10,000 birr the due date of which is on November 1 with ten % of interest rate. Yet, the debtor who has only 5000 birr at his hand failed to pay such debt on the above due date. So, the creditor instituted an action against the debtor and incurred 500 birr. Now, the total amount of debt, the principal + interest+ coast = 11 500 birr. In this case, the debtor has to pay partly the debt from downward to upward, the coast, the interest and principal respectively. But,

such appropriation does not seem to be of much importance for the debtor. Because, as long as the principal is not paid or avoided first, the interest shall continue increasing the amount of the debt.

The other case is where there is several debts between a single debtor and a single creditor. When a debtor has several debts from a single creditor, the law gives the debtor the chance to choose as to which debt be paid before the other (art 1753). Art. 1753. 2. Choice by the parties. (1) Where a debtor owes several debts to the same creditor, he may specify the appropriation of any payment made by him. (2) Where the debtor does not specify the appropriation of a payment such payment shall be appropriated to the debt specified by the creditor in the receipt unless the debtor forthwith objects to such appropriation. For instance, a buyer has bought from a seller a shirt, a pair of shoes and a jacket with 100, 200 and 300 birr respectively. In this case, the debtor has the opportunity to choose any of the above debts to be paid first. In fact, as soon as the debtor paid any of the above debts to the creditor without specifying the appropriation of payment, the creditor can specify the payment to any of the items he chooses unless the debtor expresses his objection forthwith. But, where the parties have forgotten to specify the appropriation of payment, eventually there may arise disagreement as to which debt has been paid in between. When that is the case, there is the so-called appropriation by law.

Art. 1754. 3. Appropriation by law. (1) Where no appropriation is specified in the receipt, the payment shall be appropriated to the debt which is due, or, where no debt is due to the debt which shall first become due. (2) As between debts due or debts which shall become due on the same day, the payment shall he appropriated to the debt which it was to the greatest advantage to the debtor to pay. (3) Where the advantages to the debtor are equal, the payment shall be appropriated proportionately. For example, if a debtor has 3 debts the due date of which is November 10, 20 and 30 respectively, the debtor shall pay the debt the due date of which is

November 10 first. Some times, many debts owed to a debtor may have the same due date. In this case, the court shall make the debt whose payment is of great advantage to the debtor be paid before the others. For instance, a debtor has borrowed 200,000 birr with 10 % of interest rate from a creditor. The same debtor has also bought a pickup car from the same creditor with 100,000 birr for credit. Unfortunately, the 2 debts have the same maturity date. In this case, the court shall make the debtor pay the debt having interest therewith to ease the Burdon to be shouldered by the debtor. A debtor has borrowed many debts from a creditor. The creditor has secured the TV set of the debtor for one of the debts. In this case, paying the debt secured by the TV set in advance is advantageous to the debtor because of the fact that such payment can liberate the security. But, if the several debts having the same due date are of equal advantage to the debtor, the payment shall be paid proportionately.

The other point is place of payment. Art. 1755. Place of payment. (1) Payment shall be made at the agreed place. (2) Where no place is fixed in the contract, payment shall be made at the place where the debtor had his normal residence at the time when the contract was made. (3) Unless otherwise agreed, payment in respect of a definite thing shall be made at the place where such thing was at the time when the contract was made. If the place of payment has already fixed in a contract, then the party shall perform his obligation at the agreed place. But, if the parties say nothing about place of payment in the contract, the normal residence of the debtor at the time when the contract was made shall be considered to be place of payment. The other one is payment with respect of specific thing such as car and so on. For example, at the time of the making of the contract, the residence of the dealer of the car is around Arat Kilo while the place where the car is sold is at Piasa. In this case, the debtor is not expected to go to Arat Kilo to make payment. Rather, he shall make payment going to Piasa

where the definite thing is found. It must be noted that change of place has its own impact on performance.

The logic we follow for place of payment is also applicable for time of payment. If the parties have agreed as to time of payment, the debtor shall perform his obligation at the agreed time. Art. 1756. Time of payment. (1) Payment shall be made at the agreed time. (2) Where no time is fixed in the contract, payment may be made forthwith. (3) Payment shall be made whenever a party requires the other party to perform his obligations. If there is no agreed time in the contract, anyone of the parties can ask performance of obligation. For example, in case of cash sale, the seller bargains on the price of the item under consideration with the buyer with the presumption that the buyer has come holding sufficient price. In this case, if they reach to an agreement, anyone of such parties can ask performance. A buyer may also go to a shop and ask the seller to buy a jacket for credit. In this case, the one who is allowed to take the jacket is said to have benefit of time. So, he is not asked to perform immediately but can ask the seller to perform his obligation forthwith.

Art. 1757. Simultaneous performance. (1) Only a party who benefits by a time limit having regard to the terms or nature of the contract or who has performed or offered to perform his obligations may require the other party to carry out his obligations under the contract. (2) A party may refuse to carry out his obligation under the contract where the other party clearly shows that he will not perform his obligations or where the insolvency of the other party bag been established by the court.

This article shall be illustrated by the following examples. Sisay went to a shop and asked the seller weather he could purchase a pair of shoes for credit. Then the seller allowed him to take what he asked for credit. In this case, Sisay is said to have benefit of time. Because, he is not required to perform his obligation right now. So, on the basis of the first paragraph of sub-article 1, only Sisay can ask the seller to perform his obligation of

delivering the pair of shoes for he is the beneficiary of time in the contract. In a situation where non of the parties has benefit of time, a party who has performed his obligation can ask the other party to perform his obligation. For example, Lemma went to Alton trading and agreed to buy a laptop computer. In this case, as soon as Lemma has just paid the price of the computer, he can demand the other party to deliver the computer forthwith and vice versa. On the other hand, a party who has offered to perform his obligation can ask the other party to perform his obligation too.

Some obligation may not necessarily mean to take and deliver the thing. Rather, it may mean to make the thing ready for delivery. For example, Johannes may go to a shop and ask the seller to buy a varity of items at a time. Yet, all of the needed items may not be found at once. The seller may, however, agree to import them a month later. In this case, as soon as the seller has brought and made those items ready for delivery, he is said to have offered to perform his obligation. He can, therefore, demand the other party, yohannes, to perform his obligation.

Article 1759 and sub-article 2 of art 1757 are related to each other and talk about anticipatory contract. Yohannes and Sisay entered into a contract of sale on November 1 2011. In this contract, Yohannes has undertaken to sell his pickup car the delivery of which is fixed on November 30 2011 for Sisay. Sisay, on his part, has undertaken to pay the price on November 20 2011. But, with a reason unknown to Sisay, on November 18 2011, Yohannes told him that he is not going to deliver the car as promised on the fixed due date. In this case, as per sub-art 2, Sisay should refrain from paying the price of the car for Yohannes on November 20 2011. But, depending on weather the other party who refused to deliver the car, Yohannes, is going to come with securities or not, the measure to be taken may be different from what is suggested above. Art. 1759, Limit of right to refuse performance. Notwithstanding the provisions of Art 1757 (2), a party shall carry out his obligations under the contract where the other party produces

securities efficient to guarantee that he will perform his obligations at the agreed time. Since the contract dealt with under these articles is anticipatory contract, Yohannes may be expected to produce a security that he will perform or deliver the car on the due date. In this case, Sisay has no right to refuse performance as he did above. And if Yohannes has not kept his word here too, Sisay may ask compensation for the damage he ensued.

The other point that must be raised here is the issue of transfer of risk. Art. 1758. Transfer of risks. (1) The debtor bound to deliver a thing shall bear the risks of loss of or damage to such thing until delivery is made in accordance with the contract. (2) The risks shall pass to the creditor where, he is in default for pot taking over the thing. In the above example, if any thing bad happens to the car until delivery, November 30, Yohannes is going to shoulder the risk because, until the due date, the car belongs to Yohannes. But, if the creditor, Sisay, has not shown up to collect the debt on the due date, Yohannes will transfer the risk to the creditor by giving default notice.

Expenses incurred to deliver the thing and so on are coasts of payment and they are met by the debtor. Art. 1760. Costs of payment. Unless otherwise agreed. The debtor shall meet the costs of payment. In the above case, Yohannes may have incurred expenses to deliver the car. Sisay may have also incurred expenses to send the price for Yohannes through bank or any other means. All these debts are met by the debtor, Yohannes, unless they incorporated a contrary provision in their contract. Any party who makes payment his debt to his creditor may ask the creditor to give him a receipt and deliver or cancel the document supporting the debt. Art. 1761. Receipt. (1) The debtor may on payment demand a receipt and, where the debt is fully discharged, the delivery or cancellation of the document supporting the debt. (2) In cases of part payment or where the creditor has additional rights supported by the same document, the debtor may only demand a receipt and that the payment be mentioned on the said document. On the

other hand, the creditor may state that the document supporting the debt has lost or destroyed. Art. 1762. Loss of document supporting the debt. Where the creditor alleges that he has lost the document supporting the debt, the debtor may demand the delivery of an attestation to the effect that the document supporting the debt is cancelled and the debt extinguished. In this case, the debtor can ask the creditor to give him an attestation stating that the document supporting the debt is cancelled and the debt extinguished. In the case of part payment, the debtor can demand the creditor to give him not the whole document supporting the debt but, a receipt and that the payment he made be mentioned in the document supporting the debt.

By variation, we mean adjustment or modification of the existing contract.

The rule is that contract is private law of the parties and it can be varied by the law maker and not by the court (art1763). Variation of contracts. Art. 1763. Power of the Court. The court may not vary a contract or alter its terms on the ground of equity except in such cases as are expressly provided by law.

Only the parties can vary such contract as long as it is deemed to be private law when there are changes which brought about circumstances by which the obligation of one party becomes more onerous than he thought at the time of making of the contract (art 1764). Art. 1764. Modification of the balance of a contract. (1) A contract shall remain in force notwithstanding that the conditions of its performance have changed and the' obligations assumed by a party have become more onerous than he foresaw. (2) The effect of such changes may be regulated by the parties, and not by the court, in the original contract or in a new agreement.

The parties are free to make or provide for the adjustment at the time of making of the contract or at the time of the change of the circumstances. Parties, at the time of the making of the contract, may provide a clause by alleging, for instance, if there is any change that makes the obligation of one party more burdensome, we shall make an adjustment to the contract on our own. Parties may also agree by stating, for instance, if there is any change that makes the obligation of one party more burdensome, we will refer to an arbitrator as to the decision of varying the contract (art1765). Art. 1765. Arbitration by third party. When making the contract or thereafter, the parties may agree to refer to an arbitrator any, decision relating to variations which ought to be made in the contract, should certain circumstances occur which would modify the economic basis of the contract.

Courts can, however, make adjustments of a contract under exceptional circumstances provided by the law even if the rule states that there is no judicial variation. There are four exceptions as regard to making judicial variation. They are (1) when there is a special relationship between the parties (2) when the contract is made with a public administration (3) when there is partial enforcement and (4) when there is period of grace.

Art. 1766. Special relationship between the parties. The court may vary a contract where the parties do not agree and a family or other relationship giving rise to special confidence exists between the parties and compels them to deal with each other in accordance with equity. The special relationship is the relationship between persons such as husband and wife, father and son, doctor and patient lawyer and customer and so on. Imagine that a contract has been entered into between a father and son. But, a few times later, there appeared changes which make the obligations of the son more burdensome than he foresaw at the time of making of the contract. In this case, the son should ask the father as to making variation to such

contract. If the father failed or refused to do so, the son can go to court and the court can make an adjustment to such contract as long as there is a special relationship in between based on this provision.

The other one is contract with public administration (art 1767). Art. 1767. Contracts with a public administration. (1) The court may vary a contract made with a public administration where the circumstances in which it was made have changed through an official decision in consequence of which the obligations assumed by the party who contracted with the administration have become more onerous or impossible.
For this provision to be applicable (1) the contract should be made with a public administration such as MOE, MOFED and etc (2) the public administration with whom the other party entered into a contract should take a certain measure that make the obligation of the other party more onerous. In this case judicial variation can be made. But, it has to fall under 3192. Art. 3192. — Particular measures. — 1. Taken by contracting authorities. (1) Particular measures taken by the contracting public authority shall create a right to compensation in favor of the person contracting with such authority, where they affect the substance of the contract or render the performance of the contract more difficult or more onerous.

The third one is partial impossibility of performance (art 1768). Art. 1768. Partial impossibility of performance. The court may reduce the obligations of one party where the performance by the other party of his obligations has become partially impossible and there is no ground for canceling the contract. If it is totally impossible, the contract will be cancelled. Imagine that 2 persons entered into a contract. But, part of the obligations a party assumed may have been impossible. On the other hand, the part that has been performed may be greater than the part that has become impossible. But, the other party may think that there is non-performance and require

cancellation. In this case, it would not be fair to cancel the contract. For example, a party entered into a contract to build a house with another party. Then this party, as per the contract, built the house but, failed to obtain the window frames stated in such contract in the market. In this case, the contract cannot be canceled. Rather the court shall vary the contract by calculating and deducting the amount which was to be paid for the window frames. Art 1769 seems to require the court to make more care in passing decision to preserve the balance of the contract. Art. 1769. Balance of the contract. In making its decision under Art, 1767 and 1768, the court shall ensure that the balance, of the contract be preserved. According to this article, the court should carefully assess the circumstances that the balance of the contract is not disturbed or anyone of the parties is not more affected than the other by its decision. The matter of proportion performed and not performed may not be the case that should be taken into account to preserve the balance of the contract. Rather the significance of what is not performed to what has been performed should be taken into account. For example, if a party who entered into a contract to construct a building with 30 floors failed to install a lift for such building, in this case, what is not performed may be said to be significant to what has not been performed. Because, it is too hard to go up and down on such floors and requires the destruction of the building to install the lift. But, if the same party install the way on which the lift go up and down without installing the lift used for transport, then it may not be said to be significant to the building.

The last one is period of grace. Here the change or the variation is with regard to time. Art. 1770, Period of grace. (1) The court may, with all necessary care, grant a period of grace for the debtor to carry out his obligations under the contract having regard to the position of the debtor and the requirements of justice. (2) The period of grace shall not exceed six months. (3) The parties may provide that no period of grace shall be

granted. As per this article, the debtor has already been given a fixed date for the performance. But, after the due date has arrived, the debtor has not succeeded in performing the obligation on the due date. As a result of which, the creditor has instituted an action against the debtor by invoking non-performance. In this case, the debtor stating the strong reasons for which he did not perform his obligation may ask the court to give him a certain period, period of grace not exceeding 6 months.

According to art 1731, the provisions of a contract are binding on the parties and failure to obey such provisions is non-performance. By non-performance, we mean failure to discharge the obligations assumed. Non-performance is said to have occurred (1) when there is total failure to perform one's obligation. For instance, a party entered into a contract to deliver 100 quintals of tef may fail to deliver anything. Non-performance is also said to have occurred when there is partial failure to perform one's obligation. For example, a party entered into a contract to deliver 100 quintals of tef may deliver only 50 quintals of tef. According to art 1746, partial performance is one type of non-performance when one's obligation is to deliver the whole thing and the creditor can refuse to accept such partial payment. Non-performance is also said to have occurred when there is improper or wrong performance of the obligation. For instance, a party who has entered into a contract to make a table with iron frame may make a table with wooden frame. In all cases, we say that there is non-performance. When there is non-performance, the creditor may take the following remedies: asking performance, cancellation and compensation against the loss he suffered as a result of non-performance.

Performance is divided into 2, specific performance and substitutive performance. By specific performance, we mean that the debtor is required to perform his obligation in person. But, in case of substitutive performance, anyone can perform the obligation replacing the debtor. Cancellation may

also be categorized into 2, judicial cancellation and unilateral cancellation. Compensation may also be made along with cancellation or performance. Art. 1771.

Effect of non performance. (1) Where a party does not carry out his obligations under the contract, the other party may, according to the circumstances of the case, require the enforcement of the contract or the cancellation of the contract or in certain cases may himself cancel the contract. (2) He may in addition require that the damage caused to him by nonperformance be made good.

Before a creditor resort to these possible remedies, he is required to do one thing.
I.e. the creditor is required to give default notice to the debtor. Art. 1772. Notice necessary. A party may only invoke non performance of the contract by the other party after having placed the other party in /default by requiring him by notice to carry out his obligations under the contract. This is only done when the parties do not excluded the necessity of default notice in their contract since it is a permissive provision. Doing such serves as a reminder to the debtor for he may possibly forget his obligation; it also serves as a warning. It also determine the time from which the creditor ask compensation. Fourthly it transfers risks to the other party. Finally, it serves as a means of reducing litigation.

The default notice may take either written, oral or any other form. Art 1773. Form and time of notice. (1) Notice shall be by written demand or by any other act denoting the creditor's intention to obtain performance of the contract. (2) Notice may not be given unless the obligation is due. The other important thing is that the creditor cannot give default notice before the due date arrived (sub-art 2). Because, in such a case, the time belongs to the debtor and not to the creditor.

In the default notice, the creditor may give certain time or period of grace for the debtor. Art. 1774. Time for performance. (1) The creditor may in the notice fix a period of time after the expiry of which he will not accept performance of the contract. (2) Such period shall be reasonable having regard to the nature and circumstances of the case. But, the time to be given must be reasonable. If so, the debtor cannot invoke the issue of time insufficiency by alleging that the given time was not sufficient to perform his obligation.

The clause “after the expiry of which he will not accept performance of the contract” means that the creditor does not accept the performance and hence he cancels the contract. This indicates the existence of unilateral cancellation of the contract without the need of going to court to this effect.

On the other hand, there are cases for which default notice is not required (art 1775). Art. 1775. Notice when unnecessary. Notice need not be given where: (a) the obligation is to refrain from certain acts; or (b) the debtor assumed to perform an obligation which the contract allows to be performed only within a fixed period of time and such period has expired. Or (c) the debtor has declared in writing that he would not perform his obligations. Or (d) it is agreed in the contract that notice shall not be required and the debtor shall be in default upon the expiry of the time fixed. One of those cases is that when the obligation that has undertaken is not to do. In such a case, we say that the debtor has complied with the obligation when he refrains from doing it. Good examples are the obligation not to be employed from other place for a certain period of time. 2 neighbors may also agree for a certain area to be left open or not to build a fence. Once such obligation is violated, the creditor seeks to take one of the remedies, cancellation with compensation or cancellation only. The second situation is where an obligation to perform on a specific date and that date lapsed and the creditor is no more interested in such performance.

Such specific date which is sometimes called compulsory date is the period or date with in which the debtor has to perform the obligation with no fraction of hours of the due date. For example, a debtor may enter into a contract to submit wedding dress on November 23 on which the wedding is celebrated. In this case, if the debtor fails to perform his obligation on such date, the creditor is no more interested in performance for it has not any value for him after such date. So, there is no need of warning to be given for the debtor. If the creditor gives him default notice on the eve of the wedding it is going to be before the due date thereby violating the rule of art 1773/2. Rather, the creditor not only cancels the contract but also ask compensation as long as he incurred some amount of money other than he had to for such purpose. The third one is where the debtor informs the creditor that he is not going to perform his obligation. So long as the debtor has informed the creditor in writing that is not going to perform such obligation, then there is no need to give default notice. In this case, the creditor is expected to cancel the contract even without the need to go to court. The Fourth one is where there is a clause excluding the need of default notice in the contract. If the parties have agreed to be taken the required measure in case of non-performance without the needed to give default notice, then such parties are making art 1772 irrelevant based on art 1731 and art 1775/d.

These are the exceptional circumstances under which default notice is unnecessary.

We have already said that performance has 2 forms. They are specific or forced performance and substitutive performance. In case of specific or forced performance, we are talking about the case where the debtor is required to perform his obligation in person. When the creditor has a special interest on the performance of the obligation by the debtor, he can demand forced performance (art 1776). Art. 1776. Specific performance.

Specific performance of a contract shall not be ordered unless it is of special interest to the party requiring it and the contract can be enforced without affecting the personal liberty of the debtor. But, when the debtor institutes an action for the performance of the obligation by the debtor before court of law, he is required to show the existence of special interest on such performance. The court also has to ensure that the performance may be effected without affecting the personal liberty of the debtor. These requirements are cumulative. Such type of contract is rarely authorized since it cannot be enforced without affecting the personal liberty of the debtor. For example, a creditor has entered into a contract with a painter. Such creditor has also some special interest on the work of such painter. Unfortunately, the painter refused to perform his obligation. In this case, even if the creditor institutes an action against the debtor before court of law, it is difficult for the creditor to obtain forced performance without affecting personal liberty of the debtor. Secondly, if the painter is forced to perform his obligation in such a manner, the creditor cannot obtain what he foresees from such debtor. So, in this case, the way-out is to cancel the contract and get compensation. A creditor entered into a contract with a gold smith to have a golden ring made with a specification with the price of some ten thousand birrs. After the gold smith made such golden ring with the required specification, he informed the creditor to take the ring but adding some 5000 birr from what they agreed. In this case, the court can order specific or forced performance. Because, the property is already there and it has been performed with the specifications he wishes.

In the case of substitutive performance, there is no special skill to be performed and anyone can perform such obligation replacing the debtor. Art. 1777. Obligation to do or not to do. (1) The creditor may be authorized to, do or to cause to be done at the debtor's expense the acts which the debtor assumed to do. (2) The creditor may be authorized to destroy or to cause to be destroyed at the debtor's expense the things done in violation of

the debtor's obligation to refrain from doing such things. Abebe entered into a contract with dereje to dig a well of 2 meters long. Dereje also agreed to pay 200 birr for the debtor. In this case, if Abebe failed to perform his obligation, Dereje can make it done by another person but at the expense of Abebe. Because, digging a well may not require special skill.

If the obligation is not to do or has already been done such as not to erect a fence, the creditor can make it be destroyed at the expense of the debtor. Art. 1778. Fungible things. Where, fungible things are due, the creditor may be authorized by the, court to buy at the debtor's expense the things which the debtor assumed to deliver. In case of obligation to give like contract of sale, a person may agree to deliver 10 quintals of tef. But, he failed to deliver such amount of tef. In this case, the creditor can go to market and buy such amount of tef at the expense of the debtor. A person entered into a contract to repair and deliver a broken car on Dec 22 2011. though, he failed to repair and deliver such car on the due date. After lapse of such due date, The owner of the car used to come and ask the mechanic to repair and deliver the car. In such a way, about 30 days were made lapsed to no avail. Then, on January 23 2012, the owner instituted an action against the garage owner and asked compensation the amount of which is 10,000 birr for what he lost during the 30 days after the due date. In this case, the plaintiff cannot obtain what he came up with calculating in such a manner. Because, he would have taken the car to another garage and reduce the amount of damage sustained at his best (article 1802). But,, in all such cases, care should be taken. For example, in the above case, if dereje pays 500 birr to have the well dug by another person, Abebe can refuse to cover such expenses as per art 1802. Because, Dereje had to reduce the damage at his best. Art. 1802. Duty to limit the extent of the damage. (1) The party who invokes non performance shall take all reasonable measures not involving inconvenience or heavy expenses to limit the extent of the damage caused. (2) Where he fails to take such measures, the other

party may invoke such failure to require that the amount of damages be reduced. If the creditor, having bought the thing, refuses without good cause to take delivery of such thing, the law allows the debtor to deposit the thing in a place designated by the court (art 1779). Art. 1779. Creditor refusing to accept the thing. Where the creditor refuses without good cause to accept the thing offered to him, the debtor may deposit the thing at the risk and expense of the creditor in a public warehouse or deposit bank or in any other place named by the court of the place where payment is to be made. The creditor is also going to suffer from any loss that may arise as a result of his refusal. Similarly, if the thing is perishable or whose custody is more onerous than the value thereof, the debtor is allowed to sell it by public auction and deposit the proceedings (art 1781). Art. 1781. Sale of the thing. (1) Where the thing is of a perish" nature or the costs of its deposit or custody are disproportionate to its value, the debtor may be authorized by the court to sell the thing by public auction. (2) Where the thing is quoted on the Stock Exchange or has & current price or the costs of the sale by public auction am disproportionate to its value, the debtor may he authorized by the court to sell the thing by private agreement. (3) The proceeds of the sale shall in such a case be deposited with a public deposit bank. On the other hand, If the goods have quoted price on the market, the debtor can just sell it by private agreement and deposit the proceedings there of. Deposit is necessary with a view to transfer the risk of loss and to make the person not to ask the debtor liable for non-performance. If the debtor wants to be totally free from the debt, he should take additional measures to validate the deposits (art 1782). Art. 1782. Validity of deposit. The debtor shall be released where the court finds that the thing or the proceeds of its sale have been validly deposited. In validating the deposit, the court shall ascertain weather what the debtor has deposited or what the debtor is going to deposit is exactly in conformity with that he has undertaken. In the earlier case, art 1779, the court does not go such a distance and see the

validity. Rather, it simply decides or designates the place where the debt is deposited as long as the due date arrived. But, in this case, the court is going to see weather what the debtor has deposited is in conformity with what he has undertaken. Secondly, the creditor is going to be summoned with a view to giving the opportunity for the creditor to come and see the deposit. If he does not show up, the court renders its decision in the absence of the creditor against the agreement and the debtor will be completely released. But, as per art 1783, the debtor may withdraw what he has deposited. Art. 1783. Withdrawal of debt. (1) The debtor may withdraw the thing or money deposited until the deposit has been accepted by the creditor, notwithstanding that the deposit has been found valid by the court. (2) The claim shall revive upon withdrawal of the deposit. (3) The securities attaching to the claim shall not revive where the deposit has been found valid by the court. The effect of withdrawal is, therefore, that the debt will be revived. But, Securities will remain released. Art 2789 which has connection with this case reads as follows. Art. 2789. — Bailment in the interest of third party. Where the bailment was made in the interest of a third party and such third party has informed the bailer and bailee of his agreement, the latter shall not return the chattel to the bailer without the third party's consent.

When Abebe and Adera entered into a contract for the latter to deliver 100 quintals of tef, Abebe who had little belief in Adera asked for a bailer. Then, Lemma became a guarantor to deliver such amount of tef in case Adera fails to perform. On the due date, Adera was ready to deliver or to give such tef. But, Abebe failed to collect the debts without good cause. Then, Adera informed the failure of the creditor to the court of law and the court of law allowed Adera to deposit the tef in a custodian designated by the court. Adera also, on the basis of 1782, validated the deposit. As soon as he validated the deposit, both the principal contract (Between Abebe and Adera and the subsidiary contract between Lemma and Adera has been

terminated. In this case, both the debtor and the guarantor became released at the same time. Then, without the consent of Lemma, Adera decided to use the deposited tef after termination. Though, Lemma is still released because of the fact that the securities attaching to the claim could never be revived (art 1783) where the deposit has been found.

Cancelation

Cancelation is the bringing to an end of the effect of a contract. In the case of cancellation, the obligation is going to be extinguished. In short, cancellation is something that comes as a response for non-performance. Cancellation defers from invalidation in that the latter comes as a result of non-compliance with the requirements of making a contract. But, it must be noted that both cancellation and invalidation have the same effect (art 1815). Art. 1815. Effect of invalidation or cancellation. (1) Where a contract is invalidated or cancelled, the parties shall as far as possible be reinstated in the position which would have existed, had the contract not been made. (2) Acts done in performance of the contract shall be of no effect.

Cancellation is categorized into two, judicial and unilateral cancellation. Unlike judicial cancellation, unilateral cancellation is exceptional. We say judicial cancellation when the creditor requiring cancellation has to appear before the court to that end (art 1784). Art. 1784. Cancellation of contract by the Court. A party may move the court to cancel the contract where the other Party has not or not fully and adequately performed his obligations within the agreed period of time. This provision also tells us what non-performance constitutes in it. A party may go to court requiring cancellation of a contract (1) when the other party has not fulfilled the performance of his obligation, (2) when the obligation is not fully fulfilled, (3) when the obligation is not adequately fulfilled. The court of law which has been requested to cancel the contract by the creditor should be guided by art

1785 to declare the requested cancellation. Art. 1785. Good faith. (1) In making its decision, the court shall have regard to the interests of the parties and the requirements of good faith. (2) A contract shall not be cancelled except in cases of breach of a fundamental provision of the contract. (3) No contract shall be cancelled unless its essence is affected by non-performance and it is reasonable to hold for such reason that the Party requiring cancellation of the contract would not have entered into the contract without the term which the other party has failed to execute being included. As per this provision, in making decision, the court has to be satisfied with the reason submited by the party requiring cancellation and see the existence of breach of a fundamental provision of the contract. According to article 1768, the court may reduce the obligations of one party where the performance by the other party of his obligations has become partially impossible and there is no ground for canceling the contract. We can say there is no ground for canceling the contract where, for instance, the substantial part of the contract has been performed or the essence of the contract has not been affected. In this case, the court may not accept the request for cancellation of a contract before assessing such factors. But, if a person who entered into a contract to deliver 400 quintals of tef from Gojjam to another person the residence of whom is in Addis Ababa brought to deliver only 30 quintals of tef, then this contract can be canceled. Because, it is inevitable for the creditor to go to Gojjam to bring the rest for the fact that the substantial part of the contract has not been fulfilled. Secondly, the creditor requiring cancellation of the contract would not have entered into the contract without the term which the other debtor has failed to deliver being included. In short, the court should be guided by virtue of article 1785 when it decides to grant cancellation. One may request total cancellation. Yet, the court may partially cancel and uphold the rest of the contract.

The other one is unilateral cancellation. Unilateral cancellation is an exceptional one and the parties are enforcing the law being judges on their own cases. So, it is allowed only under exceptional circumstances. These exceptional circumstances are (1) where the parties have included a cancellation clause in their contract, (2) where there is expiry of time limit, (3) where performance is impossible, and (4) where the party refuses performance (article 1787). Art. 1787. 2. Expiry of time limit. A party may cancel the contract where the other party has failed to perform his obligations within the period of time fixed in accordance with Art. 1770, 1774 or 1775 (b). When parties enter into a contract, they may insert a clause by saying that if any one of the parties fails to perform his obligation, the other party, without the need to go to court, would declare cancellation. The creditor can unilaterally cancel the contract where the debtor fails to perform an obligation which the contract allows to be performed only within a fixed period of time and such period has expired (1775/b). Because, such type of due date is compulsory as a result of the nature of the performance. If the non-performant party has requested period of grace and if such period has lapsed, then there is no need to go to court of law but unilaterally cancel (1770). The creditor may also in his default notice give the debtor a period of grace after the expiry of which the creditor cannot accept performance (1774). On the other hand, if the creditor does not accept performance, the remaining option is cancellation of the contract.

A creditor may also cancel a contract when the performance by the other party becomes impossible either anticipatorily or in any other situation. Art. 1788. 3. Performance impossible. A party may cancel the contract even before the obligation of the other party is due where the performance by the other party of his obligations has become impossible or is hindered so that the essence of the contract is affected. A musician entered into a contract with an organization to perform musics for the celebration of the New Year. But, the musician sustained grave bodily injury by a car accident 2 days

before the New Year. In this case, even if the due date has not arrived yet, the creditor can cancel the contract due to the fact that it is impossible for the musician to perform his obligation attending at the agreed place and time.

According to article 1757/2, if one party refuses to perform his obligation, the other party should also refuse to perform his obligation. But, according to article 1759, if the refusing party comes up with a security that he can definitely perform his obligation, the other party may not have the right to refuse as well. Art. 1789. 4. Party refusing performance. (1) A party may cancel the contract where the other party informs him in an unequivocal manner that he will not carry out his obligations under the contract. (2) The party who intends to cancel the contract shall place the other party in default and the contract shall not be cancelled where the party in default produces within fifteen days securities sufficient to guarantee that he will perform his obligations at the agreed time. (3) Notice shall not be required and the contract may be cancelled forthwith where a party informs the other party in writing that he will not perform his obligations. The party may cancel the contract; but, he may need to give default notice. As in the case under 1759, the cancellation may be conditional. Because, the party who wants to cancel the contract shall give default notice. Not only giving default notice, the party should also await for 15 days weather the other party could come up with sufficient security. If the awaited party became able to furnish such security, no cancellation shall be effective. Article 1773/2 states that notice shall not be given before the due date. On the other hand, from the reading of article 1789/2, we can understand that default notice can be given before the due date. These 2 articles should not be understood to be contradictory to each other. The normal default notice is a default notice that is given to the non-performing party after the obligation is due. Because, the party expects that the other party performs his obligation until the due date. But, the default notice under article 1789

is a kind of default notice that is given before the due date. Because, the refusing party has informed the other party his refusal to perform his obligation before the due date. Hence, the default notice is given to asure weather the refusing party is serious or not.

The other point is the issue of compensation. Compensation is the replacement of what one has lost. Art. 1790. Damage arising out of non performance. (1) Apart from or in addition to the enforcement or cancellation of the contract, a party may require that the damage caused to him by the other party failing to perform his obligations be made good. (2) Without prejudice to the provisions of the following articles, the provisions of the Chapter of this Code relating to "Extra contractual liability" shall apply where the damage is made good under sub art (1) (Art, 2090 2123). According to this article, a party can ask for compensation either with performance or cancellation.

Art. 1791. Damage when to be made good. (1) The party who fails to perform his obligations shall be liable to pay damages notwithstanding that he is not at fault. (2) He shall not be released unless he can show that performance was prevented by force majeure. The creditor has to get compensation; because, he is required to perform that the debtor failed to perform. Or because, even if the debtor has undertaken to deliver a thing, he did not perform his obligation. As a result of which, he has incurred loss. But, there may still be a case where the non-performing party may be relieved from paying compensation. The only case under which a party is relieved from paying compensation is where he proves that the performance was prevented by force majeure. There are 2 essential elements to determine weather a certain event constitutes force majeure or not (article 1792). Art. 1792. Force majeure. (1) Force majeure results from an occurrence which the debtor could normally not foresee and which prevents him absolutely from performing his obligations. (2) Force majeure shall not exist where the occurrence could normally have been foreseen by the

debtor or where it renders more onerous the performance by the debtor of his obligations. These elements are unforeseeability and unpreventability or impossibility to prevent.

Article 1793 and 94 explain sub-one and two respectively. Art. 1793. Cases of force majeure. The following occurrences may, according to the circumstances, constitute cases of force majeure. (a) The unforeseeable act of a third party for whom the debtor is not responsible. Or (b) an official prohibition preventing the performance of the contract. Or(c) a natural catastrophe such as an earthquake, lightning or floods. Or (d) international or civil war. Or (e) the death or a serious accident or unexpected serious illness of the debtor. A person entered into a contract to import and deliver an item to another person. But, a law which prevents the import of such item was issued before delivery took place. In this case, the debtor cannot be responsible to pay compensation.

Art. 1794. Absence of force majeure. Unless otherwise expressly agreed, the following occurrences shall not be deemed to be cases of force majeure. (a) A strike or lock out taking place in the undertaking of a party or affecting the branch of business in which he carries out his activities. Or (b) an increase or reduction in the price of raw materials necessary for the performance of the contract. Or (c) the enactment of new legislation whereby the obligations of the debtor become more onerous. If the parties experssly agreed in their contract, cases specified under article 1794 may also constitute force majeure. The employees who undertake strike or lockout may have asked the employers wage increment. Hence, it is foreseeable and preventable by increasing one, five or ten percent. An increase or reduction in the price of raw materials necessary for the performance of the contract is also foreseeable. Hence, parties could have included a clause governing such situation in their contract. Apart from article 1791, there are cases where proof of fault is necessary for a creditor to be entitled for compensation. Art 1795. Proof of fault. A party may not

claim damages on the ground of non performance of the contract by the other party, unless he can show that the other party is at fault, where. (a) The debtor has undertaken to do his best to procure something to the other party without guaranteeing that he would succeed. Or (b) such an exception is expressly provided by law in respect of cartais contracts. We have already seen that In the case of obligation of deligency, the debtor undertakes to do his best. In this case, the creditor requesting compensation is expected to establish non-performance+loss and fault. Therefore, we can say that 1795 is an exception to 1791. Because, the creditor, under 1791, is not expected to establish the existence of fault.

We have also talked about gratuitous contract under article 1739. In that case, the debtor should be favored during interpretation. The same is true in case of compensation. Likewise, this person is liable for compensation only if the creditor proves the existence of grave fault. Art. 1796. Grave fault. Where the contract is made for the exclusive advantage of one party, the other party shall not be liable to pay damages in cases of newimforgummm he has committed a grave fault.

Under art 1791/2, we said that a debtor is released from paying compensation only if he proves the existence of force majeure preventing him from performing his obligation.

But, even if there is force majeure, there are cases in which the debtor still pays compensation. Art. 1797. Notice to other party. (1) The debtor shall forthwith inform the other party of the reason which prevents him from performing his obligations. (2) He shall be liable as though non performance were attributable to him for any damage caused to the other party which could have been avoided, had notice been given. A seller has undertaken to deliver his horse to a buyer on November 30 2011. Unfortunately, the horse died of a car accident on November 20 2011. Yet, the seller did not inform the creditor the occurance of such accident. The buyer, on his part, came

and asked the delivery of the horse on the due date. In this case, the seller cannot invoke art 1791 and 93/c to be free from paying compensation. Because, he had to inform the death of the horse as soon as it occurred.

Art. 1798. Party in default. Where performance is prevented by force majeure, damages shall be due where force majeure occurred after the debtor had been placed in default. A seller has undertaken to deliver his horse to a buyer on November 30 2011. But, the seller did not deliver the hoarse on November 30 2011. The buyer, on his part, came and placed the seller in default to deliver the horse on dec 1 2011. Unfortunately, the horse died of a car accident on Dec 2 2011. As soon as the death occurred, the seller also informed the buyer the occurrence of the death by a car accident. In this case, the debtor cannot be relieved from paying compensation. Because, the death occurred after the creditor put the debtor in default.

Article 1799 is related with assessment of damage. We have already said that for a certain creditor to establish damage, he has to prove non-performance and loss. And compensation also amount to loss. If the loss is related to a fixed price, there may be no problem in determining the damage sustained by the creditor. Because, it can serve as a spring board. The problem lies on determining loss in the case of variation of prices. Article 1799 sets as a solution the normal amount of damage which is determined by the court of law as seen by a reasonable person. Art. 1799. Normal amount of damages. (1) Damages shall be equal to the damage which non-performance would normally have caused to the creditor in the eyes of a reasonable person. (2) The nature of the contract, the profession of and the relations between the parties and any circumstances known to the debtor who surrounded the making of the contract shall be taken into consideration in assessing the amount of damages. According to this article, in assessing the amount of damage ensued, the court shall redress weather it was foreseeable by the debtor that this amount of damage was going to

be sustained by the creditor, weather these parties know to one another or not. So, what the creditor asks may not be the same with what the court may grant by its decision. It may be less; and this is why we call it as the normal amount of damage.

The amount to be paid to the creditor may be lesser than the normal amount. Art. 1800. Lesser damage. Where the debtor can show that the amount of damages assessed in accordance with Art 1799 is greater than the damage caused to the creditor, he shall be liable to the extent of the damage actually caused. If the debtor thinks that the creditor could not be entitled to the normal amount fixed by the court, he has to show how and why he is not entitled to such amount. A person has undertaken to deliver the car on Monday Dec 2. But, he failed to perform delivery on such due date but on the marrow. If the creditor has asked compensation, the court may decide that the normal amount that the car would have produced had it been delivered to be 150. In this case, the debtor can object to such decision by alleging that the normal amount is greater than the actual damage because of the fact that the due date was either holly day or any other reason. And the normal amount, the 150, is the one that could have been obtained had Monday been a working day.

What the creditor is going to obtain may also be greater than the normal amount. Art. 1801. Greater damage. (1) The amount of damages shall be equal to the damage actually caused to the creditor where the debtor on entering into the contract was informed by the creditor of the special circumstances owing to which the damage is greater. (2) The provision of sub art (1) shall apply where non performance is due to the debtor's intention to cause damage or to his gross negligence or grave fault. The creditor shall be entitled to the amount greater than the normal amount only if he had forewarned the debtor. Before entering into this contract, he must have told the debtor the conditions which are going to make the amount of damage greater. Lemma entered into a contract with Yohannes

to have his car repared on Monday. Lemma has also told Yohannes that he will lose 200 birr if he does not deliver the car on such due date. In this case, even if the normal amount is less than 200 birr, the debtor shall pay the actual amount greater than the normal or average amount as already fixed in the contract. Sub-art 2 is concerned with bad faith of the debtor. A certain garage owner was given a vital machinery of a factory to fix and deliver it on Dec 22. He was also told that if this machine is not going to be delivered on the due date, the whole factory will stop working. Even if he was made aware of this fact, he gave priority to other non-important things and neglected fixing this important machinery. As a result of which, the feared consequence happened to the factory. In this case, the party was so negligent that the amount of damage to be paid shall be greater than the normal amount.

In the case of money debt, the amount of damage is not assessed on the basis of 1799. In other words, the issue of normal amount is not there. The creditor is, rather, paid in the form of interest for default. Art. 1803. Money debts. 1. Interest for default. (1) Where the debtor owes a money debt and he is in default, he shall pay interest for default at the rate fixed by law (Art 1751) notwithstanding that the contract fixes a lower rate in respect of interest to be paid before the debt is due. (2) Where a higher rate of interest is fixed in the contract, such interest shall be due in lieu of interest under sub art. (1). (3) Interest shall be due notwithstanding that no loss is incurred by the creditor. For a creditor to be entitled for interest for default, there has to be non-performance and default notice. Lemma borrowed 100,000 birr without interest from Yohannes the maturity date of which is November 2 2011. Yet, Lemma failed to pay on the due date. So, Yohannes gave default notice on the basis of 1772 to the debtor, Lemma on November 3 2011. In this case, as of November 3, Yohannes will be entitled to get interest for default the rate of which is 9 % per annum Art 1751). Here, we can see 3 cases. One of them is in case the 100,000 is lent without

interest. The second one is in case the 100,000 birr is lent with lower interest than 9 % per annum. In the above case, for example, Lemma may have lent the 100,000 birr with 3 % of interest rate. But, what he is going to pay is with 9 % per annum. This is still what we call as interest for default. The third scenario is in case the 100,000 birr is lent with any interest rate greater than the legal interest rate. But, on the basis of art 2479, any interest which is beyond 12 is illegal. Art. 2479. — 2. Rate of interest. (1) The parties may not stipulate a rate of interest exceeding twelve per cent per annum. (2) Where it has been agreed that the loan will bear interest but a higher rate has not been fixed in writing, the borrower shall owe interest at the rate of nine per cent per annum. (3) The borrower shall also owe interest at the rate of nine percent per annum where a rate exceeding twelve percent per annum has been agreed in writing. In the above case, Lemma may have borrowed the 100,000 birr with 11 % of interest rate. In this scenario, Yohannes is entitled to such interest rate fixed in the contract to be above 9 percent. In other words, if any interest rate which is above 9 but less than 12 is fixed in the contract, such interest rate shall not be reduced to 9 percent. In this case, the legislator seems to have believed that the debtor should continue being punished for the fact that he did not keep his word to pay the debt on the due date. The opposite happens if the interest rate is fixed to be above 12 percent.

Art 1804 has got to do with periodical payment. 1804. 2. Interest on interest. (1) Where the debtor fails to make periodical payments which constitute an income for the creditor, such as rent% arrears of life or perpetual annuities or interest on capital, interest for default shall be due from the day on which proceedings for recovery are instituted where the debtor is one year in arrears. (2) Nothing in this Article shall affect the provisions relating to current accounts. Periodical payments are defined under article 2490. Art. 2490. — Definition. (1) The contract for periodical payments is a contract whereby a party confers on the other the right to

demand the periodical payment of a certain sum of money or of a certain quantity of fungible things in exchange for the alienation of a thing or the assignment of capital. (2) The stipulation for such payments may also be agreed on as counterpart of a liberality. Art 1805 is similar with 1801 except the fact that the former applies for money debts only. Art. 1805. 3. Greater Damage. Where the damage caused to the creditor exceeds the interest for default, such damage shall be fully made good by the debtor where he knew of the circumstances on entering into the contract or where non performance is due to the debtor's intention to cause damage or to his gross negligence or grave fault. In the above case, if Yohannes has suffered damages exceeding the 11 percent, he is going to be entitled to total amount only if the 2 have entered into a contract where by Yohannes told Lemma that if Lemma does not pay him on the due date, that there will be a certain serious financial consequence to him. Art. 2481. — Compound interest. (1) The parties may not agree in advance that interest will be added to capital and itself produce interest. (2) Nothing shall affect the rules for the calculation of compound interest on current accounts.

Provisions related to liability part have got to do with contractual clauses inserted by the parties in a contract with a view to regulating liability. Of course, starting from art 1790 and the following, we have already discussed about liabilities for compensation. But, that compensation is determined by the court after the damage is due on the basis of art 1799 and the following. Yet, here we are talking about a case where parties are going to determine the penalty. For example, they may insert a penalty clause where by the parties stipulate or fix the damage before the damage is due. Art 1791/2 states that debtor shall not be released unless he can show that performance was prevented by force majeure. On the other hand, art 1797 and 8 are exceptions to the above sub-article. Art 1886 is also another exception to the same sub-article. According to sub-article 1, although art 1791/2 tends to relieve the debtor from liability if he shows that he was

prevented from performing by force majeure, if the parties have inserted a liability clause in their contract making them liable despite non-performance due to force majeure, such debtor is still liable for compensation. Art. 1886. — Extension of liability. The parties may extend their liability under the contract and provide that they will be liable for non-performance notwithstanding that performance is prevented by force majeure. Art 1791/1 also states that the party who fails to perform his obligations shall be liable to pay damages notwithstanding that he is not at fault. According to sub-article 1, as far as a creditor proves the existence of non-performance and loss, the debtor is liable to pay compensation irrespective of the fact that he is not at fault. But, we have already seen that art 1795 and 6 are exceptions to the above sub-article. Unlike art 1886, art 1887 is not extending but limiting liability. Hence, it is another exception to the same article. Art. 1887. — Limitation of liability. The parties may limit their liability under the contract and provide that they shall not be liable unless they commit a fault. According to this article, the debtor is going to be liable only if the creditor proves the existence of non-performance, loss and fault on the basis of their agreement. Art 1888 is the extension of art 1887. This article talks about not fault of parties but of their employees. Art. 1888. — Acts of employees.
(1) The parties may provide that they will not be liable where non-performance is caused by a fault of their employees or auxiliaries. (2) Any such provision shall be of no effect where it is made to the prejudice of, a party who is the employee of the other party. According to this article, the parties may agree in their contract that if the obligation undertaken by the parties has not been performed as a result of the fault of their employees, they shall not be liable. Of course, it seems to against the principle of extra-contractual liability. Because, under extra-contractual liability, any one is liable for the fault committed by his employees, children and properties. But, if the parties agreed in that way, it is acceptable not withstanding that there is one condition under which this may not be acceptable (sub-art 2).

Truly speaking, this has danger of its own. A person with a laundry entered into a contract to wash a suit and deliver on Dec 4 2011. A provision which says that the debtor is not liable if he does not deliver the suit as ordered due to the fault committed by the employees has been incorporated in the same contract. In this case, the creditor may possibly lose his suit and the debtor may easily escape liability. Because, it is abusively permitting the washer to disregard the obligation he assumed. Planiol has said that sub-article 2 has a drafting problem for the fact that it puts the contract as if it were made between the employees. It should be noted that such arrangement is not enforceable before court of law if it has the probability of bringing such danger. If such arrangement is going to affect the other party not the other employee to the contrary, then it is not going to be acceptable.

The other point is penalty. Penalty is a damage or compensation that has been fixed before the damage is due in the contract should a party fail to perform his obligation. The amount which is going to be fixed in a penalty clause in the contract is in terms of money. Such type of clause is usually known as accessory agreement. Such agreement is made with a view to force the debtor to perform his obligation as agreed. Secondly, such agreement excludes the possibility of the court calculating the damage. If the damage is sustained after non-performance and is going to assert, the court shall calculate it on the basis of art 1799. However, if, as in the above case, the penalty clause has been inserted in the contract, the court is relieved from calculating any damage sustained. As a result of this, penalty is known as liquidated or stipulated damage. And it excludes the application of art 1799 and the followings. . Art. 1889. Penalty. The parties may fix the amount of damages which will be due, should a party fail to discharge his obligations or to discharge them completely and in due time.

We have already said that the creditor is entitled to compensation only if he proves the existence of non-performance and loss. In the case of penalty,

the creditor is entitled to get penalty if he proves the existence of non-performance but not necessarily loss (art 1892). Art. 1892. — Actual damage. (1) The penalty shall be due notwithstanding that no actual damage was caused to the creditor. (2) Damages may not be claimed above the amount of the penalty unless non-performance is due to the debtor's intention to cause damage or to his gross negligence or grave fault. As a principle, Compensation is usually equal to loss (art 1799). But, in the case of penalty, as far as penalty is fixed in advance, it may be greater, equal or lesser than the damage sustained. Because, it is fixed without observing or knowing the damage that may be sustained. It is also possible to reduce the possibility of litigation by inserting such penalty clause in the contract. For the debtor, Penalty is not an alternative obligation. Art. 1890. — Rights of creditor. (1) Unless otherwise agreed, the creditor may require the performance of a contract which includes a penalty. (2) He may not require both the enforcement of the contract and the penalty unless the penalty was provided in respect of delay or the non-performance of a collateral obligation.

When there is a penalty clause and non-performance, the creditor may still insist on performance. A person has agreed to deliver 20 quintals of tef. The same person has agreed to pay 3000 birr as a penalty if he did not deliver. On the other hand, the price of tef has unbelievably gone up at the maturity date. Now, were the debtor able to sell such amount of tef, he would make 5 or 6000 birr as a profit. But, if he performed or deliver such amount of tef to the creditor as agreed in the contract, he would only be paid 3000 birr. In this case, he may desire to pay the penalty by non-performing his obligation. Yet, he has no right to do such and the creditor can say no by insisting on that he is still in need of such amount of tef. The creditor cannot, however, ask both performance and penalty at the same time unless the penalty has already been designed for delay. A person has agreed to deliver his car on Dec four. The same person has agreed to pay penalty of 2000 birr if he

delays the delivery for a certain period of time. In this case, creditor can ask both performance and penalty at the same time. In short, the creditor can ask penalty if there is only non-performance despite not loss as per art 1892/1. The debtor can say that the creditor is not entitled to take the damage above the fixed sealing of penalty unless the creditor proves that non-performance is as a result of the debtor's intention to cause damage or to his gross negligence or grave fault.

The agreed amount of penalty cannot be varied by the court except when there is partial performance. 1893. — Variation, of penalty. The agreed amount of the penalty due for non-performance may not be reduced by the court unless partial performance has taken place. A person has entered into a contract to deliver 20 quintals of tef to another party. The same person has agreed to pay 3000 birr as a penalty in the case of non-performance. Yet, the debtor has delivered ten quintals of tef on the due date. In this case, the court is going to reduce the penalty to 1500 birr for the fact that the debtor has delivered half of the amount which would have been delivered.

Sometimes, in the case of non-performance, parties agree that a certain amount of money fixed should be paid to the government. But, this seems to be invalid for there is not any legal base for the government to be entitled to such payment. As per art 1675, 1731 and 1952, the provisions in a contract are law of the parties and hence must be applied upon them only and not third parties. Art. 1952. Relative effect of contract. Except in the cases provided in this Code, contracts shall produce effects only as between the contracting parties.

The other point is contractual sanction the concept of which is related to penalty. Art. 1895. — Contractual sanctions. Where a contract provides that a party may apply certain sanctions, should the other party fail to carry out one of his duties, the court shall, notwithstanding any provision to the

contrary, verify whether the agreed sanctions may be applied. A person entered into a contract with another person to deliver ten quintals of coffee and be paid 20,000 birr by the latter. In this contract, the parties have agreed that the creditor can impose sanction upon the debtor should he fail to discharge one of his obligation such as quality, quantity and so on. This is what we call as contractual sanction. In this case, the creditor can impose upon the debtor by deducting the due amount from the 20,000 birr. But, the court shall verify the lawfulness of the imposition and the existence of the conditions which enable the creditor to take such action. It is not, however, interested with weather the sanction is proportional or not.

Obligations created by contract may be extinguished by performance which is the normal way of extinguishing contractual obligations (1806). Art. 1806. Obligation performed.
An obligation shall be extinguished where it is performed in accordance with the contract. The intention of the parties is to perform their respective obligations Thereby extinguishing their obligations.

The other modes of extinguishing obligation are invalidation and cancellation, termination, remission, novation, set-off, merger and limitation. Art. 1807. Other causes of extinction. An obligation shall be extinguished where:
(a) the contract in which it is provided is invalidated or cancelled; or
(b) the parties or one of them enforce a provision made in the contract for the termination of the contract; or
(c) the parties agree to substitute a new obligation for the original obligation; or
(d) the debtor's obligation is set off by an obligation owing hVm the creditor to the debtor; or
(e) tile positions of creditor and debtor are merged in the same person; or
(f) performance of the contract has not been demanded within a fixed period. These are modes of extinguishing obligation.

On the basis of art 1808, there is a party entitled to ask for invalidation. Art. 1809. Party may refuse performance. A party who is entitled to require the invalidation of the contract may at any time refuse to perform it. Let's imagine that this party has not asked for invalidation of the contract. In the mean time, the other party has asked him to performer his obligation. In this case, the requested party is entitled to refuse performance for the fact that he has a valid ground to do so.

Art 1810 talks about period of limitation within which a party can ask for invalidation. Art. 1810. Action for invalidation. (1) No contract shall be invalidated unless an action to this effect is brought within two years from the ground for invalidation having disappeared. (2) Where a contract is unconscionable and tile party injured was of age, the action shall be brought within two years from the making of the contract. Abebe who is a minor with 16 years of age entered into a contract on Dec 11, 2011. He shall attain 18 years of age in 2013. At this time, the ground for invalidation shall disappear. 2013 is, on the other hand, the beginning of the period where he can bring an action for invalidation of the contract. So, Abebe can bring an action for invalidation only after he has attained 18 years of age. That is until the beginning of 2015. On Dec 11, 2015, his right to request for invalidation shall be barred. It must be noted that unless he is emancipated, juridical acts performed by the minor in excess of his powers shall be of no effect (313). The person may be of age. The contract he has entered is unconscionable. Since the contracting party is believed to know the unconscionability of the contract, he will have only two years to ask for invalidation starting from the moment he entered into such contract.

Unlike the knowledge of unconscionability, disappearing of the ground for invalidation in the case of mistake and fraud may take time to detect the existence thereof. The same is true for the secession of duress.

Art 1811 also talks about conformation. Art. 1811. Confirmation of contract. (1) The party whose consent was vitiated may waive his right to require the invalidation of the contract where the cause which vitiated his consent has disappeared. (2) Where the contract was made in a special form, waiving as mentioned in sub art (1) Shall be made in the same form. Conformation is always related to voidable contract. If such contract has been made in a special form, the conformation should also be made in the same form. See the example given for art 1702. Unconscionable contract is dealt with under art 1812. 1812. Putting an end to action. Where a party requires the invalidation of an unconscionable contract, the other party may put an end to the action by offering to make good the injury. A person who is of age has entered into unconscionable contract. In the case of unconscionable contract, the amount of the benefit what the injured has been given is disproportionate to what he should have obtained. Because, the party has been exploited by the other party. In this case, when the injured party tends to request for invalidation, the exploiting party can put to an end the action for invalidation by making good the damage. Refer to the example given under art 1710. In the case of certain contract, invalidation and cancellation may be partial. Art. 1813. Partial invalidation. Where part only of the contract is vitiated, only that part shall he in validated unless such invalidation affects the essence of the contract. The party whose consent has been vitiated has the right to opt either conformation or invalidation or cancellation. Art. 1814. Duty to opt.
(1) The party who is entitled to require the invalidation of the contract or to cancel the contract shall, where he is so asked by the other party, without delay answer whether he intends to confirm or to cancel the contract. (2) Notwithstanding any proof to the contrary, the contract shall be deemed to be cancelled where answer is not given in due time. Let’s assume that the party who has the right to ask for invalidation has instituted an action for invalidation and the court has granted for invalidation. Art. 1815. Effect of invalidation or cancellation. (1) Where a contract is invalidated or cancelled,

the parties shall as far as possible be reinstated in the position which would have existed, had the contract not been made. (2) Acts done in performance of the contract shall be of no effect. The other point is the right of third parties. Art. 1816. Rights of third parties. Acts done in performance of the contract shall not be invalidated where the interest of third parties in good faith so requires. A person has entered into a contract to sell his car to another person. The buyer has immediately sold such car to a third party. In this case, if the contract has to be invalidated, the third party who bought the car shall not be affected. The invalidation shall remain between the former two parties. The former parties shall reinstitute to each other with the payment of money. Reinstatement may not always be possible. Art. 1817. Restoring previous position not possible. (1) Acts done in performance of the contract shall not be invalidated where such invalidation is not possible or would involve serious disadvantages or inconveniences. (2) The parties shall as far as possible be reinstated in the position which would have existed, had the contract not been made, by the payment of damages or any other remedy which the court thinks fit. Art. 1818. Expenses. Where a party who is to restore a thing following invalidation or cancellation of the contract has altered such thing or incurred expenses in relation thereto, the provisions of the Chapter of this Code relating to "Unlawful Enrichment" (Art. 2168 2178) shall apply in settling the rights or obligations arising out of such alterations or expenses. A person has bought a book from another person with the price of 50 birr and has made some changes on the book which increases its value with 20 birr. Though, immediately, the contract was made invalidated. In this case, the person who has to return has the right to be paid the price he paid and the coast he incurred if it proved that the change he made has added the value of the book by invoking unlawful enrichment. Termination has got to do with a contract that has not yet been fully performed. We usually call it as an on going contract. Good examples are contract of supply and contract of employment. In such types of contract, the parties put an end to the

contract by their agreement or with their own consent at a certain point before the definite or indefinite period as the case may be. Art. 1819. — Consent of the parties. (1) A contract may terminate where the parties so agree. (2) A contract which is terminated shall no longer be performed. (3) Termination shall have no retrospective effect.
In this case, what has been performed is going to be maintained and what has not been performed is going to be terminated as of the date for termination. A party has been supplying bread to another party for about 9 months. Then, after such a month, the parties wish to terminate his contract. In this case, this party shall be paid for the part he supplied up to the point of termination. The remaining will be terminated. But, in the case of invalidation and cancellation, what has been performed shall be considered as if it were not done retroactively. On the other hand, termination shall stop where it is and the effect of terminating rests on that which was to be performed yet. So, we can say that the parties may terminate the contract by their agreement or with their own consent. On the other hand, one of the parties may unilaterally terminate the contract by giving notice which may be provided by the law or customary period. Art. 1820. — Termination by one party. (1) Provisions may be made in the contract to the effect that the partties or one of them may terminate the contract on notice. (2) Where more than two persons enter into a contract, provisions may be made to the effect that the contract shall terminate with regard to one of them and remain in force with regard to the other parties.
According to sub-article 2, some times, parties may also include termination clause in their contract. In multilateral contracts, there might be 100 and more parties. Such parties usually include a termination clause that one of the parties may withdraw or terminate the contract. In this case, the contract as of the date one of the parties declared to have withdrawn from the contract will come to an end in respect of such party. Though, the contract will remain effective among the other parties. Where a contract is made for an indefinite period of time, both parties can terminate the

contract by giving notice at any time. Art. 1821. — Contracts for an undefined period of time. Where a contract is made for an undefined period of time, both parties may terminate it on notice. In contracts such as contract of employment there are certain rules applicable to the way in which notice is given. Art. 1822. — Period of notice. (1) The party who terminates a contract shall comply with legal or customary periods of notice. (2) Where the period of notice is not fixed by the law or by custom, it shall be reasonable having regard to the circumstances. Where the period of notice given by the law of custom is lacking, it is expected to be reasonable having regard to the circumstances. A person let his house to another person for residential purpose. In this case, if the person who let his house wishes to throw the lessee out, he will reasonably give the notice to the lessee at least before two weeks enabling him to look for another house. Of course, whether the time given is reasonable or not is going to be determined by the court. Contracts for which special relation or loyalty is required or which are gratuitous may also be judicially terminated. Judicial termination seems to be applicable for contracts entered into for definite period of time only. Because, if the contract is entered into for indefinite period of time, the law has already provided an authority that both parties can terminate the contract by giving notice. Art. 1823. — Special relations between the parties. A party may apply to the court to order the termination of a contract which requires a special confidence, cooperation or community of views between the parties, where such requirements are no longer present. As per this article, the creditor has to have special confidence or trust up on the debtor. If some one is employed as an accountant or as a casher for 5 years, there must be loyalty or trust between the employer and the employee. At certain time, such trust may be violated and the creditor may be in a position in order not to have trust on the debtor. Even if the contract is for a definite period of time, if the creditor has submitted a good cause for the termination of such contract by invoking the breach of loyalty which is the vital attribute for such contract, the court shall terminate the

contract. The other case regarding judicial cancellation is gratuitous contract. Art. 1824. — Gratuitous contracts. The court may order the termination of a contract made for the exclusive advantage of one party where the other party for good cause so requires. A person entered into a contract with another person to deposit some amount of goods of the latter for a year for free. But, 6 months later, his goods similar to those of the creditor arrived and lack of depositary place was created. Then, the debtor told the creditor to take his goods despite not the expiry of the due date. The creditor, on his part, refused to take delivery of the goods by invoking the non-arrival of the due date. Then, the debtor instituted an action against the creditor. In this case, the court can render decision in favor of the debtor as far as the latter requires it for good cause. The other point is remission. By remission, we refer to voluntary renunciation of claim. Art. 1825. — Remission of debt. Where the creditor informs the debtor that he regards him as released, the obligation shall be extinguished unless the debtor forthwith informs the creditor that he-refuses his debt to be remitted. A debtor owes 1000 birr to a creditor. Though, the creditor informed the debtor that he released him by remission. In this case, if the debtor does not want to accept the remission, he should forthwith object to such remission and asserted that he pays the debt on the due date. But, if the debtor wants to accept the remission, he should ask the creditor to give him a receipt or if there is any document supporting the debt, he should ask the creditor to deliver or cancel them. Otherwise, the creditor tempted by another person may come and ask the debtor to pay the debt although he had already released him. Notice under our discussion is somehow different from that given for cancellation or compensation. Unlike that of cancellation, notice under the issue is used only for informing one party that the other party whishes to terminate the contract.

Novation is the other mode of extinction by substituting a new obligation in place of the original obligation. Novation may be subjective or objective. By

subjective novation, we mean to replace the subject, debtor or the creditor. However, in our legal system, this does not fall under novation but under delegation or assignment. So, our law is interested with objective obligation where the novation is with respect to the object or nature of the contract. Art. 1826. — Principle. An obligation shall be extinguished where the parties agree to substitute therefor a new obligation which differs from the original one on account of its object or nature. If the new obligation comes up with a new element with respect to cause or object, then, novation shall occur. There are some conditions to be fulfilled for novation. They are: the existence of valid debt, the creation of new obligation or agreement or intention to novate the obligation, new element of the new obligation and extinction of the original obligation. If the old obligation is not valid, then we cannot have a valid novation. The old debt, despite valid, should be extinguished. A new obligation must also be created. Of course, extinction of the old debt and creation of the new obligation is known as dual effect of novation. The parties have to clearly state that they are innovative of the new element. Art. 1828. — Intention to extinguish original obligation. Novation shall not occur unless the parties show the unequivocal intention to extinguish the original obligation. When we talk of novation, we must bear in mind the existence of to issues, object and cause (nature) of a contract. A person bought a TV set with 5000 birr from a seller for credit to pay on Dec 5. A while later, the debtor, however, realized that he is unable to pay such debt on the fixed date as promised in the contract. He proposed to the seller a new idea so that the debt will be transferred to loan to be paid with interest. The creditor also agreed to such idea and did it as the debtor wishes. In this case, these parties have changed the contract from contract of sale to contract of loan. And the new element for the novation here is the cause or nature of the contract. The mechanic, Lemma, borrowed 1000 birr from Yohannes to pay on Dec 20 2011. Though, he failed to pay on due date. On the other hand, the automobile of Yohannes has been badly damaged. Hence, Yohannes asked Lemma to mend the

broken automobile instead of paying the debt. In this case, if Lemma has agreed to the proposal, contract of loan will be changed to obligation to do. And in respect of the object, the new obligation is different from that of the old obligation. The other thing is effect of novation. Art. 1827. — Effect of novation. (1) Unless otherwise expressly provided, securities or privileges attaching to the original obligation shall not be transferred to the new obligation. (2) Unless otherwise expressly provided, interest due prior to novation may not be recovered thereafter. Novation has the effect of extinguishing the old and creating the new obligation. It has also the effect of releasing securities attached to the old obligation. Interests which were to be paid had the old obligation not been extinguished shall also cease to exist. Article 1829 should be examined with article 1827. Art. 1829. — Absence of novation.
Unless otherwise agreed, novation shall not occur where: (a) a new document is prepared to support an existing debt; or (b) the debtor signs a promissory note or bill of exchange in respect of an existing debt; or (c) new securities are provided to ensure payment of an existing debt. These tings are not deemed to be novation. Because, they fulfill none of the above elements. For instance, if a new document is prepared to support an existing debt, there is nothing pertaining to cause or object of the contract. Rather it is simply a document.
If the debtor signs a promissory note in respect of an existing debt, there is still nothing. He is, rather, promising to the creditor that he pays the debt on a certain date. If new securities are provided to ensure payment of an existing debt, still there is no novation. The debtor is simply providing securities for the creditor to be sure that he can pay the debt on a certain date. Article 1830 seems to be contradictory with the elements we mentioned above. Art. 1830. — Current account. (1) Novation shall not result from the entry of credit or debit items in a current account. (2) Novation shall occur where the balance of an account is finalized and admitted. (3) Unless otherwise agreed, the creditor shall retain such

securities as may attach to one of the items entered in a current account notwithstanding that the balance of the account has been finalized and admitted. On the basis of one's transaction with the bank, there may be various entries in a current account. Though, this cannot be considered as novation. But, if one adds up the total balance of the person and come up with a certain amount, then it can be considered as novation. However, there is nothing related with cause or object of the contract. Sub-article 3 is also an exception to the effect of novation. We have already seen that the effect of novation is to extinguish the old obligation and create a new obligation thereby releasing securities attached to the old obligation. But, in this case, despite novation, the creditor can retain securities attached to one of the entries.

Set off which is sometimes called as compensation is another mode of extinction. For a set off to arise, there must be reciprocity of obligation, mutual creditors and debtors to one another. Abebe lent Debebe 10,000 birr. In this case, for a set off to arise, Debebe must have the same claim against Abebe as well. The debt should be money debt or fungible. both debts should be equally due. Both debts should be equally liquidated. The debtor should invoke set off (article 1838). Art. 1838. — Intention, to set-off. (1) Set-off shall not occur unless the debtor informs the creditor that he intends to make a set-off. (2) The court shall not have regard to set-off unless raised. Art 1832 sets positive conditions by declaring that Set-off shall not occur unless both debts are money debts or relate to a certain quantity of fungible things of the same species and both debts are liquidated and due. But, sometimes, the period on which payment is made may not be equal due to period of grace.

Art. 1834. — Period of grace. The granting of a period of grace shall be no bar to a set-off. 2 persons owe 400 birr to one another the due date of which is Dec 22 2011. On the due date, one of them requests the court to give him a period of grace. In this case, even if the debts are not equally due as a

result of the period of grace to one of the parties, it cannot ban the set off from being practical.

There are also cases where set off is not allowed. Art. 1833. — Negative conditions.
Set-off shall occur regardless of the cause of either, obligation except where: (a) the special nature of the obligation requires that the creditor be actually paid, as in the case of maintenance or wages necessary for the livelihood of the creditor and his family; or (b) the obligation is owing to the State or municipalities; or (c) the obligation is to restore a thing of which the owner has been unjustly deprived; or (d) the obligation is to return a thing deposited. The special nature of some obligations may require that the creditor be actually paid as in the case of maintenance and wage which are necessary for the livelihood of the creditor. A person has the obligation to make payment of maintenance for another person. The latter one borrowed 300 birr from the debtor and he himself became a debtor. In this case, if the former debtor seeks to set off the 300 birr he lent for the latter by deducting the payment of maintenance, the court is not going to order such type of set off to be performed. A person has undertaken to do something for the ministry of education. Even if He should be paid for what he has done completely, there is some part of payment left unpaid to him. In the mean time, he is required to pay tax as a citizen. In this case, he cannot invoke set of the debt they owe to one another. Because, it results in a problem of auditing and accounting. Ezra has taken an object belonging to Yohannes who is his debtor without his consent. Then, Yohannes whose object has been taken without his consent demands the restoration of the thing. And Ezra informed Yohannes that he intended to make set off. In this case, the court shall not allow set off even if it is raised by the creditor. Because, it encourages other persons who are creditors to unlawfully snatch the property of their debtors and invoke set off. A person has deposited his valuable good from his creditor of 10,000 ETB. Then, when he

wishes to take the good back, the creditor informed him that he intended to make set off. In this case, the creditor of the 10,000 ETB cannot invoke set off. Basically, there are 2 contracts here: contract of deposit and contract of loan. On the basis of the contract of deposit, the debtor should give the good back to the creditor. He should also ask the payment of the loan on the basis of the contract of loan. All these are negative condition where set off is not allowed.

When there are 1 or more debts between a debtor and a creditor, for a set off to be applicable, the provisions (art 1752-54) governing appropriation of payment should be applied. Even if the amount of money is different, there are some cases in which set off may be possible. Art. 1836. — Effect of set-off. The debts shall extinguish each other as from the day when they both exist and to the extent of the amount of the lesser debt. A person borrowed 1000 ETB from another person. The lender also owes 500 ETB to his borrower. In this case, set off is possible up to the extent of 500 ETB and the rest 500 ETB will remain unextinguished.

However, set off shall not affect the right of third parties. Art. 1837. — Rights of third parties. Set-off shall not affect the rights which a third party may have in respect of one of the debts. Lemma has borrowed 1000 ETB from Sisay and vice versa. Lemma has instituted an action against Sisay to pay him the 1000 loan. At the same time, Lemma has owed the same amount of debt to Yohannes. Though, Lemma having no money to be paid to Yohannes has not paid his debt yet. Yohannes has already instituted an action against Lemma to pay him what he has owed and the court has rendered decision in favor of Yohannes while the case of Lemma and Sisay is pending in court. so, in the case of Lemma and Sisay, set off cannot be allowed since it may affect the right of Yohannes to recover his debt due to him. Because, if Lemma has nothing to be paid for Yohannes, he should obtain the 1000 birr from Sisay and if there is set off, no money will be paid to Lemma. But, it must be noted that the debtor may in advance waive his

right to make a set-of. Parties may agree to settle their debt by way of set off by setting aside the provisions of the law governing set off. Art. 1840. — Contractual set-off. (1) Set-off may occur in cases not provided by law where the parties agree. (2) The parties may in advance specify the conditions of a set-of. According to the law, for a set off to be fulfilled, there must be a reciprocity of obligation; there must be money debt or the debts must be fungible; they must be equally due; they must equally be liquidated and so on. However, parties may not preserve such conditions laid down by the law if agreed in their contract. A person borrowed 500 ETB from another person. The latter has also borrowed a tap recorder from the former. In this case, even if the debts are not fungible, if the parties have agreed in their contract to this effect, they can settle their debts by way of set off.

The other one is the issue of judicial set off. Art. 1841. — Set-off by the court. (1) Where one of the debts is not liquidated, the court may hold that a set-off has been made to the extent of such amount of the debt as is admitted. (2) Where one of the debts is not liquidated but can be liquidated without delay, the court may suspend judgment against the debtor whose debt is liquidated until the other debt is liquidated. Not withstanding that both debts are money debts, if they are not equally due or liquidated, the court may intervene. The English version of this article is of a problem. The English version of this article makes use of the word “liquidated” in both sub-articles. But, in sub-article 2, the word “due” should have been written instead. A person alleges that he has borrowed 1000 ETB from another person. Though, the creditor of such person insists that he has lent the debtor 2000 ETB. In this case, the court may render decision so that the parties settle the debts by way of set off to the extent of the debt admitted. Articles 1836 and 41 are the same except the fact that the latter is the type of set off by virtue of judicial decision. According to sub-article 2, when one

of the debts is not due but can be due without delay, the court may suspend judgment against the debtor whose debt is due until the other debt is due.

Merger is another mode of extinction of obligation that can occur when the positions of both parties are merged. Art. 1842. — Principle. Merger shall occur and the obligation shall be extinguished where the positions of creditor and debtor are merged in the same person. The Amharic version of this article is also of a bit problem. Because, it states that there are two debts. But, there are not 2 debts but one debt between a creditor and a debtor. This type of mode of extinction usually occurs in the case of succession and organization. Dutu, the father of Butu has owed 3000 ETB to his son Butu. Though, before the arrival of the due date, Dutu, the father of Butu died of malaria. On the other hand, the sole heir called to succeed Dutu is his son, Butu. In this case, the obligation of Dutu shall be extinguished even if the rights of third parties pertaining to the succession are not affected.
Because, as per art 1843, Merger should not affect the rights which a third party may have in respect of the obligation.

There may also be a possibility whereby this merger stops or comes to an end. For instance, in the above case, the status of Butu as an heir-at-law, may be contested and made invalid. And the whole succession may devolve upon the contester. In this case, the obligation shall revive (article 1844). I.e. the contester shall owe 3000 ETB to Butu.

The other one is period of limitation as a mode of extinction of contract. Period of limitation is not something provided by the parties but the law. The creditor is allowed to bring an action of performance or payment against the debtor. But, the issue is how long he can exercises this right. the law has put a period of limitation with in which the creditor can bring a valid action of performance or payment against his debtor and after the lapse of which he loses his/her right to bring a valid action against the

debtor. The period of limitation librates the debtor from his debt and he can invoke it as a defense if the creditor tends to institute an action against him. Needless to say, the debtor is not saying that he has made the payment but the creditor has lost his right to request performance or invalidation. Period of limitation is necessary for the fact that in the case of adjudication, evidences will be lost; witnesses may die; memories may fail and so on. Period of limitation may also create certainty and security among individuals as regards their property. A person may inherit a house from his father. If there is no period of limitation for the creditors as to bringing an action against their debtors, this heir may not live of comfort or live under threat for there may be a creditor claiming against the house. Because, he is not sure whether there is or not any agreement entered into between his father and some other individuals which can be enforced up on this house. But, if the opposite happens, the heir may live to be settled down or certain at least after the lapse of period of limitation. It is also used to worn inactive and dormant creditors in exercising their rights to institute an action against their debtors.

For a period of limitation to be accepted as valid mode of extinction of obligation, some conditions must be fulfilled. From the out set, there has to be time and right of action. A person has entered into a contract to deliver a thing on Dec 30 2011 with another person. In this case, the creditor has the right to bring an action against his debtor as of the lapse of the due date. Secondly, there must be inaction of the creditor to exercise his right. Thirdly, there must be lapse of time, the period of limitation fixed by the law. Finally the debtor has to raise it as a defense. If all these conditions are fulfilled the right of the creditor to bring suit against his debtor, is barred. The lapse of period of limitation provides the debtor with right to put forward such lapse as a defense against the creditor to liberate him form performing the obligation.

The other point related to period of limitation is the concept of interruption. Interruption is an act of either the debtor or the creditor which puts an end to the period of limitation running or going on. Art 1851 — Interruption. The period of limitation shall be interrupted where: (a) the debtor admits the claim, in particular by paying interest or installments or by producing a pledge or guarantees. Or (b) the creditor brings an action for the debtor to discharge his obligation. When a periods of limitation is interrupted by an act of one of the parties, it shall stop; the period of limitation that has been running will be cancelled or destroyed. And a new period of limitation is to be counted.

Art. 1852. — Effect of interruption. (1) A new period of limitation shall begin to run upon each interruption. (2) Such period shall be of ten years where the debt has been admitted in writing or established by a judgment. It may be interrupted as a result of the act of the creditor. For example, 9 years after the inception of the period of limitation, the creditor may institute a suit against the debtor with a view to being paid. It may also be interrupted as a result of the act of the debtor. For example, 8 years after the inception of the period of limitation, the debtor may acknowledge his debt and pay the debt either fully or partly or interest of the capital. This act will create a new period of limitation as of the time of interruption. Otherwise, Interest and collateral claims shall be barred where the principal claim is barred. Though, there is an exception where the court may disregard the period of limitation that has run.

Art. 1853. — Special relations between the parties. (1) The court may set aside a plea based on limitation where it is of opinion that the creditor failed to exercise his rights in due time on account of the obedience he owed to or tear he felt of the debtor to whom he is bound by family relationship or subordination. (2) In such a case, third parties who guaranteed the payment of the debt shall however be released. A person may have lent 100,000 ETB to his father. But, the same person may request

the payment of the debt 11 years after the due date. In this case, owing to the fact that there is a special relationship between the debtor and the creditor, the court may neglect the right of the debtor to invoke such period of limitation as a defense regardless of lapse thereof. But, the guarantor of the debt, if any, shall be released.

The other point is the issue of pledge. Art. 1850. — Pledge. A creditor whose claim is secured by a pledge may exercise the rights arising out of the pledge notwithstanding that the -claim is barred. A person has lent 3000 ETB to another person having secured the TV set of the debtor. The debtor failed to pay the debt on the due date and the period of limitation on which the creditor institutes a suit against the debtor has lapsed. Then, the debtor requested the return of the security by invoking the lapse of the period of limitation. In this case, even if the creditor has lost his right of bringing a suit against the debtor, he can exercise his right over the thing pledged. In other words, the property secured shall be sold and the proceeds thereof will be taken by the creditor.

Article 1846 provides that the period of limitation shall run from the day when the obligation is due or the rights under the contract could be exercised. A person has borrowed some amount of money the maturity date of which is Dec 20 2011. In this case, the period of limitation shall run from this date, Dec 20 2011. Article 1848 regarding the calculation period provides that (1) the period of limitation shall not include the day from which such period begins to run. (2) The action shall be barred where the last day of the period of limitation has expired without having been used. (3) Where the last day of the period of limitation is a holiday at the place of payment, the action shall be barred on the next working day. For the purpose of calculation, in the above case, Dec 20 on which the period of limitation has begun to run will be precluded. And on the basis of art 1848/1, the calculation of the period of limitation shall start from Dec 21. In the above case, on the basis of art 1845, the last day of the period of

limitation will be Dec 20, 2021. If such a date has lapsed to no avail, the action will be barred. But, where this last date of the period of limitation is a holiday, the action shall be barred on the next working day if the latter has also lapsed in vain.

The other point is perpetual annuity. A person may have perpetual annuity to be paid through his life monthly or yearly and so on. Article 2490 defines it as (1) The contract for periodical payments is a contract whereby a party confers on the other the right to demand the periodical payment of a certain sum of money or of a certain quantity of fungible things in exchange for the alienation of a thing or the assignment of capital. (2) The stipulation for such payments may also be agreed on as counterpart of a liberality. In respect of annuities, the period of limitation will run from the day when the first payment not made was due. A person is annually paid ten thousand ETB from a creditor. But, the creditor has not paid him for 2011, 2012 and 2013. In this case, the period of limitation for each debt is treated separately. For example, the period of limitation for the first debt will be in 2021 while for the latter is 2022.

If the period of limitation has lapsed, anything a party says about the other party having bad faith is unacceptable. Art. 1854. — Bad faith. A party may plead limitation notwithstanding that he is in bad faith. The parties are not allowed to elongate or shorten the period of limitation provided by the law in their contract. Art. 1855. — Contrary provisions. The parties may not in advance waive limitation nor may they fix periods of limitation other than those fixed by law. But, after the period of limitation has been effective, even if the above requirements are fulfilled, the party may pay the debt or fail to raise it. The court will not also raise such limitation to be in place of the debtor. Art. 1856. — waiving of limitation. (1) A party may waive limitation after it has become effective. (2) The court shall not have regard to limitation unless pleaded.