

1. LAW OF FAMILY

Chapter One: General Consideration

Definition and Sources of Family Law

It is usually seen as the law governing the relationship children and parents, and between adults in close relationships'

Rationale behind Protection and Regulation of the

The family is a very important constitutive part of a society. It has natural, economic as well as social importance.

It is the nucleus of the society, and hence much depends on its safety and security.

Sources of Family Relationships are marriage, filiations and adoption.

Relationship by consanguinity:- results from the birth.

It is a direct relationship: it is represented by a straight line going from one relative to the other, no matter how many intermediaries there may be.

the Ethiopian Civil Code of 1960, it does not govern how the relationship in the direct line is to be computed. Article 551 tries to give some highlight

Relationship by Affinity:- created as a result of marriage.

-The woman who marries becomes the daughter in law (by marriage) of the father and mother of the husband and the husband becomes the son in law of the mother and father of the wife.

-a relationship does not exist between the relatives of one spouse with the relatives of the other spouse.

Relationship by Adoption:- created as a result of a special contract between the adopter and the original families of the adopted child.

Effect of Family Relationship

-creation of rights, creation of obligations and making the related persons incapable of performing some juridical acts. (The law prohibits marriage between close relatives. The incapacity to marry)

Chapter Two: Marriage

Betrothal: - is defined under article 560.FDREC recognizes the right of individuals to form a family with their own free and full consent.



between
emotional

Family

- RFC has excluded the concept of betrothal as a whole. However, some regional family codes maintain the concept of betrothal with modification. Benishangul Gumuz, Amhara, SNNPR

Definition of Marriage:- is the natural and fundamental unit of a society and an important legal and social institution.

The Revised Family Code and the regional family codes as an institution, rather than a contract.

Modes of Conclusion of Marriage:- Civil, Religious and Customary Marriage.

Civil Marriage (Marriage Concluded before an Officer of Civil Status):- The formalities r residence, giving notice to z officer, appearance personally, the obligation on the witnesses to declare, under oath, that the essential conditions for marriage are fulfilled, the future spouses need to declare openly that they have consented to enter into the marriage.

Religious Marriage -marriage by their religion or by the religion of one of them.-

Customary Marriage- Article 4 of the RFC- Considering the shortcoming of article 580 of the Civil Code, the RFC included the custom of the community in which the parties are living at the time of conclusion of marriage.

Marriage Celebrated Abroad -new introduction in the RFC- article 5

Essential Conditions of Marriage - biological factors relate to age, sex and state of health, psychological factor relates to the freedom of will,

sociological aspect pertains to issues like marriage between persons related by consanguinity and affinity as well as by adoption and it also incorporates bigamy.

1) Consent- Article 34/2 of FDREC- recognizes some grounds which would vitiate the consent
Fundamental Error- article 13/2 of the RFC -Judicial Interdiction-
Violence (Duress)- article 14 of the RFC

2)Age-

3) Relationship - existence of prohibited degrees.

4)Bigamy

5)Period of Widowhood - by requiring the female to wait for a period of 180 days following the dissolution of a previous marriage, the law tries to avoid any conflict of paternity. Exception is zero Article 16

Opposition to Marriage- The society as well as the executive organ of the government, has the obligation to oversee the observance of these essential conditions.

When the condition violated is age- the parents, public prosecutor, any other interested person' (who may be directly or indirectly affected) eg, NGOs which are working on the prevention of underage marriages.

When the essential condition violated is relationship by consanguinity or affinity- the ascendants of both or one of the future spouses, their brothers and sisters who have attained the full age of 18 years, the public prosecutor

In cases of bigamous marriages- the previous wife or husband, the public prosecutor,

In the case of judicial interdiction- the guardian, the public prosecutor

Effects of Violation of Essential Conditions of Marriage

A void act is an empty act. It does not achieve what it sets out to do so.

A voidable act is an act which, although it contains a defect, has its intended legal effect.

A voidable marriage is quite different from a void marriage.

the Ethiopian law recognizes only voidable marriages (A marriage which has been concluded when one or more of the essential conditions are lacking will be invalidated.)

from the date of invalidation, the marriage will cease to exist, and the consequences of dissolution of marriage will follow.

There r civil as well as criminal consequences of violating each essential condition.

Impediment to the celebration of the marriage- period of widowhood - the marriage will not be dissolved

Underage marriages: -Art 31- Bigamous Marriages: - Article 650 of the Criminal Code

Defective Consent: - Articles 34-36

Chapter Three: Effects of Marriage

The contract of marriage, if valid under the law, will govern the pecuniary effects as well as the personal relationship of the spouses.

Personal effects of Marriage – it produces special obligations between the husband and the wife as a result of their status as spouses.

- 1) Respect, Support and Assistance- Article 49 RFC
- 2) Family Management and care of the children.

3) Cohabitation- 'The jurisprudence holds that the unjustifiable refusal to have sexual relations with the spouse constitutes a violation of the obligations of marriage.'¹ The RFC also requires the spouses to have sexual relations normal in marriage unless these relations involve a risk of seriously prejudicing their health. As a result of this obligation, one cannot talk of marital rape under the Ethiopian law. Planiol, 514-515

4) Duty of fidelity

Pecuniary Effects of Marriage

Personal property- the property which the spouses possess on the day of their marriage, or which they acquire after marriage by succession or donation, will remain their personal property.

the party claiming to retain the personal property has to apply for the declaration of the court of such facts.

Common Property of Spouses- income of the spouses- Irrespective of its source, income is the common property of both spouses.

personal efforts of the spouses, meaning the income acquired through employment, income derived from the common property, or thirdly, income derived from personal property.

as far as the income from personal property is concerned, there is a belief that the other spouse has contributed to the up keeping of the property and hence the generation of income. As a result, the income is made common property.

- *There is a split between judges as to whether the retirement pension is a common marital property or not.*

- *the employee's contribution is made during the marriage, there is no doubt that the four percent contributed each month is a marital property.*

-Article 63- all property in the marriage will be considered as the common property, unless the other spouse proves otherwise. (presumption)

- the legal presumption would still be applicable even if the property is registered in the name of only one spouse.

Management of Personal and Common Property of Spouses- article 59- the contract of agency entered in between the spouses for the administration of personal property of one of them will not require, unlike other contracts, the approval of the court.

Debts of Spouses- personal debt or debt incurred in the interest of the household- Article 70

However, in this circumstance the right of the other spouse should also be considered

if the common property is not enough to cover the debt, the creditor may proceed to the personal property of either of the spouses.

Chapter Four: Proof of Marriage

Registration of Marriage- mandatorily, marriage shall be registered by a competent officer of civil status irrespective of the form of celebration of marriage. Article 29

Proof of Marriage by Certificate of Marriage- the certificate issued by the officer serves as a primary means of proving the celebration of marriage.

Proof of Marriage by Possession of Status- the fact that a man and a woman who live together are deemed to be married by those who know them.

Chapter Five: Dissolution of Marriage

Grounds of Dissolution

Dissolution by Operation of the Law- article 75/a- death of one of the spouses, absence, non fulfillment of the essential conditions

Divorce- 1 Divorce by Mutual Consent- they are not required to divulge their reasons to the court.

The power of the court in cases of divorce by mutual consents is limited to counseling the spouses either jointly or separately to renounce their wish to divorce.

2 Divorce by Petition- it may be only one of the spouses who requests for the ending of the union; or alternatively, both the spouses may request the divorce.

Unlike the Civil Code, the RFC provides for optional arbitration of family disputes. However, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months.

Effects of Dissolution of Marriage

1 Child Custody- The visitation right of the non custodial parent & how much s/he should be given for the maintenance of the child? is also an issue to be determined at the time of deciding on the custody of the minor.

the principle of “best interest of the child” in determining custody issues. Article 3 of the CRC

consideration of best interests must embrace both short and long-term considerations for the child.

the interest of the child being a primary consideration, not the sole consideration, : “**...shall be a primary consideration**”.

The 1995 FDRE Constitution under article 36 recognizes the different rights of children.

by virtue of article 9/4 as well as 13/2 of the Constitution,

Article 113 of the RFC, 221/2

When seeking the opinion of the child, age of the child in which he can make a reasonable preference.& the environment in which the child’s preference is to be obtained. The presence of the parents

2 Liquidation of Pecuniary Relations- the property is determined to be the personal property, the owner of that property may retake it in kind, art 86

debts incurred in the interest of the household are considered to be common debts, art 89

3 Partition of Common Property- article 90,

CHAPTER SIX

IRREGULAR UNION

The Concept of Irregular Union *de facto* union

It is the union of a man and woman established solely by the consent of both parties.

What has been provided under Art.709 of the Civil Code has been reiterated by Art.99 of the Revised Family Code and the regional family laws.

irregular union is established where the relationship is analogous to marriage it is because of this feature that irregular union is quite different from what is known in Ethiopia as “kept woman” or “kimit”

Why Do People Live in an Irregular Union?

the reasons encompass roots in cultures of societies that have accepted or tolerated informal families, socio-economic changes and especially in Ethiopia absence of knowledge of the legal consequences of one’s relationship with another.

The Need for Legal Protection

there is no reason that irregular union is not protected by law since the living situation in an irregular union is as much as familiars as marriage

an irregular union creates a family, children are born to such union, a man and a woman like marriage. p. 123

Legal Effects of Irregular Union

Introductory Remarks

The 1960 Civil Code as well as the current family laws of Ethiopia do not say any thing as to the requirements for the formation of a valid irregular union.

Although the laws are silent, the conditions that need to be satisfied in marriage must be satisfied.

(A) Consent- No one can be forced to do anything without his consent.

(B) Capacity (C) Prohibited Degrees

(D) Other Impediments- period of widowhood and the existence of another irregular union

Legal Effects of Irregular Union

-Absence of Bond of Affinity- Art.100

-Duty to Contribute to the Common Expenses- Art.101

- Community Property- art 102- Under the current family laws, irregular union has been made to give rise to community property between the cohabitantes provided the relationship lasts for three years or more.

Cohabitants in irregular union cannot agree that no community property is created during their union. Art.103 and Arts.85-93 RFC).

-Debts of the Man and the Woman in Irregular Union- Art.102 (3), 103 cum Art.93

- Filiations-

Proof of Irregular Union- the primary and frequent mode of proof is possession of status as opposed to documentary evidence.

Possession of status is said to have comprised some three facts known as *"nomen"*, *"tractus"*, and *"fama"*.

"Nomen" is the fact of having the name which indicates the status;

"tractus" is the fact of being generally reputed as having the status by all persons with whom family or business relations took place; and

"fama" is the fact of being generally recognized and treated by the public as having the status.

The RFC and the regional family laws have adopted a single mode of proof, they have singled out possession of status as a mode of proof of irregular union by ignoring proof by an act of notoriety. article 106

(a) the fact that the man and the woman behaved as married people

(b) That they are considered as married people by their families and

(c) The fact that both are considered as married persons by the community.

Termination of Union- may be terminated unilaterally or by mutual consent in addition to the clear instance of termination of the union by death.

Though not clearly provided, an irregular union may also be dissolved by a court order Art.32 cum Art.100(2)

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CHAPTER SEVEN

FILIATION

Maternal Filiation- The status of being brother and sister, father and child is established only after the establishment of maternal filiation.

the presumption of paternity flows from maternity. A person will be a father of a child because of the presumption if such a man had relationship provided by law with the mother.

the maternal filiation is established from the sole fact of birth irrespective of the type of relationship that resulted in the conception of the child.

Contestation of Maternal Filiation - (Arts.163-166 of RFC) , can be contested at any time by any interested person.

With a view to protecting the already established status, the law restricts the conditions under which the contestation of status may be admitted.

Paternal Filiation- Art.36(1) of the FDRE Constitution, Art 7 CRC

the 3 modes are,

1)Presumption of paternity- Arts.126-130 - The presumption is attached to a person who may happen to be the husband of the mother of the child or the man in an irregular union at the time of conception or birth.

-1st at the time of conception or birth of the child the mother had relations provided by law with a certain man. b/c cohabitation and fidelity r zere

as regards the duty of fidelity, the law nowhere states that partners in an irregular union are duty bound to observe the duty of fidelity. But by analogy we can apply .

However, the analogy as regards the duty of fidelity becomes senseless when it is seen in light of the Criminal Code of Ethiopia. Art.652(1)

-2nd birth or conception within the legally provided union.

2) Acknowledgment of Paternity

(A) Scope of Acknowledgement- is an important method by which the children conceived or born out of a legally provided union may gain status vis-à-vis their fathers.

The acknowledgement of adulterine (zimut) and incestuous (beqirb zemedamoch mekakil betederege wosib yeteweleda) children is considered as an assault to the legitimate family.

Art.131 is only meant to avoid interference of acknowledgement if the child has an already established filiation by presumption of paternity and not to exclude disowned and incestuous children from the benefit of the voluntary acknowledgement of paternity. Art.192

(B) Form of Acknowledgment- Art.133

- a declaration made before an officer of civil status; or
- a will made in writing; Arts.881 and 884 of the Civil Code or
- a document attested by a competent authority.

(C) Acknowledgement to be made by whom- it is to be made personally by the alleged father of the child.

(D) Acceptance of Acknowledgement to be made by whom?- Art.136

Acknowledgement cannot be effective unless it is accepted by the child to be acknowledged where such child is of age.

If the mother is alive and in position of manifesting her will an acknowledgment could be effective only if she accepts it as well-founded. (possibly be the father of a child)

F. Non-revocability of Acknowledgement (Art.140 of RFC)- the principle Pacta Sunt Servanda works.

However, revocation of acknowledgement may be allowed when the father who made the acknowledgment is a minor.

G. Annulment of Acknowledgement- art 141 If the consent of the acknowledger is vitiated by a vice of consent, acknowledgement may be annulled (invalidated).

H. Several Acknowledgements Prohibited (Art.142 RFC)

3)Judicial Declaration of Paternity (Arts.143-145 of the RFC & Art.758-761 of CC)

Regulation of Conflict Paternity

there is no possibility where a child can have two fathers by operation of two modes of establishing paternity in different “hierarchies”.

The conflict arises when the mother has a relation (marriage or irregular union) provided by law with two or more persons and the child could simultaneously be attributed to the person in each relation.

Disowning Art.177 vs 166-178

A)Meaning of Disowning - is a “...term applied to the act the purpose of which is to wipe out the presumption of paternity established against the husband, when he cannot be the child’s father.

-Persons other than the presumptive father have nothing to disown.

B)Disowning as Distinguished from Other Modes of Contesting Legitimacy - one can bring an action in contestation of maternity as per Art.163-166

In suit of disowning, however, one is specially contesting that the presumption of paternity taken against him is contrary to the truth. Here, the person is contesting his paternity. As Art.167

action to disown is brought to disclaim the legitimacy of children who are under the protection of the legal presumption that they are the children of the person contesting.

unlike the other modes of contesting legitimacy, disowning is contestation of paternity.

Proof of Filiations

Proof of filiation is not establishment of filiation but it is rather proving the existence of such fact where such fact is contested by interested third parties.

- 1) Proof by Record of Birth and Possession of Status - Art.154 vs Art.332(2) of the RFC and the relevant provisions of the Regional Family laws.
- 2) by possession of status- art 155 vs Art.156- Before one resorts to prove his case by possession of status, one should convince the court that birth certificate was not issued from the very out set or birth certificate was lost, destroyed or stolen.

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CHAPTER EIGHT

ADOPTION

Adoption Defined

The creation of parent-child relationship by judicial order between two parties who usually are unrelated. Black's Law Dict.

Adoption in Ethiopia both in country and inter country is governed by international laws and conventions to which Ethiopia is a signatory and by its national laws particularly the RFC and regional family laws.

Essential Conditions- Art. 184 vs CRC

As to marital status of the adoptive parents, there is no provision which prohibits adoption by a single person. However, if the adopter is married the child is adopted by spouses jointly as per Art.180.

Art.190(1) of the RFC provides that both the father and the mother of the adopted child must give their consent.

an agreement of adoption does not produce any legal effect unless it is approved by the court.

-the court is required to take into consideration, Art.194

Effects of Adoption

A)Marriage- Art. 181 of the RFC also provides that an adopted child shall, for all purposes, be deemed to be the child of the adopter.

B)Succession- there is no provision under our law which permits or prohibits an adopted child from inheriting his natural parents. But, 2 arguments r here

-First the child is considered as a child naturally born into the family of the adoptive parents, he forfeits the right of inheriting his natural parents, for Art.836

-Second as the adopted child shall retain his bonds with his family of origin, if so his right to inherit

is not in jeopardy as his relation isn't dissolved.

However, there is no a provision in the Civil Code which prohibits the adopted child from inheriting his natural parents.

With regard to the inheritance of the property of the adopted child, it is the family of adoption that is the ascendants, descendants and collaterals of the adoptive parents who have the right to inherit. Art. 183(3)

C)Rights and Obligations as to Support and Care (maintenance)- Adoptive parents are duty-bound to support and care for the adopted child. Art. 198

Inter-country Adoptions

The first scheme of inter-country adoption was arranged in the 1940s by the family welfare association in England in conjunction with the American Branch of the International Social Service Organization.

In Ethiopia, the main cause for the start of inter-country adoption as an alternative care for orphaned and abandoned children was the 1974/75 draught and famine that resulted in orphaned and abandoned children.

Nowadays in Ethiopia, there are two kinds of inter-country cases. The first one is the biological mother voluntarily relinquishes her children for personal reasons (private inter-country adoptions)

The other is adoption of orphaned or abandoned children or children whose parents are ill and hence have no one else to act on their behalf (agency inter-country adoptions)

-in the field of private international law, two aspects must be distinguished. One concerns the choice of law; the other the exercise of jurisdiction.

Placement of the Child - the placement of a child in another country should be carried out by competent authorities and must not result in financial gain for the parties involved.

Selection of Adoptive Parents- the examination of the personal qualities of the adopter is of special significance. Art.193

Safeguards for Children in Inter-country Adoption

Follow-up Work- This can be done by requesting concerned governmental as well as non governmental organizations found in the child's country of residence eg periodical visits

The Child's Right to Identity and Secrecy- Art. 7 of CPC states that the child's right to know its natural parents will have to be restricted by operative legal solutions, aimed at keeping the

adoption secret

Prevention of Unlawful Acts in Inter-country Adoption

in most states it is a crime to offer or receive money or any valuable consideration for relinquishing or accepting a child for adoption Art.11 & Art.35 CRC

Hague Conference on Inter-country Adoptions calls for adoptions to be organized by authorized adoption agencies.

Revocation of Adoption

it cannot produce any legal effect unless it is approved by the court. Art. 195 Art. 196

The court, before giving the decision of approval, conducts serious investigations and inquires to make sure that the agreement of adoption is in the best interest of the child in all respects.

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CHAPTER NINE

OBLIGATION TO SUPPLY MAINTENANCE

Rationale behind the Obligation- a moral duty that exists among family members. When a member of a family becomes needy, no one is nearer than the family members to maintain such member.

Subject Matter of the Obligation- Art.197- maintenance comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation depending upon the financial capacity of the debtor.

Persons between whom the obligation exists- Art. 198-213 a person is obliged to supply maintenance to his/her adoptee or adopter as the case may be.

This is because Art.181 of the RFC clearly provides that (without prejudice to Art.182 of the same code) an adopted child for all purposes, be deemed to be the child of the adopter.

maintenance creates a debtor creditor relationship.

Termination of the Obligation- Although the Ethiopian Family laws have not fully incorporated the grounds of termination, z ff r

A) Agreement of the parties:- The debtor and the creditor may agree to terminate such relationship without affecting the mandatory provisions of the law.

B) The ability of the creditor to earn his/her livelihood:- one is entitled to claim maintenance allowance when one is not able to earn his/her livelihood by his her/own effort due to some reasons.

C) Inability of the debtor to discharge the obligation

D) Condemnation of creditor (Art. 200 RFC):- where z creditor commits or attempts to commit a criminal act against the life or property of the ascendants or descendants, spouse z debtor & z latter.

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CHAPTER TEN

SETTLEMENT OF DISPUTES

Settlement of Disputes Arising out of Marriage and Irregular Union

Settlement of Disputes by Court- Article 91, 82 , 81 113,111

if the spouses petition the court for divorce, the RFC requires the courts to discuss with the parties patiently and give the parties a cooling period in order to calm down their anger.

The court directs the parties to arbitrators of their own choice so that they will end up their dispute in reconciliation.

-113(1)- practically courts render decisions without giving reasons as to why the custody of a child is entrusted to the father or the mother. zis is a problem

-courts give decision only on the interests of the children. but there must be additional conditions that are to be taken into account by the courts.

-Courts after pronouncing divorce close the file and there is another file to be opened for the partition of property of the spouses because the court considers this case anew.

Settlement by Arbitration- Although family arbitration was criticized for not treating women in equal footing with men, the RFC and the regional family laws have retained this alternative dispute resolution method. but have significantly reduced their power.

arbitration could only serve as an alternative mechanism of dispute settlement and the reason for this is that if arbitration outs regular courts for matters of family disputes then the rights of women would be at stake.

Art. 119 of the RFC confers the power upon the disputants to appoint the arbitrators and the number of the arbitrators is not limited.

Article 121- z sole duty of the arbitrators is to make an exhaustive effort to reconcile the spouses.

Article 82(2) , 120,

Settlement of Other Family Disputes

1)Child Custody- believed to be the best possible individuals for the proper upbringing and nurture

of their children.

Article 113(1) of the RFC, the court, after pronouncing the dissolution of the marriage, has to deal with three important matters: child custody, maintenance allowance for the child and visitation right of the child and the non custodian parent.

The RFC tries to state elements that the court has to take into consideration rather than applying the 'best interest' standard or the outdated 'maternal preference' rule.

2) Maintenance Allowance- Article 198, 113, 202, 197

3) Visitation Right- granted to non custodial parent. it should not go against the best interests of the child.

Thus, courts put several restrictions on this right like frequency, length and location of visitation and whether someone else or third party besides the non-custodial parent must be present.

there are cases where by the court simply awards the child custody right and visitation right to either of the parents based on the mere joint agreement of the parents.

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2. LAW OF SUCCESSIONS

CHAPTER ONE

DEVOLUTION OF SUCCESSIONS

General considerations of THE devolution of A succession

1) The Concept of Patrimony- is the estate that descended from the father to his descendants. However, this does not exclude the estate that descends from the mother to her descendants and/or from other ancestors in the paternal as well as in the maternal line.

2) Opening of Succession- Article 826 of the CC, the succession of the person opens at the place he/she had his/her principal residence (174) at the time of his/her death.

3) Things making up a Succession- Art. 827 - As a matter of principle, all of the property which were owned or possessed by the deceased on the day of his/her death (hereditary estate) shall

constitute his/her inheritance.

*Life insurance Art. 691 Com C.

*Public Servants' Pensions Proclamation № 345/2003 and the amendment Proclamation № 424/2004. Pension is money payable to the spouse, children or parents of the deceased person based on conditions

Art 35(1) of this Proclamation, if a person who is a government employee dies, the widow or the widower would be entitled to receive 50% of the pension to which the deceased was or would have been entitled.

The spouse or the relative of the pensioner has no right to pass the pension allowance to which he/she is entitled to his/her heirs when he/she (the spouse or the relative) dies. Therefore, pension allowance does not constitute the hereditary estate of the deceased.

Pension money is not the estate left by the deceased at the time of his death. The purpose of pension is to support the pensioner when he is unable to earn his livelihood through his work or to support those who were dependent on the pensioner (only spouse and very close relatives)

*indemnity cannot form part of the inheritance of the deceased. For instance, if the person who is entitled to receive the indemnity payment dies, the money cannot go to his heirs.

3) Capacity to Succeed- Articles 830 & 831, the heir and/or legatee must survive the deceased (alive at the time of the death of the deceased) & the heir and/or legatee must not be unworthy.

the law assumes that such persons have died simultaneously (at the same time) and hence no one has survived the other (called Commorients) Art. 832.

these persons have not survived one another and they cannot succeed each other.

Art. 833, if the heir himself dies, all the rights of the heir in the succession of the deceased shall pass to the heirs of the heir.

in order to succeed the deceased, the heir and/or the legatee must not be an unworthy person. An heir and/or a legatee can become unworthy because of his criminal actions, 838- 840

When the father of a merely conceived child dies, the law considers that the interest of the child requires his consideration as a person.

The law of succession makes no distinction based on the status of a child whether such child is born in marriage, outside a wedlock marriage or he is an adopted child.

with respect to nationality of the heir, no distinction. But this rule is subject to the provisions of the CC which restrict ownership of immovable property by foreigners. Arts 390 – 393.

INTESTATE SUCCESSIONS Articles 842 to 848

the deceased leaves no will at all or a court for various reasons invalidates the will made by him, it is said that the succession is intestate.

Devolution according to the degree of relativity

A) First r/p- Children or other descendants are number one candidates to succeed a person (See Art. 842(1)). representation could be taken as an exception to the rule of survivorship.

B) Second r/p- the father and the mother of the deceased. In the case where one of the parents has died before the deceased, such parent shall be represented by his/her children (or other descendants).

C) third r/p- If the deceased is survived by all of the four grandparents, half of the hereditary estate shall be devolved on the paternal grandparents and the rest half will go to the maternal grandparents.

D) forth r/p- A person has eight great-grandparents, four on the paternal line and the other four on the maternal line.

Paterna paternis-materna maternis Art 851

The exceptional rule of paterna paternis materna maternis is designed to allocate an immovable property that is obtained by the deceased from one of the lines by way of donation or succession to the heirs of the line from which the property is obtained.

Escheat- When there are no heirs of the deceased up to the 4th relationship, the property shall devolve on the State.

Representation and renunciation- Representation is an exception to the requirement of surviving the deceased. As a rule, the heir must survive the deceased.

Renunciation is a refusal to accept the succession. A person may renounce the succession for various reasons. If he is relatively in a better economic position.

WILLS

A will is a juridical act that shall have a legal effect after the death of the testator or the will maker.

The law is very strict with respect to the formality of making a will. A will that does not satisfy the required formalities is invalid by the court of law.

Will is a unilateral juridical act which is different from contract, in which the latter needs at least two parties.

*** Conditions for the validity of wills**

1) Personal nature of wills - No any other person may take part in the making of a will on behalf of the testator or by way of assisting him.

According to Article 858 of the Civil Code, no two persons may make a will together using the same document, no joint wills.

2) Capacity to make a will- testamentary capacity commences upon the completion of the 16th year. Prior to this, the minor cannot make a will even with the consent of his/her legal representative. Art. 295 of RFFC .

judicial interdicted Arts 861, 368 and 862.

3) Provisions difficult or impossible to execute- Art 865 (1)- For instance, Ato Ayalew, in his will, gave the building of the Ministry of Education to his friend Lemma.

4) Illicit provisions- 865- If the purpose of the will is unlawful or immoral, its provision shall be of no legal effect.

4) Violence- Violence vitiates the freedom of making, modifying and revoking a will. it may not necessarily be directed toward the testator. Articles 1706-1709 and 1808-1818 are the provisions of the general contracts and they shall apply by analogy.

5) Undue influence- Although such influence affects the mind of the testator, it is not considered as a serious threat. However, there are exceptional circumstances in which undue influence could be a ground to invalidate a will or reduce the amount indicated in the will.

6) Fraud- In the case of undue influence, the testator seeks others' help. In the case of fraud, the testator may not necessarily be in a weak position. For instance, the fraudster may promise to do something to the testator, if the testator makes a will to the benefit of such a fraudster.

7) Error- it is not logical to invalidate a will for every trivial or minor error.

*** Form and proof of wills- There are three types of wills (See Art 880).**

1) A public will is a will that is read in the presence of the testator and of four witnesses. The testator can write the will in the presence of the witnesses. He/she can also write the will in the absence any person. He may write the will by himself or he may get it written by another person under his dictation in the presence of witnesses or even in the absence of the latter.

The law prescribes the fulfilment of very stringent formalities when one makes a will. The reason is the testator is not in a position to defend his/her positions if someone makes some fraudulent act against the will.

A deaf person, If he is unable to read the contents of the will, his presence serves no useful purpose as he has no mechanism of knowing the contents of the will.

2) Holograph will is a will that is totally made by the testator himself/herself in the absence of witnesses. Only literate persons may make it.

3) Oral will is a will made verbally to two witnesses. Art 892 of the Civil Code, the testator does not make an oral will under normal circumstances. He makes such a will when he feels that he is going to die within short period of time, particularly after accidents, shocks or similar situations. It can be said that oral will is not a proper will. The testator can make only restricted testamentary dispositions through an oral will.

* Revocation and lapse of wills- By another will, By an express intention to revoke, made in the same manner as a will, i.e., this must comply with the formalities set out by the law, By destruction, By alienation of the thing bequeathed

Lapse of will takes place by the operation of the law.

1)a holograph will shall lapse where it is not deposited with a notary or in a court registry within seven years since it has been made.

2) If a child is born after a will is made (whether a public or a holograph will) such a will, shall lapse if the newly born child accepts the succession.

3) However, such a legacy cannot lapse where the marriage is dissolved by death (but by court or divorce, it will lapse)

4) When the legatee dies before the testator.

5) When the legatee cannot succeed the testator, unworthiness.

6) When the legatee does not want to take the legacy.

* Contents and interpretation of wills- Art 909 lists down the contents of a will. But this should not be seen as an exhaustive list.

Courts, especially the Supreme Court may construe (or interpret) a will.

The general rule of interpretation is that words must be construed in their usual, or literal, sense.

* Conditional Legacies- suspensive condition or condition precedent, the legatee shall wait until a certain time lapses or until a certain circumstance occurs.

Resolutive condition or condition subsequent is a situation where the legatee brings back what he received from the succession when a certain condition is fulfilled.

* Charges- Charge is the order of a testator against his heirs and/or legatees in which he binds

them to take some responsibility or take care of one or more persons.

* Substitutio vulgaris- An alternative heir was appointed in the event that the person instituted as the primary heir failed to become the heir (e.g. because he died before the testator or refused the inheritance). Article 928

* Entails- It is a restriction of inheritance to a limited class of descendants for at least several generations. It is mainly linked with real estate. The object of entail is to preserve large estates in land from the disintegration.

* Disherison- is an order passed by the testator to exclude his heirs from the succession. It usually serves as a means of punishment for the misbehavior of his heirs.

Express disherison is a kind of disherison in which the testator excludes his/her heir from the succession in an explicit manner by stating clearly that he/she has disinherited the heir.

The law does not list down what things are justifiable and not justifiable. A justifiable reason is a subjective standard.

The court has a power to examine and decide whether the reason given by the testator is justifiable or not. it cannot ascertain whether the given reason is true or false. It is not possible to pass a decision by hearing only one party. Any statement that the testator gives is a true statement. Therefore, the heir cannot claim that the statement of the testator is untrue.

CHAPTER TWO

LIQUIDATION OF SUCCESSION

The Essence of "Liquidation" Article 944

Liquidation is the settlement of accounts or the winding up of the business. [It is] the act or process of making of clear, fixed and determined that which was before uncertain or unascertained. Payment, satisfaction, collection, or realization of assets and discharges of liabilities; winding up or settling with creditors and debtors.

heirs-at-law 1061(1) and/or legatees by universal title 915(1)

The Guiding Principles of Liquidation - Art. 942- So long as a succession has not been liquidated, it shall constitute a distinct estate.

But, what does "a distinct estate" mean? Literally, a distinct estate means some property set aside for a special purpose.

the law considers the succession a distinct estate. The primary reason behind this move seems to be the protection of the interests of rightful persons.

Who is the "Liquidator"?- Article 946

The liquidator, therefore, is nothing but the institution designated with the task of carrying out the liquidation of a given succession, natural or physical persons.

Mechanisms of Appointment of a Liquidator

1) Designation by Law- Where a person dies wholly intestate; or where the deceased dies without leaving a will at all; or where he dies leaving a will, but the will is either subsequently declared invalid by court or fails to appoint a liquidator, the function of liquidator will devolve to his heirs-at-law.

Article 947 “ipso facto” or “Designation by the law” - heirs automatically become liquidators by the operation of the law. They assume the office because of the mere fact that they happen to be the heirs-at-law of the deceased.

2) Appointment by Will- any person he thinks fit but he may choose one or more of his heir-at-law to be the liquidator of his succession.

the deceased may have left a valid will but had failed to make any express disposition as to whom he wishes to be the liquidator. Article 948(2) “**ipso jure**” to the legatees by universal title appointed in the will.

Akin to the term “**ipso facto**” in Article 947, the term “**ipso jure**” in Article 948(2) of the Civil Code appears to be confusing. The two terms seem to be misplaced erroneously. They both would have been more sensible if they switched places.

3) Incapable Liquidator- A person may be the heir-at-law of the deceased or might have been appointed a legatee by universal title by the deceased in his will.

Eg the law assigns the tutor of the incapable person to represent the latter.

4) Appointment by Court- It appoints a liquidator upon the application of any interested person. In the present context, a legatee by singular title or the public prosecutor could be regarded as interested person.

5) Other Cases of Judicial Appointment- The court may replace a liquidator already appointed in terms of Articles 947, 948, 949, or 950. Z grounds r 950 (1,2,3)

the court acts upon the application of any interested person (an heir-at-law, a legatee by universal or singular title, or the public prosecutor)

Nature of the Functions of the Liquidator- The function of liquidator is voluntary. No person is bound to take the office of the liquidator without his consent & may resign after starting his

functions (Article 954(2) cum. Article 961).

Powers and Duties of the Liquidator

the liquidator may not resign while there are perishable goods out there that seek his immediate attention.

Powers and Duties of the Liquidator

- Search for a will of the deceased - Determination of persons who are called to the succession
- Determination of the property that constitutes the succession
- Administration of the succession

Option of Heirs and Universal Legatees

Since succession is obviously an individual right, any person who has right to succeed a deceased person is at liberty to make an election as to whether he will accept the succession.

the rights of such creditors shall not be affected by the heir renouncing the succession in fraud of their interests. the creditors may, where it is prejudicial to them, apply to the court to annul the renunciation by invoking the device of “**Actio Pauliana**”

Certificate of Heir- an heir can before that apply to the court and obtain a “certificate of heir” Article 996 (1)

Petitio Haereditatis A lawful heir may sue the person who has obtained a certificate of heir without a valid title with a view to redeeming his right. The suit such an heir institutes is technically called the action of “**petitio haereditatis**”. Article 999

Art 1000- It is no good even if the defendant invokes the provision of property law that authorizes acquisition of ownership through possession in good faith. He cannot avail himself of this provision by claiming to have become the owner of such property as a result of his good faith.

administration succession- The liquidator is expected to administer the properties of the succession with the prudence and zeal of a **bonus pater familias**². must act as honestly and diligently as a good head of a family does.

payment of debts claimed from the succession-

1) debts which are imputable to the deceased- include the expense of the deceased’s funeral, debts he assumed during his lifetime, claims of maintenance by his rightful, and properties he bequeathed to legatees by singular title.

claimants of these particular debts are creditors of the deceased, rather than of the succession.

2) debts that are attributable to the succession- include the expenses of administration, liquidation, and partition of the succession such as those incurred for affixing of seals, drawing up of inventory, preservation of property, partition and delivery of the inheritance to the heirs, etc.

for purposes of payment, creditors are treated differently on the basis of the priority attached to the debts they claim.

Funeral expenses - Articles 1014 (a) and 1015 (1). Expenses incurred for purposes of administration and liquidation should be paid next to the funeral expenses art 1014 (b)

Debts of the Deceased - could be contractual, non-contractual, or penal by nature.

Creditors with special privilege are such creditors as workers claiming payment under employment contracts. Ordinary creditors are creditors who do not have any security or who are not conferred with a special privilege by the law.

Ordinary creditors whose debts are exigible are creditors with liquidated and mature claims.

creditors not exigible r wiz debts that are not yet liquidated and mature, those who have conditional claims over the estate may require deposit of securities from the liquidator to ensure that he will later pay their claims when they fall due or when the conditions attached to the claims materialize.

A legacy by singular title is a disposition whereby the testator calls a person, otherwise called a legatee by singular title, to receive a specific property which forms part of the inheritance, 912

In the normal course of events, a legatee by singular title may not get his legacy at all if the entire property of the inheritance is spent early serving the debts with precedence.

closure of liquidation - Article 1052 – 1059

CHAPTER THREE

PARTITION OF SUCCESSION

After the liquidation process comes to an end, the following phase is partition of the remaining hereditary estate among the heirs and universal legatees.

This phase shall exist only if some property is left from the liquidation phase.

Partition may not necessarily follow when liquidation comes to an end. The coheirs may jointly own the property that they acquired from the succession.

The joint ownership of property by the coheirs is different from the community of property of spouses. partition of the property may be made after some time if a co-heir applies to the court

-In the case of spouses, every property in the hands of the spouses is presumed to be a common property, while only the property obtained from the succession is the common or joint property of the coheirs.

-The common property of the spouses remains their common property so long as their marriage exists, but the joint ownership of coheirs stays only for a limited time, unless the coheirs agree to jointly own for longer time.

-The spouses have an equal right over their common property, but the coheirs may have a different proportion, especially in the case of testate succession.

Art. 1064 (1) seems to lay down yet another exception to Art. 1062.

Collation by coheirs-art 1064- 1078 -bringing back of properties that were given by donation to a descendant by the ascendant during the lifetime of the latter into the succession. Collation is devised to bring equality among the coheirs.

it is only descendant that has accepted the succession who should be obliged to bring back the donations he/she has received from his/her ascendant or parent. The testator may also exempt his descendant from collation

Modalities of partition- art 1079- 1096- be made as per the terms of the agreement to be made as between the coheirs.

Where the coheirs fail to agree on how partition should be made, it shall be made in accordance with the provisions of the law.

As a rule, partition must be made in kind.³ That is, instead of selling the property and dividing the liquid cash or the money, the law considers it good to divide the property as it is.

Z r/n b/n or among coheirs after partition- Basically, there will be no binding relation, whether contractual or legal. However, arts 1097- 1112.

Conventions relating to an inheritance

the law does not recognize any agreement made in connection with the inheritance of a person while he is still alive.

Any agreement as to how the succession of the deceased shall devolve on the heirs or an agreement made between third parties and heirs, particularly before the opening of the succession shall be of no effect.

Pacts on Future Successions- A “pact” is an agreement made between two or more people. The

3 Article 1086 (1), *id*

law does not allow people to make agreements on a succession that has not yet opened.

Partitions made by Donations- any contract or unilateral undertaking relating to the succession of a person who is alive will have no legal effect, unless it is expressly authorized by law.

However, under certain conditions, the law allows certain persons to validly partition their properties by way of donations while they are still alive - Article 1117

Such distribution is technically different from succession. Nevertheless, without prejudice to their technical differences, the two processes produce somehow similar legal effects.

partition should be made in compliance with the formality requirements prescribed by the law for donations **inter vivos**.⁴ Articles 2427 through 2470 of the Civil Code, which specifically govern donations, provide for those requirements.

Donation **inter vivos** is a donation made while the donor is alive. The donee receives the donated property during the lifetime of the donor.

Donation **mortis causa** is a donation given effect after the death of the donor. It is similar with a bequest left by a will. As such, it is subject to the provisions governing wills. art 2428 .

3 PROPERTY LAW

UNIT ONE

GENERAL OVERVIEW OF PATRIMONY, PROPERTY AND PROPERTY LAW

Rights protected under z Civil Law & z concept of patrimony

patrimonial rights r those that have a pecuniary value such as property rights over things and rights arising out of contractual relations or those arising out of extra-contractual relations.

patrimonial rights are also referred to as rights in-personam / personal rights/ because they can be exercised against a specific person or persons.

patrimonial rights over things/ property rights/ are governed by the law of property and they are also called rights in-rem/ real rights/ since they can be exercised against any person who may interfere with the right-holder's enjoyment.

The totality or unity of patrimonial rights and obligations of a person constitutes his patrimony.

extra patrimonial rights, those that cannot be assessed in terms money such as family, political and civil rights & governed and protected by family law, penal/ criminal law

4 Article 1118, *Id.*

THE CONCEPT OF PROPERTY

property means everything that has material or moral value for human beings beginning with their own body, reputation, and freedom to think and act.

in its narrower and proper legal sense, property may be defined as an exclusive right to control, use, transfer... an object or a thing of economic importance and its fruits, exclude all other persons from its use and enjoyment.

DEFINITION AND SCOPE OF PROPERTY LAW

Property law deals with the allocation, use, and transfer of wealth and objects of wealth. Property law does not deal with the rights, privileges in the abstract; it deals with relationships between and among persons.

THEORIES OF PROPERTY

There are two main groups of theories of property; the first group attempts to explain how private property came to existence, i.e. it describes the facts, which purports to show the origin of private property. It attempts to explain how things came to be owned privately.

the other group of theories is concerned with passing a judgment on the institution of private property and attempts to justify or condemn the institution.

THEORIES REGARDING ORIGIN OF PROPERTY

A. THE POSITIVIST THEORY- law is nothing but the command of the sovereign, that is, the rules promulgated by government officials for reasons of public policy, protection of individual rights, promote the general welfare, increase social wealth or maximize social utility, Jeremy Bentham.

B. THE HEGELIAN THEORY - Hegel concludes that the person becomes a real self only by engaging in a property relationship with something external. Such a relationship is the goal of the person.

Hence, private property originated in the person's attempt to actualize his/her free will, i.e., when someone extends his will to external things he makes that thing a part of himself.

C. THE OCCUPATION/ FIRST POSSESSION/ THEORY- the right of possession continued only for the time only the act of possession lasted. tries to justify the existence of private property on the ground that the first occupier should be rewarded and property acquired in such a manner is ethically justifiable

Property, both in lands and movables, being thus originally acquired by the first taker, which taking amounts to declaration that he intends to appropriate the thing to his own use, it remains in him, by the principle of natural law.

D. LABOR OR ENTITLEMENT THEORY- John Locke argues that natural reason tells us that men, being once born, have a right to their preservation, God has given the earth to humankind in

common.

Though the earth and all the creatures are common to all men, every man has a property in his own person to which nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his.

THEORIES REGARDING THE JUSTIFICATION OF PRIVATE PROPERTY

- A) Occupation theory tries to justify the existence of private property on the ground that the first occupier should be rewarded and property acquired in such a manner is ethically justifiable.
- B) Labor theory -private property is the result of individual labor because industry (hard work) should be encouraged by granting to a worker the ownership of the res, which is created by his labor so that even greater productivity is achieved.
- C) The Utilitarian theory the function of the legislator/ state is to maximize the sum of human felicity (Utility) or happiness, and private property, which is the expectation of protection provided by the state, is justifiable because it increases human felicity/ happiness.
- D) Hegelian Theory- Property is a part of the personality of the owner and the protections provided for property of the person are protections for the person.
- E) Marxist Theory- According to the communists, the history of all societies in the world is the history of class struggles between the slaves and freemen, feudal lords and serfs or vassals, the bourgeoisie and the proletariat.

These relations were not always based on equal or even fair exchange of labor and wages or other form of payments. . In effect private property served and is serving as a means of exploitation of the slave by the slave owner . . .

OBJECTS OF PROPERTY

'objects of property' may be defined as the goods or things over which a right of property may be exercised.

- 1) A thing, which is corporeal and tangible matter, which has an organic or physical unity, for example a horse, block of marble.
- 2) A thing, which is corporeal and tangible, but consists of specific things, for example, a flock of sheep, a house.
- 3) A thing, which is neither material/ corporeal/, nor tangible but which is an element of wealth, for example a copyright or a patent right, a claim for payment of sum of money...etc.

under Ethiopian law, arts 1127-29 & up to 1140

INTRINSIC ELEMENTS OF THINGS Art 1132

-Rights on or dealings relating to the principal thing shall include the intrinsic elements unless the

parties have agreed expressly that such right or dealings shall not apply to them.

- A thing that becomes an intrinsic element of another thing ceases to exist as a distinct movable thing.

ACCESSORIES OF THINGS Art. 1136

- In the absence of an express provision to the contrary, rights on and dealings relating to the principal thing shall apply to the accessory 1135

- Temporary separation of the thing shall not, in any way, terminate the character of accessories 1137

- Rights of an owner or possessor of a thing, which is considered as an accessory of another thing shall not be affected by its treatment as such. 1138(1)

- However, the owner or possessor of the accessory may not claim it from third parties in good faith who have acquired the principal together with the accessory unless his rights to the accessory are evidenced by a deed dated prior to date when it is so destined. Art 1138/2/.

- the owner/possessor of a principal thing may terminate the character of accessory of such thing at any time, but he cannot do so if a third party has already acquired a right in relation to the principal thing with the belief that he will benefit from the accessory. Art 1139

CLASSIFICATION OF OBJECTS OF PROPERTY

CORPOREAL AND INCORPOREAL THINGS - This classification is based on the physical or material nature of things or objects. Art 1127

Incorporeal things are things that do not have a material or physical existence, that cannot occupy space and hence that cannot be perceived by the senses.

MOVABLE AND IMMOVABLE THINGS - The basis of this classification is physical mobility or immobility and the value or importance attached to various types of property.

-SPECIAL MOVABLE THINGS- movable things by nature but to which the law attaches characteristics of immovable things. The law does so mainly because of the importance attached to these types of things.

includes things such as motor vehicles, ships, airplanes, televisions and businesses. Art 2267 (2) 3047 (2)

-MOVABLES BY ANTICIPATION- immovable things by nature but which the law considers as movable things. 1133

IMMOVABLE THINGS - our Civil Code does not define the concept of immovable things. It rather enumerates, under Art 1130, the things which are considered as immovable under Ethiopian law. Accordingly, land and buildings are considered as immovable things.

immovable things have more economic as well as social value and the law provides them more protection. Compare the provisions of Art 1193 and 1195, 1185 and 1186

-IMMOVABLES BY NATURE- 1130

- IMMOVABLES BY DESTINATION- 1136- are movable things that are placed permanently with an immovable thing for the latter's economic exploitation. horses, cattle, tractors and other movable

things, which are intended to facilitate the use and exploitation of a land, are considered as immovable things by their destination.

REAL AND PERSONAL PROPERTY-

Real rights/ rights in-rem/ refer to either a power to recover a specific thing, or more often a right that may be exercised against any person,

personal rights or /rights in-personam/ are rights that may be exercised against a particular person.

- The rules of intestate succession are different for the two types of property. Compare the paterna-patternis materna-maternis rule under Art 849-851

- Only personal property can be owned absolutely, where as real property could be split up in to successive interests-tenancy, lease usufruct...etc.

- Personal property was primarily liable for the payment of debts.

- Special rules of transfer apply to immovable things. Compare Arts1723/1/, 1185, 2877 and 2878

MISCELLANEOUS CLASSIFICATIONS

A. CHOSE (things) IN ACTION AND CHOSE IN POSSESSION

A chose in action includes all personal right of property, which can only be enforced by action and not by taking physical possession.

If A owes B ten pounds, B has a chose in action. An owner of a car has a chose in possession, because, even where another person is unlawfully using it, the owner has a right of retaking it.

B. FUNGIBLE AND NON-FUNGIBLE THINGS

Fungible things consist of movable things that, in ordinary dealings, are usually determined by number, measurement or weight and hence any unit is, from its nature or by mercantile usage, treated as the equivalent of any other unit.

Non-fungible things are movable or immovable things, which in ordinary dealings, are determined by their specific identity, A land or a vehicle

*Things may also be classified in to things that are used or enjoyed by consuming or alienating. food stuffs are used or enjoyed by consumption. These types of things cease to exist after the use. Similarly, money is used by alienation or transferring it to other persons in exchange for goods and services.

UNIT TWO

POSSESSION

THEORIES OF POSSESSION

1) SAVIGNY'S/CLASSICAL/ THEORY OF POSSESSION- possession consisted of two ingredients, corpus possessions (effective control) and animus domino (the intention to hold as an owner.)

2) JEHRING'S THEORY OF POSSESSION- He held that whenever a person looked like an owner in relation to a thing, he had possession of it unless, based on special practical considerations, the law denied him possession.

a possessor is a man who, in relation to a thing resembles an owner, i.e., who has direct physical control of such thing. no animus domino element

4) SALMOND'S THEORY- He started by distinguishing between possession in fact and possession in law.

He then distinguished between possession of physical objects, which he called corporeal possession and possession of rights, which he called incorporeal possession.

DEFINITION OF POSSESSION- it is the detention and enjoyment of a thing by a person himself or through another person in his name.

Possession in the narrow legal sense is the holding of a thing in the power of a person who intends to exercise, with regard to it, a property right. Art 1140

Possession is, in the broadest sense, the state or relation of fact that gives a person the physical, actual and exclusive capacity with regard to a thing to carry out acts of use enjoyment or transformation.

Though the holder and the possessor have the same physical control, the difference between them is found in the mental element, i.e., the intent of the possessor and what distinguishes the possessor from the mere holder is the animus domino or the desire to hold for one self and not on behalf of another.

ACQUISITION OF POSSESSION - is realized if the two constitutive elements concur, i.e., where the present and exclusive power to act physically with regard to the thing (corpus) and the manifestations of an intention to keep the thing as owner (Animus) exist.

DEFECTS OF POSSESSION- Art 1146/1/- Possession may be affected by flaws either in the mental element/ the animus /or in the nature of the physical acts / the corpus /

1)Precarious Possession, 1146 - if the person does not have a right of ownership in relation to the object he holds.

the possession of a usufructuary, a limited user /usage/, a tenant farmer, leaseholder or a pledgee, a creditor secured by antichresis, a tutor with regard to a minor's property is affected by the defect of precariousness.

2)Clandestine Possession- if the acts by which it was acquired and continued were not such as to be known to the outside, especially to those persons against whom they are to be claimed.

3) Violence- is possession acquired or continued by acts involving physical or psychological violence.

The Ethiopian law does not clearly declare violence as a cause for defectiveness of possession. 1146. However, we can deduce from the provisions of Art 1148.

4)Ambiguity (Dubiousness)- where it is not clear whether the person is holding a thing in his own name or in the name of another person. Art 1146/3/

EFFECTS OF POSSESSION

- Possession may create ownership either by occupation 1151, 1168
- Possession is a prima facie evidence of ownership, 1193
- Possession is the basis for certain remedies because the law protects a possessor, as it does not always know that a possession in question is unlawful. 1206

PROTECTION OF POSSESSION – b/c

1) It aids the criminal law by preserving the peace and order as the latter is best secured by protecting a possessor and leaving the true owner if there is one to seek his remedy in a court of law.

2) It is protected as part of the law of the tort since it is an extension of the protection, which the law throws around persons.

3) It is protected as part of law of property because it is difficult to know that the possession in question is unlawful.

TYPES OF PROTECTIONS

* **POSSESSORY ACTIONS**- legal actions or suits instituted by a possessor without touching the basis of the title. include actions to retain possession, actions in restraint of works by neighbors and actions to recover possession. 1149 and 1206

* **USE OF FORCE**- is this 'self-help' type of protection is considered as a protection provided for the person of the possessor or holder and not merely for the protection of his property. 1148

TRANSFER OF POSSESSION- may result from contracts such as sale, donation or operation of the law. Arts 1143-1145

LOSS OF POSSESSION - when one of the two elements, animus and corpus, is lost ceases to exist. However, a possessor shall not be considered to have lost his possession by the sole fact that, at a given time, he was not able to exercise physical control in relation to the thing or that he did not intend to hold it in his own name and for his own benefit. 1142

UNIT THREE-OWNERSHIP

DEFINITION AND ELEMENTS OF OWNERSHIP- includes the right of use and enjoyment Arts 1205/1/ and 1270-1271, possession that includes the right to exclude others 1204, 1148 and 1149, the right to transfer the thing and its fruits for consideration or gratuitously which could be inter vivos / while the owner is alive / or mortis causa/ upon his death/ and the right to charge them as security (mortgage or pledge) 1205/2/ and 3049/2/, the right to leave or abandon the thing or its fruits at will, 1189.

RESTRICTIONS ON THE RIGHT OWNERSHIP- Art 1204/1/, Arts 1319/2/ 1460 and 1464

PROPERTY RIGHTS WITH REGARD TO LAND AND WATER- Under Art 40 of the FDRE Constitution land/ both rural and urban/ land is declared to be the property of the state of Ethiopia and its peoples. See also Art 4 of the Federal Rural Land Administration Proclamation No 1997.

But the land use/ holding rights recognized by the constitution.

Regarding property rights in relation to water resources, Arts 1255 and 1447 vs Art 40(3) of FDREC of the Civil Code provide that waterways (rivers), lakes and underground accumulation of water shall be deemed to form part of a public domain, i.e., they can not be privately owned.

SCOPE OF RIGHT OF OWNERSHIP/USE OF LAND- There is a presumption that the owner/holder of the land owns what is constructed on it.

The ownership/holding of the land extends to a depth below, including all the objects located there. Art 1255(2) limits this right to a depth of 100 meters. The owner has the right to cut the roots of trees of a neighbor that grow into his holding.

ACQUISITION OF OWNERSHIP

- 1) **Derivative Acquisition;** Refers to the mode of acquisition right of ownership through transfer from one person to another, sale, donation, succession . . .
- 2) **Original Acquisition;** involves the creation of new property a right, which is independent of any preexisting rights over the same thing. includes occupation, possession in good faith, accession and usucaption/ acquisitive prescription

-Occupation is a mode of acquiring ownership by the sole fact of taking possession of a thing that does not have an owner with the intention of becoming an owner.

This mode of acquisition is largely limited to chattels such as wild animals, birds, fish /res nullius/ and abandoned chattels /res derelictae/ and treasures.

- possession in good faith is a mode of acquisition in which a person who purchases a corporeal movable thing from a person who is not an owner or who is not entitled to alienate or transfer a thing, becomes an owner of such thing originally as a result of his good faith.

This mode is not applicable to immovable things and special movables where production of title deeds is required. This is because the purchaser is expected to ascertain the true owner of a thing he is about to purchase by referring to officials registers.

- Acquisitive prescription (usucaption) is a mode of acquiring ownership title or some real interest through possession that is free from defects, exclusive and continuous (Art 1168 and 1150 junction of possession). Art 1168

where the owner leaves his property unattended and fails to claim its restoration within the period of time determined, the law assumes that the owner does not need the property

the rules governing acquisition of ownership through usucaption are not applicable to rural land in

parts of the country where land is the common property of the family, /rest holding/.

-Accession- it is through the union of two or more things belonging to two or more persons. If the thing which is joined does not have a master before, a person acquires it by the sole fact that nobody can claim it. 1171

Accession also applies to increase from breeding in case of animals/ accession by separation/. Hence, the owner of the mother shall become the owner of the calf.

*accession of movable to immovables- Crops sown on the land of another person 1172-1174, Plantations on a land belonging to another 1175-77, Buildings on a land belonging to another person 1178-80, Using materials belonging to another 1181.

* Accession of one movable to another movable- Adjunction or union 1183 (3), Transformation (specification) 1182, Commingling /fusion/ 1182(2).

TRANSFER OF OWNERSHIP RIGHTS Art 1184

The right of ownership of ordinary corporeal movable things (chattels) is transferred by the transfer of possession, pursuant to the provisions of Art 1143-45, 1186. If immovable 1185

PROOF OF OWNER SHIP RIGHTS- 1193-1203 - The mode of proof of the existence of a right of ownership varies depending on the type of the object of the right.

EXTINCTION OF OWNERSHIP RIGHTS- 1180-1192

UNIT FOUR- JOINT OWNERSHIP

Arts 1257-1308

DEFINITION AND SCOPE

Joint ownership or Co-ownership is the right of ownership exercised by two or more persons in relation the same object. Art 1257 (1).

The rules on joint ownership are developed and applied to cases where the relations between the co-owners are simple relations of common interest in a thing.

even though marriage results in the community of property of spouses common/joint properties of spouses are governed by special body of law, i.e. Family Law not by the law of property.

ADVANTAGES AND DISADVANTAGES OF JOINT OWNERSHIP

- to acquire certain property very important for their lives, w/c they would not have otherwise acquired b/c of lack of sufficient financial capacity by joining or contributing a lesser amount of money.

- help in achieving efficient utilization of scarce resources.

* it is usually difficult to obtain the agreement of all joint owners to reach a decision. Hence, joint ownership may hinder the free transfer of goods.

SOURCES OF JOINT OWNERSHIP

arise from an agreement/ a contract/ or a will or the provisions of the law (eg Art 1060,1393)

RIGHTS AND DUTIES OF JOINT OWNERS

- Right to Use and Enjoy the Undivided Thing/Property, and its Fruits, 1263 & 64
 - Right to Administer the Thing, 1265 & 66
 - has the right to dispose of his share of rights in the undivided interest in the thing jointly owned.
- See Art 1260

- has the right to request termination of joint ownership, 1271

* each co-owner shall bear, in proportion to his/her share, the costs of administration, taxes... and necessary costs (costs incurred to avoid loss or damage to the thing), Art 1267, 1268. However, 1268(3) and 1282(2).

SPECIAL CASES OF JOINT OWNERSHIP

A.PERPETUAL JOINT OWNERSHIP - in which joint owners do not have the right to demand termination. 1276

B. PARTY WALLS- a wall placed on the boundary line between two estates, and belonging in common to their owners, including the land on which it rests. 1278-80

C. CO-OWNERSHIP IN BUILDINGS IN WHICH FLOORS OR APARTMENTS ARE SEPARATELY OWNED - governed by two separate sets of rules. Ownership right on the individually owned units are governed by the rules of individual ownership discussed under Unit Three while the ownership of the common elements is governed by the rules of joint ownership discussed so far. 1281, 89

UNIT FIVE - USUFRUCT

DEFINITION

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

By its nature usufruct presupposes the possibility to use and enjoy a thing, which is its object, while preserving its substance. Hence, things that are consumed by their first use are not

susceptible of usufruct in the proper sense of the term.

SOURCES OF USUFRUCT - 1310, The law, Contract (2410) & Will (912, 929)

RIGHTS AND OBLIGATIONS OF THE USUFRUCTUARY

- The Conservation of the Substance of the Thing, Arts 1309(1) and 1330(2) – has rts of Arts 1341, 1148 and 1149, 1319(2)
- the right to use and enjoy the thing, and its fruits. Arts 1312, 1330/2/ and 1328
- * The obligation to up-keep the thing 1313 * obligation to pay all the charges 1314
- * obligation to inform the bare owner about any act of interference by a third person in the rights of the bare owner 1342
- * an obligation, at the time of extinction of the usufruct, to restore or restitute the thing to the bare owner or his agent.

RIGHTS AND OBLIGATIONS OF THE BARE OWNER

- the duty to refrain from any kind of interference with the right of the usufructuary to possess, use and enjoy the thing and collect and use its fruits.
- must undertake major repairs as defined under Arts 1337 and 1338, which are not result of the usufructuary's fault.
- an obligation to cover extra ordinary charges. Art 1315

EXTINCTION OF USUFRUCT

Art -1319-24

RIGHT OF USE AND HABITATION

Right of use is a temporary real right (for agreed period of time or for life the beneficiary) which entitles the beneficiary, called the user, to use a thing of another person and to receive its fruits such as profits or rents... but only with in the limits of his own and his family's needs. The right of use is not recognized under the Ethiopian Civil Code

RIGHT OF HABITATION /OCCUPATION OF PREMISES/

Right of habitation (occupation of premises) is merely a particular type of right of use, i.e., a right of use exercised over residential houses or premises.

Art 1353 of the Civil Code defines the right of habitation or right of occupation of premises as a right to live in a house or part of a house belonging to another person.

UNIT SIX- SERVITUDE

DEFINITION

It is a right in rem / real right/ over a definite plot of land (servient tenement) and annexed to

another plot of land (dominant tenement.). it is a property right vested in the owner/holder of one plot of land to use a land belonging to another for certain purposes Art 1359

PURPOSE OF SERVITUDE

to enable the owner of the dominant tenement to derive the best possible use and benefit from his land by giving him certain rights on the land belonging to another person, called servient owner. Servitude should be used exclusively for the purpose of using or exploiting the dominant land and it must be used exclusively for that purpose.

SOURCES OF SERVITUDE – 1362, may arise from a contract, a will, acquisitive prescription or the provisions of the law.

RIGHTS AND DUTIES OF THE PARTIES

where the instrument creating the servitude does not contain provisions dealing with the rights and duties of the parties, or where such provisions are not valid or where the manner of its creation and enjoyment is not clear, Art 1370 shall apply.

1)The owner/holder of the servient tenement shall have

- the obligation to allow the owner/holder of the dominant tenement to use his land 1359
- Art 1373/2/

2) The owner/holder of the dominant tenement, 1375, 77, 78

TYPES OF SERVITUDE

1)**URBAN SERVITUDES AND RUSTIC/ RURAL SERVITUDES** Art 1371

Urban servitude include right of view, right of way and the various other servitudes arising out of the law such as the right to install water, gas or electrical lines.

rural or rustic servitudes are those types of servitudes created and enjoyed in rural areas such as right of way or right to cross a parcel of land on foot, with animals, during the dead season, across fields, rights of pasture, watering animals, wood-cutting, irrigation.

2)CONTINUOUS AND DISCONTINUOUS SERVITUDES - a continuous servitude is a servitude that continues without continuous human intervention.

a discontinuous s. is that cannot exist without a continuous human intervention. Eg Art 1382

3) APPARENT AND NON-APPARENT SERVITUDES - *App s. are manifested by external works such as ditches, pipelines or an aqueduct, roads 1366*

Non-app S.are whose existences r not manifested by external works necessary 4 their enjoyment by z owner of z dominant tenement. Servitudes of pasturing animals, cutting wood & extracting

quarry.

EXTINCTION OF SERVITUDE –

- Waiver /release by the owner of dominant tenement 1381
- Art 1381(3) and (1) and Art 1366
- Redemption of the servitude by the owner of the servient tenement, Art 1383
- Surrender of the servient tenement to the owner of the dominant tenement 1374

UNIT SEVEN

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

RIGHT OF RECOVERY

DEFINITION

Right of recovery is a right of a person to recover a thing sold by an owner from the buyer by paying the price and costs the latter has incurred, it is intended to keep things within a certain group of persons, such as a family or joint owners. Art 1386

This right is always the result of legal provisions, may not arise from contract, will or any other source. Furthermore, it is a right personal to the beneficiary and hence cannot be transferred to another person, nor can creditors of the beneficiary exercise it on his behalf. Arts 1387 and 1397

PERSONS HAVING A RIGHT OF RECOVERY

- Relatives by consanguinity, Arts 1389 and 1394/2/
- Joint Owners shall have a right of recovery where one of the joint owners sells his share of right in thing jointly owned. Art 1260, 1261, 1388 and 1394

CONDITIONS FOR THE EXERCISE OF RIGHT OF RECOVERY- 1400, 1403, 1398, 1407(1)

EFFECT OF RIGHT OF RECOVERY- Arts 1406 - 1409

LOSS OF RIGHT OF RECOVERY- 1401

PROMISE OF SALE AND RIGHT OF PRE-EMPTION

A-A Promise of Sale- is a contract where by the owner of a thing undertakes to sell it to the promisee or another person specified if and when the promisee or such other person decides to buy it. Arts 1410 (1), 1416 and 1417).

B- Right of Pre-emption 1410(2), 1418

PROHIBITION OF ASSIGNMENT OR ATTACHMENT

arises from a contract or will where by certain things are transferred and where by the transferor

prohibits the transferee from assigning or transferring the thing to another person. The producer, maker, seller or owner of such thing may impose these prohibitions. Art 1426

UNIT EIGHT-COLLECTIVE EXPLOITATION OF PROPERTY

DEFINITION AND NATURE OF PUBLIC DOMAIN Art 1445

Things or property forming part of the private domain of the state are treated in the same manner as the private property of individuals and are governed by the rules governing privately owned property.

property forming part of the public domain of the state are governed by the rules dealing with collective exploitation of property rather than the rules governing privately owned property. properties owned by the public enterprises such as Commercial Bank of Eth, Muger Cement Fac, Harar Brewery.

while the buses owned by the Anbesa City Bus Services, Black Lion Hospital, Atse Yohannes School...etc are considered as the public domain of Ethiopia.

EXPROPRIATION Art 1460, Art 40(8) FDREC

the power of a sovereign state to take or authorize the taking of private property for public purpose or use with out the owner's consent but conditioned up on payment of commensurate/just compensation in advance.

Public purpose is a requirement of due process of law in the context of expropriation, and failure to comply with it may render the taking of private property unlawful and unconstitutional.

The first view holds that public purpose is equivalent to public benefit, utility or advantage.

The second view holds that public purpose exists only where the undertaking for which the property is to be expropriated is to be directly used or enjoyed by the public, Such as schools, hospital, roads etc. this view proposes a strict interpretation of the concept and requires the public to be the direct beneficiary of the proposed undertaking.

Art 2/5/ of the Expropriation of Landholdings for Public Purposes and Payment of Compensation Pro No 455/2005

EXPROPRIATION PROCEDURES UNDER THE CIVIL CODE Article 1463-1479

EXPROPRIATION PROCEDURES UNDER PRO NO 455/2005

UNIT NINE- REGISTRATION OF PROPERTY

NATURE AND TYPES OF REGISTRATION

Registration refers to a system, established and managed by appropriate state organs, in which various property rights are entered.

The main purpose of registration is to provide security to the right holder and to other persons to whom the property will be transferred.

Property registration systems may be 'documents or deeds' registration system or 'title or ownership' registration system.

Under a documents registration system, documents or acts creating or transferring rights on immovable things are filed or kept systematically to give notice interested parties a notice of the transactions involving the immovable concerned.

ownership or title registration systems register ownership or other right, such as usufruct, servitude or mortgage rather than the acts or contracts creating such rights.

PURPOSES OF REGISTRATION

registration of immovable and special movable properties and issuance of title deeds is creating security of property rights by recording the rights and encumbrances relating to the thing and providing evidence to the right holders.

It also enables a potential buyer or mortgagee to ascertain that he or she is dealing with a person who is entitled to sell or mortgage the thing.

THINGS REQUIRED TO BE REGISTERED

registration applies to immovable things and special movable things, because of their high economic and social value and they are easily identifiable, and various acts, public or private, which are intended to recognize, create, modify, transfer or extinguish rights related to them.

4 Law of Contract I

CHAPTER ONE

OBLIGATIONS IN GENERAL

The concept of obligation

a means of personal claim brought against another in order to force him before us to give us so as to we are able to enforce our rights.(to give or not to give, to do or not to do , to render rights to

others to do something)

Sources of obligations

In Ethiopian legal system, there are no clearly stated classifications of sources of obligations. But Art.1675 of Ethiopian civil code generally expresses obligations as arising from contractual agreements.

However, obligations arising from non-contractual relationships (from Art.2027-2178)

- from unlawful acts or obligation that arises from the causing of physical injury or obligation
- from the causing of material damage (from Art.2027-2161)
- from unjust enrichment (from Art.2162-2178).
- from the law, unilateral obligation imposed on citizens or contracting parties without their consent,(to pay income taxes, render military services, creditors, debtors, families to their children

Types of Obligations

*based on the nature of activities, and the number of parties legally bound by the obligation.

- 1) **Divisible obligation**- whereby a party undertakes to perform its obligations by dividing into parties.
- 2) **Indivisible obligations** -the performance of the obligation undertaken cannot be divided into parts.
- 3) **Positive obligation**- a person's obligation is to do or to give some thing to another.
- 4) **Negative obligation** (obligations not to do.)- a person's obligation does not to do some thing or it refrains from doing some thing.\

*Based on the number of parties legally bound, obligations can be classified into unilateral, bilateral, and multilateral obligations.

a) **Unilateral obligation**- arises from contract in which two parties are participate.

b) **Bilateral obligation** arises from a contract entered into by two parties in which these contracting parties are bound legally to each other on equal terms.

c) **Multilateral obligation** - where more than two persons undertake to perform an obligation.(Simple joint , Joint, Several and joint obligations)

The meaning of contract/contract law- Article 1675 vs 1678

Contract law is the whole collections of rules, which apply to contracts

Purpose of the contract law

supporting institutions of exchange, support and control the millions of agreements that collectively make up the market economy, empowers the parties to make agreements, creates smooth functioning of business transaction,

Scope of Contract Law

-article 1676(1) stipulated the application or scope of general contract to apply to contracts regardless of the nature thereof and the parties thereto.(the general rules of contract law apply to all contracts)

-may be applicable to extra-contractual obligations, unlawful enrichment obligation and so on. but 1677(2) ን ያጠናቅቃል!

Historical development of contract law

The Economic Analysis of Contract Law

- if voluntary exchanges are permitted-if, resources will gravitate towards their most valuable uses.
- to provide sanction for reneging, which, is in the absence of sanctions, sometimes tempting where the parties' performance is not simultaneous.
- to reduce the costs of the exchange process by supplying a standard set of risk allocation terms for use by contracting parties.

CHAPTER TWO FORMATION OF CONTRACTS

Non-Binding Agreements- Mere domestic or social agreements are not usually intended to be binding and, therefore, are not contracts.

the mere existence of agreement to be bound by defined obligation does not necessary make Contract

the phrase “...**agrees to be bound thereby**...” in Art. 1679 implies the parties' intention to take any controversies in relation to obligation to court thereby allowing the court to interfere in their relation.

Meeting of Mind (Art.1680) - the minds of the offeror and offeree meet upon common object of the contract.(*consensus ad idem* i.e. consent to the matter.)

obligation that one of the parties wants to be included in the contract never binds the other party unless such party knew and agreed to be bound by it. Art 1680 is a repetition of Art 1679 and hence

may even be deleted from the code.

Yardsticks- Capacity - Art 1716.

1) Consent (Art.1679-1710)- Communication of Consent (Art. 1681)- Consent is expressed (communicated) either in the form of offer or acceptance

Offer contains the intention of the person making it to be bound by the content of the offer.

Its elements r the content of the contract, the agreement of an offeror to be bound and request of the offeror to the offeree to be bound by the offer.

the following declaration of intention are not offer but advertisement

a) Sending price lists or tariffs (Art 1687 (b) b/c , may be taken as content of the contract *but dedication to be bound is missing*

It never indicate all terms of the contract such as due date, place of performance, quantity , etc. & will create *the problem of multiple acceptance.*

b) Posting up price list/tariff and catalogue in a public place - there would be multiple acceptances

c) Display of goods for sale to the public - only utmost contain the type of goods and their prices

d) Sale by Auction (Art.1688) - **e) Public Promise of Reward (Art 1689)** - becomes an offer only if it is addressed to an identified person or group

Effects of Offer (Art.1690, 1691, 1693(1), 2055)- the offeror has agreed to be bound it is to bind the him.

an offer cannot change his opinion. That is why it is necessary to distinguish an offer from mere declaration

the offer begins to be binding at earliest from the moment the offeree knew its content.

Change or withdrawal of an offer is not a fault when it is withdrawn or changed.

- a. before the offeree knows the offer or
- b. at the time the offeree know the offer or
- c. at any time before acceptance for justified reason

Acceptance (Art 1681-1685, 1689(1), 1694) (1893(3))- positive response to an offer i.e. it is a declaration of intention to be bound by each and every contents of an offer

the offeree (the current offeror) is bound by the new offer he makes until the time limit he fixes for acceptance expires (Art. 1690(1))

acceptance is communication of intention, like an offer, it can be made in all possible ways of communication.

Communication of acceptance by conduct means performing partly or fully the obligation proposed by the offer or benefiting from the rights proposed by the offeror.

The offeree does not have a duty to give response to the proposal of the offeror

However, in the following cases the offeree has a duty to respond a “no” answer if he does not want to be bound by an offer, otherwise his silence may be taken as a sign of acceptance by the offeror.

a. **Duty to accept:** - Art. 1690(1) & (Art.1683) - when the offeree is a monopoly supplier of goods or provider of services(EELPA)

b. **B .Preexisting Contractual Relation-** Silence may also amount to acceptance where

- *the content of the offer is to vary, supplement or complement preexisting contractual relation (Art. 1684 (1)).*
- *the offer is made in writing* that is addressed directly to the offeree (Art 1684(2)).
- *the offer should be written on special document* (Art 1684 (2)).
- *The offer contains warning that silence amounts to acceptance.* (1690(1) or reasonable period (Art.1691 (1) (Art 1684 (2))

Effect of Acceptance- Art 1679 and 1693(2) that once an offer is accepted the offeree is bound by his word. He can freely withdraw his acceptance before the offeror knows

Defect in Consent (Art 1696 – 1710) - The cause of defect in consent is either wrong information (mistake, false statement, fraud) or threat (duress, reverential fear, threat to exercise rights) or lesion.

a cause for invalidation of contract (Art 1696). However, Art 1808 & 1708, 1709, and 1710

Defect of Consent due to Wrong Information-

- ***Mistake*** (Art 1696- 1703)- on the content of the contract or on the identity of the other contracting

party.

A/ ***mistake must be fundamental*** (Art 1698)- elements of a contract should mean “content or object of a contract”.

mistake is fundamental when it related to the **object** or **nature** of a contract or **identity** of the contracting parties.

B/ ***the mistake must be decisive***- when the mistaken party proves that a rational person in his position would not have entered into such contract had it not been for the mistake (Art 1697). Art. 1697 also provides subjective criteria

Fraud (Art 1704)- an intentional act of preparing false information or changing or modifying the content of the subject matter of the contract in a manner that cannot be noticeable by ordinary observation. mixing up banana with butter, red ash with pepper...

A defrauded party can demand invalidation of contract where

A/ *the fraud led him to commit decisive error* (Art 1704(1)- It is enough if it is decisive

B *the fraud was committed by the party to the contract or he knew or should have known the fraud or derived undue benefit*

False statement (Art 1705) - Misleading conducts or silence may also amount to false statement
false statement can be a ground for invalidation of contract where-

A/ *there is a special relationship between the liar contracting party and the mistaken party*

B) *Such special relationship led the mistaken party to believe the statements of the other party.*

Defect in Consent due to Threat (Art.1706-1709)

Duress (Art.1706 1707)- warning the party that unless he enters into a certain contract certain harm will be done to him. Z ff r cumulative

1) *There is a threat or warning to cause harm* 2) *The harm is on the person himself, spouses or his ascendant or descendants*

3) *The harm is on person, life, property, and honor* 4) *The party believes that the harm will happen if he does not consent to the contract* 5) *The threat should be serious*

6) *The harm is imminent* 7) *The threat must impress a reasonable person*

-**Duress by third Party** (Art.1707)- differences between duress and fraud, Art 1704(2)

- **Threat to Exercise a Right** (Art 1708)- Z Art applies when some one has a right and uses it to obtain a proprietary interest in excess of what he deserves.

-**Reverential fear** (Art 1709)- psychological threat, undue influence (see Art. 868 civil code).

Defect in Consent Due to Lesion (Art 1710)

2) Objects of Contracts (Art 1711-1718)-

-Object of a contract is what parties have actually agreed to undertake. It is the obligation of both parties to the contract.

-Parties are free to enter into any type of obligation, obligation to do “not to do” or “to give” (Art 1712(1))

-However; parties may fail to specify all the possible contents of the contract. law, custom, equity and good faith merely supplements the contract.

-however, a contractual freedom is limited to attain social justice, peace and tranquility.

under Ethiopian law; freedom of contract is limited by, *Clarity of objects* (Art 1714), *Possibility of object* (Art 1715), *Legality of the object* (Art 1716(1)), *Morality of Object* (Art.1716 (1)), *Motives of the Parties*,

3) Form of Contracts (Art 1719 – 1730)- when part of the agreement is written while the remaining is unwritten, such contract should be taken as oral form and the written part could only be used as corroborative evidence to oral testimony.

Freedom of Form (Art 1719)- contract can be valid if consent, object and capacity requirements are fulfilled.

There is Limitation on Freedom of Form Art.1719 (2, 3) - limited by law or the offeror Art 1681 (2)

The reason for such limitation may be;- *Evidentiary value, Recalling content of contract, Indication of intention to create legal relation* (there remains little doubt that there was no intention to be bound & a party thinks twice before he gives his final consent to be bound.)

Contracts made in Written Form (Art 1721 – 1726)-

A/ contracts required by the law to be made in writing-

Contract relating to immovable - contracts that affect a right on an immovable except lease must be made in writing. sale, usufruct, servitude, mortgage, antichresis partition, compromise and even arbitration agreement concerning house or land should be made in writing.

Contract with public administration (Art 1724):- Once officials leave their office it is difficult to ascertain the content of the contract entered into during their stay in office (corruption)

Contract of guarantee (Art 1725 (a)), *Contract of insurance* (Art 1725 (b)), *Contract of marriage*,

Partnership contract ,Pledge for a loan exceeding 500 birr (Art 2828 (2) , Sale and mortgage of business (Art 152, 177 (2) comm. code) , Promise of sale and preemptions (Art 1412) ,Agreement prohibiting assignment or attachment of a certain this (Art 1430)

B/ contracts required to be made in writing by the parties (Art 1726)

C. Preliminary contract (Art 1721)- A contract that intends to lead to another contract shall be made in writing if the contract to which it leads is required to be made in writing either by the law or the parties.

D/ Variation of contract made in writing (Art 1722)- Variation of contract is a contract itself (Art. 1675). So, if such contract relates to contracts indicated under Art. 1723, 1724 and 1725, it should necessarily be made in writing

*parties shall make the extinguishing contract in special form if the contract to be extinguished was made in special form.B/c

-Extinction of contract is a contract itself

- Intention to create legal relation can be clear- If parties agree to extinguish written contract orally and the other party later on claims that he did not intend the agreement to create legal effect, his argument may be acceptable.

-Probatory value of written instrument (Art. 2005) A written instrument is a conclusive evidence to prove obligation.

Effects of form (Art. 1720, 2877 and 2878, Art 3052 and art 177(2), Art 222 commercial code)

Written form (Art 1727-1729)- there are forms other than written form. A contract is said to be in writing where (Art. 1727)- written, on a special form (Special form means any pure paper that is intended for a specific contract only) , sign & witnesses.

Other Special Forms- There is no need of witness to sign. The best example of such special forms is commercial instruments. Signing or issuing a commercial instrument is concluding a contract (Art 735, 748, 761, 767 of commercial code for example)

* The civil code provides that insurance contract shall be made in written form (Art. 1725 (b) and has to fulfill the requirement of Art 1727. But the commercial code simply requires that the insurance contract be supported by insurance policy. (SPECIAL FORM)

4) Capacity

Effects of Elements of Contract (Art, 1808-1818)

a contract that misses any of these elements is either **void** or **voidable**

Difference between void and voidable contracts (Art, 1808-1814)

Void contract(*void ab initio*) is a contract which parties intend to produce binding effect but does not actually have any legal effect, no existence from the beginning.

Voidable contract is a contract that has begun to produce effect intended by the parties carrying with itself certain birth defects that may destroy the effect it has produced.

Void- the sperm cell meeting egg cell but unable to fertilize Voidable- defective pregnancy
void contract cannot be cured but voidable contract may be cured by agreement of both parties to the contract (Art.1811).

A contract is said to be void when the object or form element are missed Art 1808 (2), voidable contract is due to defect in consent or lack of capacity (Art.1808 (1)).

In voidable the contract will be cured where- **Invalidation is not claimed within two years ተገደው ካልጠየቁ** (1810(1), **Contract is confirmed** (Art 1811(2) , **The injury is made good** (Art. 1812), **The vitiated provisions of the contract are avoided** (Art 1813).

Similarities between Void and Void able Contracts (Art 1815-1818)

-Unable to Produce Legal Effect on the Parties- like void contract voidable contract is also considered as void abolition once it is invalidated. Invalidation of voidable contract has a retroactive effect thereby denying the contract to produce any obligation from the moment of its inception.

-Reinstatement (Art 1815-1818)- a party who receives undue payment shall give it back. returning the thing (payment) may be difficult , so reinstatement may be made by paying compensation-

* *When Ownership of the Thing is transferred to Possessor in Good faith*

* *Loss or damage of the thing by fault of receiver* * Obligation "to do" or "not to do" (The contract requires the parties to perform certain intellectual or physical (labor) activities)

* Transformation of the thing- The receiver may substantially change or alter the thing

* Returning the thing is uneconomical-

Problems and Questions on Formation of Contracts p. 82

Chapter Three

Effect of Contract (Art. 1731 -1805)

What Does Effects of Contract Mean? (Art.1731)

- The two major principles of contract are freedom of contract and sanctity of contract. Sanctity of

contract indicates that parties are bound by their agreement (Morally & Legally)

-effect of a contract implies that it becomes the law of the nation in the sense that the executive has a constitutional duty to implement it and the judiciary has a constitutional duty to interpret it.

Interpretation of Contract (Art 1732 -1739)

giving meaning to the provisions of the contract by searching the intention of the parties (Art. 1734(1))

Searching Intention of Parties

**Presumption of Good Faith-* parties entered into a contract in good faith (Art. 1732). no party to the contract intends to deceive the other party by intentionally making the provision of the contract vague, ambiguous, silent or contradictory.

How to Search Intention of Parties (Art. 1734-1738)-* techniques to arrive at the probable **common intention of parties **at the time of conclusion of the contract**

a) *Conduct of the parties-* may be shown before, during or after the conclusion of the contract (Art 1734(2)).

b) *Context of the contract-*(Art. 1736(1))

c) Business practice- Art. 1713 and 1732, Art. 1735, Art. 1736 (2).

d) Good faith -(Art. 1735)

e) Equity

f) Positive interpretation(every provisions of a contract should also be given effect)

Interpretation in Favor of Debtor

the court may not always succeed in searching the intention , if the court is unable to know the intention, the law guides the court to interpret the controversial provision or word in favor of the debtor (Art 1738(1))

However, an exception to the principle of interpreting in favor of the debtor is contract of adhesion (Art. 1738(2)) , against the party who prepared such contract

the other party did not have an alternative except entering (adhering) to the stipulation.

Performances of Contracts (Art. 1740-1762)- fulfilling one's own obligation as agreed.

1)Who Performs Contract (Art. 1740) - by the debtor, his agent or by person authorized by court or law(tutors, liquidators, trustees and person authorized by court is either a curator)

But, we can easily argue that if the creditor accepts the payment, the debtor has no right to stop third party from performing the obligation since the creditor has a right to assign his right to a third

party without the consent of a debtor (Art. 1962)

2) Who May Receive Payment (Art. 1741-1744)- to the creditor or his agent

* *Payment to Incapables (Art. 1742)*

* Payment to Unqualified Creditor (Art. 1743)- valid when *Payment benefited the real creditor, Payment confirmed*

* *Payment to a person with a valid title-* although he is not the real creditor. Art-1996-1998, Art. 716 Art. 751 of comm. Code

* *in all cases* the debtor should be in good faith

* *Doubt as to the Creditor (Art. 1744)-* Art. 290 – 293 of the CPC he can deposit the debt in court

3) What to Perform (Art. 1745 – 1751)

- Definite Thing (Art. 1745 – 1746)- a thing that can easily be identified from similar things of the same species, Animals and immovable,

- *Fungible Goods (Art. 1747–1748)-* that are indicated in the contract by using generic terms such as pasta, teff, wheat, barely.

the thing is not expressly indicated in the contract, the contract is interpreted in favor of the debtor (Art. 1738 (1) and the debtor can freely determine its quality (Art. 1747). however, the quality should not be less than the average, Art. 1786 cum. 1748 (1).

- *Money Debts (Art. 1749–1751)- if a currency is unavailable here, convert the birr into Dollar in Ethiopia and convert that Dollar into Peru's currency in Peru's exchange market.*

4) Appropriation of payment (Art. 1752-1754)- is important when the debtor pays only part of his obligation.

* *Principal Debts and its accessories (interest and cost) (Art 1752)-* the part payment made by the debtor shall be appropriated firstly to the cost; secondly to the interest; and finally to the principal

* *Multiple principal Debts (Art. 1753-1754)- Choice by the parties & by the law*

5) Place of Performance- has an implication on cost of payment, currency for money debts and territorial jurisdiction of court. three alternatives; agreed place, residence of the debtor and place where the thing situates.

If they fail, in case of **definite thing** the parties should be presumed to have agreed to perform the contract at the place where such definite thing situate at the time of conclusion of contract.

Although it is presumed that parties had knowledge as to the where about of the definite thing at the time of conclusion of contract concerning such thing, lack of such knowledge never affect place of performance.

6)Time of Performance- The importance of time depends on the nature of the contract or obligation of the parties.

agreed time (Art.1756 (1), However the law still plays the gap filling role.

Art.1756 (3) does not contain the phrase *forthwith*. Instead it contains the phrase *whenever* which is retranslated as *as soon as* by G. Krzeczunowicz , so Art. 1756(2) is different from that of Art 1756(3).

In four cases the debtor may unilaterally postpone, Art.1757 cum.1759

* Simultaneous Performance- However, if time of performance of both sides of the obligation is contractually determined, there is no concept of simultaneous performance; both sides of the obligation should be performed on the date fixed by the contract (Art.1757 (1)

* Anticipatory Breach of Contract- when the debtor informs the creditor before the debt is due that he (debtor) will not perform his obligation (Art.1757 (2).

anticipatory breach Under Art.1757 (2) is a justification to refuse performance whereas under Art.1789 it is used as a justification to cancel the contract.

under Art. 1788 conduct does not unequivocally indicate anticipatory breach.

* Insolvency - Art.1868- he has to pay all his future debts on the date he is declared bankrupt

* Breach- for the purpose of Art. 1757(1) breach of contract includes refusal to give receipt

7)Transfer of Risk - is dependent on time of performance, Art.1759 should have been sub-article 3 of Art.1757.

It is an issue only in contracts that involve transfer of ownership.

8) Cost of Payment (Art.1760)- e.g. those of counting, measuring, weighing, packing etc.

9) Debtor' Right to Receipt (Art.1761-1762)- the debtor has a duty to prove that he has properly discharged his obligation (Art.2001 (2).

- Returning document evidencing obligation to the debtor raises the presumption that the debt has been paid (Art.2020)

Variations of Contracts

It is making amendments to the provisions of a contract because of fundamental changes in circumstance that the parties or the legislator does not want to tolerate.

Contract may be varied by the parties, legislator and judiciary. (a contract itself (Art.1675).

Art1763-1765 is intended to make clear to the judiciary that it does not have inherent power to modify contract. Inherent power to modify the contract belongs to the parties themselves or the legislator. Art.1766-1770 indicates the limits of delegation and guidelines to exercise such delegation.

Judicial Variation of Contract

-contract between persons having Special Relation- relations that are recognized by the law such as spouses, relation by consanguinity and affinity, employer-employee, subordinate, lawyer-client, doctor-patient and agent principal

-Contract with public administration - A government has legislative and policy making power that may enable it to change the balance of contract in its own favor.

-Partial Impossibility of Performance- the time of conclusion of a contract(Art.1813.), after the conclusion of contract(Art.1768), Art. 1748 is conformity with Art. 1768

-Time of Performance-(Art.1770)

CHAPTER FOUR

Non-Performance of Contract & Its Remedies

Meaning and General Remedies of Non-Performance- non-performance refers to parties failure/ breach to perform contractual obligations in conformity with the terms of the contract and the law. Offering performance at a place other than the place agreed up on (place fixed by law) also constitute non-performance. Delivering a thing that does not conform to the contract or delivering a defective thing also

- the parties may stipulate contractual remedies for breach, for example by incorporating penalty clauses 1886-1895 & z law of kt. has legal remedies.

- the law of contract generally recognizes three remedies

1) enforcement of the contract- forced performance(compelling the debtor (failing party)- Article 1776

- substituted performance(authorizing the creditor (victim) at the cost and expense of the debtor) 1777 and 1778

2) cancellation- its effect is to put the parties the position which would have existed, had the contract not been made. (claim back what he has paid or delivered)

-by court judgment (judicial cancellation) Articles 1784 and 1785 or Unilateral cancellation (in exceptional circumstances) 1786-1789

3) damages (compensation)- may be claimed in addition to either of the above remedies or independently. articles 1771 (2) and articles 1790-1805.

General remedies of non-performance under Ethiopian law- Article 1771- the enforcement of the contract, Cancellation, and Compensation /damages.

The pre-requisites for invoking the remedies of non-performance- 1772-1775-

Article 1772 provides the general rule that the giving of default notice, functions including that of reminding the debtor and reducing litigation.

Manner & how much time should the victim give to the debtor- 1773 & 1774.

there are exceptional circumstances where the creditor can resort to the remedies without giving default notice to his debtor- 1775.

5 Law of Contracts II

Chapter One

Extinction of Obligations

1) **Performance of contract** – discussed

2) **Invalidation and cancellation of a contract-**

Invalidation happens when there is defect in the formation of the contract. It is making an effective contract ineffective when it has a problem in its formation.

Its grounds are lack of capacity and lack of sustainable consent, the effect of contract is said to be restitution. The contracting parties are put to the place where they were before the formation of the contract.

the effect of invalidation and cancellation is the same in compensation.

Cancellation is making a contract ineffective when there is non-performance.

* The ground for invalidation is defect in its formation while the ground for cancellation is non-performance.

* Even though the effect of both invalidation and cancellation is restitution, cancellation

additionally entitles the party a compensation that rewards the benefit of contract.

Capacity and consent do not, however, render a contract ineffective. These grounds rather entitle one of the parties the power either to invalidate the contract or give it effect.

a contract is invalid, the reaction of contracting parties to a contract is not necessarily invalidation. Contractants can also resort to other options like refusing performance without having the contract invalidated.

Article 1810 connotes that a contract shall not be invalidated unless an action to this effect is brought within two years from disappearance of the ground for invalidation, 1845

The presence of invalid contract does not necessarily mean that the contract will be invalidated and the obligation will be extinguished 1811

Art. 1815__ effect of invalidation or cancellation

Although cancellation might be followed by compensation, invalidation can also be followed by compensation according to Article 1817 (2), as it shows that payment of compensation shall be made for parties to reinstate them.

However, the reinstatement effect of invalidation and cancellation is not z same.

Article 1790 (1) shows that damage shall be made good for injury of non-performance of contract. Invalidation is followed by compensation that puts the victim in his original position.

3)Termination of contract- making the contract ineffective starting from the time of termination. It does not have retrospective effect; rather it has prospective effect.

A) Bilateral termination-by the agreement of both parties, Article 1819

* The parties may effect termination pursuant to their contract provided that they have inserted such termination clause in their contract or agreed later.

* It may also put a condition upon the fulfillment of which the contract is terminated

* they can also agree later to terminate the contract

B) Unilateral termination- z same -it can also be made by giving notice in advance

C) Judicial Termination - Article 1823 and 1824.

Similarities and differences between invalidation and cancellation on the one hand and termination on the other

- zey are the same in that they extinguish contractual obligations.

-The ground of termination is not attributable to defect in the formation or non-performance. it can be made by agreement, unilaterally by one party or by court order.

-the effect of the two have retrospective , while the effect of termination is prospective. Article 1819 Sub (2) and (3) vs 1815

4) Remission of debt- voluntary release of debtor of his obligation by the creditor. Article 1825

However, the provision does not put express acceptance of the remission as a mandatory requirement. The debtor shall object when he is informed of the remission if he wants the remission not to be made. ዝም ካለ ግን silence as acceptance.

5) Novation - Article 1826- is substitution of an existing obligation by new obligation in its nature or object

the nature nor object of the original obligation is different from a new.

Novation in its effect does not extinguish only the principal obligating but also the accessory ones. Accessory obligations in pledge, mortgage and personal guaranty are extinguished as the principal obligation extinguishes

6) . Set off- *Article 1831*- can be made upon the fulfillment of certain conditions although the contractants owe debt to one another

- positive & negative conditions r in Articles 1832 and 1833

- Freedom of the parties is not only to wave their right to set off but also to extend set-off beyond the legally possible ones and set aside certain conditions. Article 1840

-Set-off and payments are not the same although both are grounds of extinction of obligation. Set-off is not mode of payment

- Appropriation of payment in the case of set-off , Article 1835 vs Art. 1752-1754 of the C.C

7) Merger - *Art. 1842* happens when the position of creditor and debtor becomes one and the same.

The limitation is when it affects the right of third parties.

as obligation extinguished by merger might revive in certain circumstances. Article 1844 የተጣመሩ አበዳሪና ተበዳሪ ድርጅቶች ዳግም ሲለያዩ አበዳሪ አባት ዘብሰንት ሆኖ ባለእዳ ልጁ ከወረሰው በኋላ ሲመለስ

8) Limitation of action- Article 1845 – 1855 avoids bafflement (confusion) which might be created owing to loss of evidence when time lapses

*Acquisitive prescription entitles the beneficiary with certain right after the expiry of certain period of time.

* Liberative prescription relieves the beneficiary from certain obligations after the lapse of certain

period of time.

-In liberative prescription there can be limitation of right and limitation of action.

Limitation of right absolutely extinguishes the right of the other party while limitation of action extinguishes the right to bring action i.e. court action.

-Article 1845 connotes that it limits action. In addition (Article 2262) limits all actions.

There are also provisions that show the possibility of existence of certain rights even after the lapse of the prescribed time. Article 1850 .

But Reni D. says all the *rights* are subject to ten years limitation

- The controversial issue in light of period of limitation is the relationship between Article 1845 and Article 1810.

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Chapter Two

Special Provisions Relating To Contracts

Provision as to time- Article 1857-1868 generally deal with fixed days, weeks, months and other period of time like holidays.

Contractants may more probably provide the time of performance within certain period of time without specifically stating the time.

The Ethiopian Civil Code prefers totally ignoring the month as it can be seen under Article 1860 (3) which says that "The thirteenth month of the Ethiopia Calendar shall not be taken into account". (pagumen isn't considered)

The debtor can discharge his debt before the expiry of the agreed period of time unless contrary intention of the parties can be inferred.

Conditional Contractual Obligations- Article 1869- parties are free to design their contract as far as they do not contradict the mandatory provisions of the law which cannot be set aside.

-existence of the obligations is determined by occurrence or non-occurrence of uncertain event.

- The meaning of uncertainty in Ethiopian law of contract is broader

-z condition either ends the effect of contract or makes the contract effective upon its fulfillment.

Articles 1871 and 1872 deal with condition precedent and condition subsequent respectively.

The effect of the condition subsequent is cancellation of the contract upon its fulfillment.

A thing sold on condition subsequent shall be delivered immediately after the conclusion of the

contract and handed back if the condition is fulfilled.

Eventhough the condition is not fulfilled, if its fulfillment is hindered by one of the parties and his act of hindrance emanates from bad faith, the condition can be presumed to have been fulfilled. is equally applied to both condition precedent and condition subsequent.

Article 1874_ Acts of management Vs Article 2204 and 2205- Before the fulfillment of the condition, they are not allowed to carry out any acts beyond management like alienating, investing capital, denoting and so on.

-If zey exercised, they shall be in good faith.

Alternative Obligations- Articles 1880-1882-

Earnest- *Article 1885-* When we see the position held by the Ethiopian law, termination of promise guaranteed by earnest unilaterally is possible upon certain limitations.

Provisions as to liability- Article 1886 vs *Article 1889* eventhough non-performance owing to force major does not make the debtor liable (see 1791(2), the parties can agree to extend their liability even in the presence of force majuer. Article 1710, 1812

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CHAPTER THREE

PLURALITY OF DEBTORS OR CREDITORS

Solidary Obligation in Case of Plurality of Debtors

- Articles 1896 - 1909- a situation where there is a joint and several obligations among debtors.

1)Nature of plurality of debtors or creditors in different legal systems – it is treated as solidary obligations in the civil law and as joint and several obligations in the common law.

The common law has three categories of promises: joint, several, and joint and several.

The French concept of solidary obligation and the common law concept of joint and several obligations have a common feature, i.e., that each solidary debtor binds himself for the whole obligation with the result that performance by one debtor discharges the other debtors.

2)Treatment of solidary obligations in case of plurality of debtors under the Ethiopian Law - 1896 & 1897

An obligation is said to be joint and several (individually) among the debtors when each debtor is considered in his relation with the creditor as debtor of the entire performance (as if he were the only debtor) or where both debtors are jointly liable for the whole debt.

Art 1896 reads, unless otherwise agreed or provided by law, maintenance (Article 819, 2124, 2125, 2136),co-debtors shall be jointly and severally liable.

the Ethiopian Civil Code is in favor of creditors, they may always claim that the debtors are joint debtors, and therefore ask for payment of the entire debt of one of them only.

The Ethiopian solution is a choice probably dictated by the intention of seeing contracts effectively enforced, rather than putting creditors at the risk of insolvency in the many cases where no written contract is drafted.

3)The effect of joint and several obligations on the relations between creditor(s) and co-debtors

A) On Resjudicata - Article 1897, 1898 & Article 217 of CPC

B) On Default notice - Article 1899 vs 1775- is a direct reflection of the principle of reciprocal representation of the co-debtors.

C) On void and voidable contracts - Article 1900- void (object & form) common defense available to all , **ozer common defenses r** payment and limitation of actions 1901.

-Voidable (consent & capacity) -a personal one

D) On remission of debt - Article 1902- a discrepancy between the two versions of Sub-Article 3.

E) On novation- Article 1903- Article 1902 will *mutatis mutandis* apply- but it is contradicted wiz “unequivocal intention” of Article 1828.

F) On set off - Article 1904 - the two versions seems to have discrepancy.

G) On Merger - Article 1905- discrepancy in the two versions.

4)Defenses open to joint debtors –

Common objections	Personal objection extended to all	Purely personal objection	Debt rests finally with other debtor
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- | | | |
|---|--------------------------------|------------------------------|
| - Payment (total Remission of debt to 1 debtor or part) | 1. Incapacity | - Remission of debt 1902 (3) |
| - Absolute nullity 1902 (1) | 2. Vice of consent | - Set-off 1904 |
| - Remission of Novation 1903 | 3. Term | - Merger 1905 |
| debt to all co- (1) debtors | 4. Condition | |
| - Limitation | 5. Specific remission 1902 (2) | |
| -Liability 1906 (2) | 6. Specific novation 1903 (2) | |
| | 7. Set-off 1904 | |
| | 8. Merger 1905 | |

5)The Relation of the co-debtors inter se - Article 1906 - 1909

Joint Creditors -Art 1910 - 1916

-the law takes a presumption against solidarity or joint and several entitlements.

Argument 1, Article 1911 of the Civil Code is applicable only when there is agreement between creditors as to joint and several entitlements.

Argument 2 , as joint and several entitlements in case of plurality of creditors are exception, Article 1911 doesn't provide about this issue.

Each creditor may require the debtor to pay the whole debt by way of mutual representation or mutual agency, but not as a principal creditor. Article 1912

a slight inconsistency in article 1911(3)

- Article 1913 vs Articles 1920, 1928 and 1946

Non Joint Obligations

-situations where there is plurality of debtors and/or creditors regarding an obligation that is not joint and several one.

1) Indivisible obligations- Article 1917- it is generally a characteristic of the object of the obligation. For instance, a car is indivisible.

An indivisible obligation is either absolute or relative.

absolute where the object of the obligation is indivisible under whatever aspect it is envisaged, in such a way that it can never be due without the obligation being indivisible.eg sale of a horse.

relative when the thing considered in its natural form is indivisible, although one can conceive that

it can be executed successively and by fractions. to construct a house

z the law also itself provides that shares and debentures, or bonds are indivisible. (See Articles 434 and 328 of the Commercial Code).

In the Civil Code, natural indivisibility of an obligation is recognized, Article 1917 (owing to their nature)

In case of plurality of debtors, the provisions dealing with jointly and severally liable co-debtors is applicable for those co-debtors whose obligation are indivisible by its own nature.

In case of plurality of creditors, Articles 1910 -1916

2)Divisible obligations

Article 1918 deals with plurality of debtors to a divisible obligation, the case of plurality creditors is regulated by Article 1919.

Each debtor of a divisible obligation will only be liable for his own share, which of course is not necessarily equal to that of the others.

The effect of a divisible obligation is that each link to the creditor is independent of the others.

CHAPTER FOUR

SURETYSHIP

Nature of Suretyship Article 1920

a contract in which a person binds himself for another already bound and agree with the creditor to satisfy the obligation if the debtor does not.

Its advantage is to make transactions much easier by increasing the safety of the creditor entering such a secured transaction. He has in fact two (or more) debtors for the same debt.

from the side of the debtor, he gains credibility and will be able to trade.

The advantages of suretyship for the guarantor are not evident.

surety differs from real surety, "real surety" where a third person guarantees the debt of another, not by obliging himself personally, but in engaging certain of his property.

"real surety" has also been used to designate the deposit of money or other property by the debtor himself to guarantee the execution of his obligation, but in the legal sense of the situation, this is a pledge.

surety differs from insurance in that in a contract of insurance, one party, the insurer, undertakes to pay a second party, the insured or a person nominated by the party for the loss occasioned by the

happening of the specified event.

in the insurance contract two parties are bound and classified as a bilateral contract.

there is distinction between suretyship and warranty in that the former must relate to some legally enforceable obligation or duty to which another person is subject in contract.

no form requirement is laid down for suretyship agreements. But Article 1725 which is headed contracts for a long period of time seems to require suretyship agreements to be made in a written form.

Since it is a unilateral kt , it is only the guarantor who is to sign the contract of guarantee & witness a suretyship may only be validly given where the principal obligation is not void. Exceptionally, however, where the principal obligation is voidable, the suretyship agreement may remain valid. Article 1926

Effects of Suretyship- Effects of Suretyship between the Creditor and the Surety-

A. The moment for action - Article 1929 B) Maturity of debt - Article 1932

C) Simple suretyship and joint suretyship –

i) *Simple suretyship* - Articles 1934 – 1937- the guarantor's obligation is secondary because it arises if the principal debtor fails to discharge his obligation.

In principle, pursuant to Article 1920 and 1934, every suretyship is presumed to be simple. defenses available for the simple guarantor - Article 1934 (2),

The second defense available for the simple guarantor is the benefit of division which is raised in case of plurality of guarantors.

ii) Joint Suretyship - the obligation of the guarantor is primary and direct because the creditor is not required to demand payment from the principal debtor in order to bring an action against the guarantor.

The direct effect of joint guarantee is the deprivation of the surety of his benefit of discussion.

D. Acceleration of action by guarantor- Article 1938 & Article 1939

Effect of Suretyship between the Debtor and the Surety

The principle is that the guarantor, who has paid the creditor instead of the debtor, shall be indemnified by this debtor.

the surety being subrogated by law to the rights of the creditor, he need not enter into a

subrogation agreement with the creditor.

subrogation may not be made to the detriment of a creditor who has been only partly paid. 1972

Protection of a Guarantor's Action against a Debtor

-Duties of a creditor- Article 1945, Article 1946, Article 1947

-Securities obtained from principal debtor (Recourse before payment)- Article 1948

- Loss of Right- where the indemnity claim has lapsed & where a second payment is made by the debtor

Plurality of Guarantors

1) Counter Guarantor- Article 1949- has no relation with the creditor.

must benefit of all the particular advantages of a guarantor, even if this means he has to act against the previous or main guarantor.

2) Secondary Guarantor (in French "surety ship certifier") The creditor can here not only challenge the guarantor, but also the secondary guarantor. Article 1950

3) Plurality of Simple and/or Joint Guarantors- Where the plurality of guarantors granted the security at the same time (Art. 1951(1)) of the Civil Code, each of them shall be liable for his own share as a simple guarantor, and as a secondary guarantor for the shares of the others.

the creditor has to divide his action in as many actions as they are guarantors, which is called benefit of division, and ask the appropriate amount from each.

Eg. Abiy borrowed Birr 10, 000 from Belay. Five persons, Chane, Dawit, Feleke, Girum and Hailu came and signed in one instrument undertaking Abiy's obligation as simple guarantors.

If Abiy becomes insolvent and Belay proceeds against Girum only for the recover of the Birr 10, 000 the latter can raise the benefit of division so that he should be required to pay only Birr 2, 000 which is his share of the total debt.

If, however, the other co-sureties have become insolvent, Girum cannot demand benefit of division. This is because he will be responsible for his share as simple guarantor and as secondary guarantor for the share of the other co-sureties.

If, however, only Hailu becomes insolvent, the remaining guarantors shall be liable for their own shares and the share of Hailu's debt will be proportionately distributed among the solvent co-sureties.

if Chane guaranteed for the payment of Birr 1, 000, Dawit for Birr 3, 000, Feleke for Birr 4, 0000, Girum for Birr 1, 500 and Hailu for Birr 500. Since a guarantor is not responsible beyond the

maximum amount expressed in the agreement except for legal costs and interests, Belay cannot sue one of them to recover more than the amount they guaranteed.

the Civil Code does not explicitly address the situation where each of the guarantors expressed the maximum amount of their obligation. In this respect, you may argue that Article 1918 (2) of the Civil Code will apply by analogy in which case one surety cannot stand as secondary for the debtors.

the benefit of division will not be available where the sureties expressly bound themselves as joint guarantors with the principal debtor as between themselves.

Relationship between/among Co-sureties - Article 1951

When there are several sureties for the same debtor in respect of the same debt, the one who pays the creditor is entitled to contributions from the others.

equity requires that the surety who has made payment is entitled to contribution from his co-sureties who might have been compelled to pay by the creditor.

There are factors that govern the right and extent of contribution.

The first one is payment of more than one's share A surety is not entitled to contribution until the whole debt is paid, for he is still liable for the remainder. Art.1951 (3)

Secondly, to be entitled to contribution, payment must have been made by a surety in a situation where he was legally obliged to pay (the principal obligation is extinguished as a result of payment, set off, period of imitation, nullity etc) Article 1942

The third one relates to costs and interests. Regarding interest on the amount paid to the creditor, our law says noting.

Extinction of Suretyship

1)payment 2) set-off & merger

3) novation of the principal obligation by the debtor with the creditor extinguishes the principal obligation and also the accessory suretyship obligation.

4) voluntary remission by the creditor to the debtor discharges the surety as well, since the remission of an underlying obligation also extinguishes the accessory obligation.

5)in the case of principal obligation that is void . However, in cases where the principal obligation is voidable, the contract of suretyship may or may not be invalidated. See Article 1926 (3) and 1923.

6) limitation

7) where the creditor has accepted a payment in the form of an immovable or any good (Article

1927 of the Civil Code).

CHAPTER FIVE

THIRD PARTIES IN RELATION TO CONTRACTS

-declaration of demand promise for third party - stipulation for the benefit of third party
-assignment of rights and subrogation - delegation of obligations and assignment of estate.

Promises & Stipulations Concerning Third Parties

Three situations are considered by the Civil Code: the third party may be substituted to a contracting party, the third party will become the debtor of the contract, and the third party will become the creditor of the contract.

The option to substitute a third party -Article 1953

the identity of the third party to be substituted is not required at the time of the formation of the contract. such an option is open both to the creditor and to the debtor.

The advantage is to introduce flexibility in the choice of partners.

the effect of the contract where the substitution is or is not effected, Article 1954

Article 1954 as to the effect of substitution seem unduly restrictive. The main difficulty lies on the three days within which substitution is to be effective as it is short.

The promise for third party- Article 1955

this Article covers in fact two different contracts: a contract between a contractual partner and the promissory, i.e., contract of promise; Article 2270(3)

and a future or potential contract between the first partner and the third party, the existence of which is subject to ratification by a third party, i.e., the main contract.

If the third party does not ratify, the promised, unlike in cases of declaration of demand, will not be obliged to perform the contract as per-Article 1956(3).Accordingly, the non performance on the part of the promisor will entail payment of damages.

Stipulation for the benefit of a third party

Eg. life insurance for the benefit of a third party (even to benefit children not yet born), a collective insurance against accidents by employers for their employees, warranty given by manufacturers for their products to consumers, etc.

However, there is no agreement regarding the basis of stipulation.

According to the theory of offer, once the acceptance is made, it retroacts to the day of the contract and the third person becomes the personal creditor of the promisor.

According to the theory of direct creation of the action, contract with stipulations for the benefit of third persons are exceptions to the general rule, which provides that contracts do not benefit third parties.

the rights of the stipulator are clearly provided under Article 1958.

the beneficiary being delegated as the person to receive benefit from the promisor may accept or reject the benefit upon being given the option pursuant to Article 1959

the English version of Article 1961(2) is defective.

Assignment of Rights and Subrogation -Articles 1962 through 1975 (FOR CREDITORS)

Assignment is a contract concluded between the assignor and the assignee, whereby the former transfers his rights (conditional or future) under the contract or part of it to the latter.

Article 1962 reserves, however, three categories of exceptions

- * the assignment of certain rights may be prohibited by law. Eg. the claim of a victim of damage (Article 2146); an administrative contract without the consent of administration (Article 3202), assigning succession rights before the death of the person concerned (Article 1124).
- * the assignment to a third party creditor may be prohibited by the contract itself
- * the personal nature of a right may prevent its assignment *"intuitu personae"*- contract of employment, a partner in partnership agreement.

An onerous assignment is an assignment of a contractual right by the creditor which is made for consideration.

A gratuitous assignment is a voluntary transfer of the creditor's right to the assignee which is made without consideration.

Subrogation is the situation where a right with all its accessories is transferred from one person to

the other. It accompanies (coming after) payment.

subrogor is a creditor of the principal debtor. The subrogee is then able to exercise the rights of the creditor- subrogor after he has effected the subrogation by payment of the debt.

1)Conventional or contractual subrogation subrogation

Subrogation by the creditor- Article 1968- it imposes two conditions: the contract of subrogation must be express and must provide that the subrogation takes place at the time of payment.

If the subrogation does not satisfy the requirement that it be express, the law does not provide a solution to this problem.

One writer says, the case may be treated as one of assignment. If the contract is one of assignment the effect would be the creditor will have the right of lien, mortgage or pledge attached to the right.

Ato Tilahun Teshome stated the payer is treated as ordinary creditor for the debtor. Thus, failure to meet the requirement laid down under Article 1968 deprives the payer from enjoying the rights of lien, mortgage and other accessory rights.

Subrogation by the debtor- Articles 1969 and 1970- eg. a debtor who owes several creditors and who prefers to be obligated to a single new creditor may borrow funds from a third person to pay his creditors and subrogate the third person to the rights of the former creditors.

2)Legal subrogation-Article 1971 provides three situations. Articles 1909 and 1944.

In relation to extra contractual liability, Article 2161 of the Civil Code similarly provides for subrogation.

Article 1971 (b) is also given more specific application by special provisions of the Civil Code, such as Articles 3083, 3095 and 3097.

subrogation in cases of insurance of property (Article 683 of the Com Code), subrogation in maritime cases (Article 323 and 304 of the Maritime Code), cases of succesorial subrogation (Article 1059, 1045), subrogation in cases of warehousing (Article 2821), subrogation to the bailor (Articles 2795).

legal subrogation does not differ from the conventional type as both are based upon payment of the debt or obligation to the creditor and their effect is the same.

1975(1) talks about special cases of assignment of rights, such is the case for instance for usufructuary rights (Article 2410); incorporeal rights (Article 2411); succession of rights (Article 1124) and administrative contracts (Article 3202)

Delegation and Assignment of Obligations (FOR DEBTORS)

what is delegated is obligation; and what are assigned are rights with its corresponding duties, but not only rights.

***Delegation of Obligations- Atr 1976-** the delegator, the person who makes the delegation; the delegatee, the creditor; and the delegate-debtor, the third party who is delegated and becomes a debtor. either because he does not wish to or simply cannot
in principle, unlike assignment of rights, the debtor has to ask the creditor. Unlike assignment of rights, what is delegated is obligation.

perfect delegation – the parties may agree that the old debt owed by the delegator towards the creditor will be extinguished and that the original debtor will be relieved from any obligation.

imperfect delegation - they may have intended that the old debtor (delegator) will not be exonerated but rather the creditor will have a second debtor, delegator, in addition to the first one, delegate debtor.

In case of imperfect delegation, the relationship of the original debtor vis-a-vis the creditor is that of a simple guarantor and a creditor.

Article 1980 lays down the rights of the delegate.

Effect of delegation on third parties, Article 1982, may be involved in the original contract as sureties (mortgagors, surety givers....), they shall not be liable, unless they consented to the delegation. This is because, they have given a surety in respect of the first contract; the one linking the original creditor to the original debtor and cannot be presumed to have extended it to benefit the delegated debtor.

*** Assignment of Obligation-** Articles 1983 to 1985

heirs and creditors of the parties - Articles 1986 and 1987

Heirs of the Parties- The continuity of rights or obligations by heirs. However, such continuity may be limited to two instances.

- 1) where the nature of the contract doesn't provide room for substitution of the heirs;
- 2) where the parties agreed to restrict the continuity of rights and obligation by heirs.

in cases of death of the third party beneficiary, the heirs of such a party are entitled to the performance of the obligation considered art 1957 & z ff.

Creditors of the Parties- *"the property of a debtor is the common pledge of his creditors"*

Of course, this general right cannot be absolute, and it is framed within the rules governing attachment, as stated in the civil procedure code, and especially the rule stating that certain assets cannot be attached essentially the basic living commodities and tools of the debtor's trade.

The mere fact that someone is a debtor of another does not totally preclude him from entering into agreements regarding his property. Art 1989

Exceptions r Art. 1990, 1994

Rights of the creditors of the parties

* Preservation measures- Article 1992 * Exercise of debtor's right or oblique action- Article 1988(1)

* The Paulian or Revocatory Action- Article 1995 if a debtor burnt his properties, the thing restored does not re-enter the patrimony of the debtor, nor does it become the common pledge of all his creditors; it can only be distributed to the creditor(s) who pursued the action. This seems the underlying difference between revocatory and oblique actions.

Chapter Six

Proof of contracts

Burden of proof and admissibility of evidence- "the necessity of proof lies with he who complains."

Art. 2001 vs Art. 263 of CPC, Art. 137 of Cr. Pro. Code.

The burden of proof also applies to negative assertions, for example, if a lessor tries to assert that the tenant (lessee) was not taking care to repair the premises, as stipulated in the lease, then he will bear the burden of proof.

Written (documentary) Evidence and its probative value- Articles 2005 – 2019

Written evidence is normally used interchangeably with documentary evidence. Documentary evidence is then defined by the draft evidence rules as all documents and their product for the inspection of the court.

Letters, contract, deeds, licenses, certificates, ticket, or other writings are documentary evidence.

*** Authentication of Documentary Evidence-**

There are various methods of authentication both in our substantive and procedural laws and the draft evidence rules.

Authentication is a mechanism of ascertaining authorship of the document (who the author of a document is?) and genuineness of the document sought to be introduced. Unless a document is authenticated it may not be admitted as proof.

Modes of authentication- Articles 2007 and 2008

Admission authorship by the writer: the writer himself may admit or concede that he is the author of a certain document.

A) Proof of signature or handwriting

- Production of a person or persons who witnessed the writing or signature

B) Presumption as to documents not produced

C) Comparison of signature, writing with others admitted or proved

D) Lay witness authentication- There may be some persons who are well acquainted with the writings of the person who is submitted for investigation. Zey do not apply modern ways of examining and ascertaining writing in laboratories or somewhere else but by a comparison between retained mental image of the supposed writer's writing and the writing in dispute.

E) Opinions of experts_ F) Ancient document rule

Best evidence rule- The rule requires that when writings are introduced as evidence in a trial, the original writing must be produced as the "best evidence". In federal practice, however, any exact copies of the original carry the same legal weight as the original unless their authenticity is in question.

Primary (Best) evidence- the document itself (the original) produced for the inspection of the court.

Secondary evidence- where primary evidence could not be found.

Presumption of payment- Art.2020 – 2226 The party in whose favor the presumption is taken need not produce evidence in support of his allegation. The burden of proof transfers to the one who contests what has been taken as presumption.

1) Handing over of evidencing documents

2) Creditor's entries (2021 C.C)- entries in the contractual documents by the creditor, which tends to release the debtor from his/her obligation presumes payment. The entries may be in the margins, at the end, or back of the document.

3) Prior or Concomitant Debts (2022)- In the situation where the creditor required to give receipt to the debtor for periodical payment, he/s is required to give such receipt for the payment of each period.

4) Period of time related presumptions- Arts.2023 and 2024

Contrary proof

presumptions may be rebuttable by production of contrary proof if they may be irrebuttable (contrary proof may not be accepted to disprove what is hold by presumption).

Rebuttable presumptions are also divided into freely rebuttable by producing any evidence and those could be disproved by only producing specific type of evidences provided by law.

Art. 2026 of the C.C, presumption provided from Art. 2022 to 2024 are not rebuttable in principle. However, Art. 2025 has laid down as exception three specific situations in which such presumptions could be confronted.

6 PART I

CHAPTER I

DEFINITION AND PRINCIPLES OF NON-CONTRACTUAL LIABILITY LAW

Definition- Non-Contractual Liability Law is a law that gives remedy by awarding compensation to the victim or ordering restitution or injunction.

Principles or requirements art 2141

-act or omission

- damage

-The existence of casual relationship between the act or omission and the damage suffered by the victim - this damage should be a kind of harm recognized as attracting legal liability

CHAPTER II

CONSTITUTIONAL RIGHTS

Personal Security- 2038(1) of CC & art 16 of the FDREC, everyone has the right to protection against bodily harm.

Interest in property- art 40(1) FDREC, every Ethiopian citizen has the right to the ownership of private property.

Moreover, an interest in property can be affected by the negligent act of another. This as well is protected under Extra Contractual Liability Law. Art 2055- 2059.

Economic Interest- 41(1) of the FDREC, every Ethiopian has the right to engage freely in an economic activity and pursue a livelihood of his choice anywhere within the national territory.

Reputation and privacy- 24 & 26 respectively. Art 2044 & 2109- where a person's reputation is damaged by untrue speech or writing then they may have an action in the tort of *defamation*

CHAPTER III

CONDUCT THAT GIVES RISE TO LIABILITY

Conduct is a person's behavior in a particular place or in a particular situation. In legal sense, conduct is classified into two: Act and omission. Act is defined as an external manifestation of the actor's will.

Intention and Negligence- Intention refers to the defendant's knowledge that the consequences of her conduct are bound to occur, where the consequences are desired or, if not desired, are foreseen as a certain result, art 2029

Hence, Intention exists where:

[

- a) The defendant knows that the consequences of her conduct are bound to occur; or
- b) Where the defendant desires the consequences or
- c) Where the defendant may not desire but foreseen the result of her action or omission.

if a person failed to act in a reasonable manner, we say that person acted negligently.

1. The defendant must have owed the plaintiff a duty;
2. The defendant must have breached that duty;
3. The breach of that duty must be the actual as well as the "legal" cause of the plaintiff's

injury.

4) That injury must be one that the law recognizes and for which money damages may be recovered.

Reasonable 7 Prudent person- objective standards or requirements r knowledge, investigation and judgment.

the exceptions 4 z reasonable and prudent man standard is *unforeseen harm*.

Statutory Standard- The objective standard is not free from subjectivity for there is a subjective element in that it is left to the individual judge to decide what a reasonable or what could have been foreseen" ⁵ Hence the law introduces statutory standard.

CHAPTER IV

CAUSATION AND REMOTENESS OF DAMAGE

CAUSATION - To determine the cause for the damage [death] the judge may, among the many tests, uses "but for" tests. "According to this principle the plaintiff will have to show that she would not have been injured in the way she was but for the defendant's conduct"

Remoteness of Damage- if the kind of damage was an unforeseeable consequence of the act, the damage is said to be too remote.

Exception to the Foreseeability Test-

1)The egg -shell -skull rule- whether a certain act causes a physical injury, which is different and much worse than the ordinary injury that would have been caused in the course of events.

2)Economic loss consequent on physical injury- where one single conduct causes two injuries, and the one is not foreseeable by the tortfeasor.

In Ethiopian Law a victim who suffers both physical and economic loss should sue the defendant for both at the same time (simultaneously).

3) Psychiatric Illness- if a physical injury brings about the victims psychiatric illness, even though the defendant will not foresee that, she will be liable for the psychiatric illness.

4) Intentional torts- the one which is committed by an actor who knows what she is doing & committed intentionally. Examples for this are *malicious falsehood*. If someone makes maliciously false statement about someone to a third party.

5) Statutory Torts- eg. discrimination based on race, religion, or sex.

⁵ Michael P.192

CHAPTER V

Boundaries of Non- Contractual Liability Law

Non-contractual liability law v Contractual law

In case of contracts, the obligations emanate from the agreement made between the parties,⁶ while the obligation of Non – Contractual Liability Law emanates from the law.

in case of Contract Law there are certain people who are exempted from performing their part of obligations, for instance, a minor. No exception is, however, made in Non – Contractual Liability Law. 2033, 317, 2099

breach in contract is established by simply showing that the performance promised has not been materialized without showing the promisor's fault. Exception is article 1795. In Non – Contractual Liability Law, however, Liability is established by demonstrating the defendant's fault within the meaning described to that term by articles 2021, 2030

where it is established that the breach is intentional or due to “grave” fault,⁷ the compensation shall be increased to cover the damage, which is greater than the normal damage. However, in the absence of intentional fault non – contractual compensation for wrongful harm may sometimes be decreased. 1801(2), 2091, 2101.

Non- Contractual Liability Law v Criminal Law

liability from both wrongs emanates from the law

The criminal wrong doer may end up in jail or be punished with fine or both. In case of non – contractual wrong, the wrong doer may not go to jail.

the primary function of the criminal law is to protect the interests of the public [while] the primary function of the law tort is to provide of redress for individuals who have suffered a loss.

The parties are different.

PART II

Ethiopian Non – Contractual Liability LAW

CHAPTER VI

⁶ CCE article 1675

⁷ Ibid article 1801(2)

SOURCES AND TYPES OF LIABILITIES

1) Fault (offence)- 2028 – 2065

- professional fault
- diversion of power to his or 3rd parties
- intent to injure another
- Infringement of Laws
- Chain of Command (If she is aware of the illegal nature of the

order, If she knew the order was given without authority & the criminal nature of the act ordered.

- Non – Performance of a contract (eg. 2037 vs 2533)

2) Activities one engages in or things possessed by a person- 2066 – 2089

3) Where a third party for whom a person is responsible incurs liability- vicarious liability- 2124-2132

Special cases on fault

1) Trespass to person , it consists of

- Physical Assault [Battery] – 2038, defenses 2039
- Interference with the liberty of another [false imprisonment]- 2040 , defenses, 2041-43
- Defamation (jeopardize his credit, his reputation or his future)- 2044 vs 2109, defenses 2046-2048

*Defamation could be committed by way of publication, criminal & civil liability 2049

2) Trespass in goods- Our Civil Code uses trespass to indicate trespass to land or a house, 2053, while trespass to movables is referred to as assault to property, 2054.

CHAPTER VII

Interference Against Economic Interest

Articles 2055 to 2064

- 1) Pre contractual Negotiations [2055]
- 2) Inducement to breach of contracts [2056]
- 3) Unfair competition [2057] vs 126 com code
- 4) Simulation (2058)
- 5) False Information (2059)
- 6) Witnesses [2061]
- 7) Advice or recommendations (2062)
- 8) Seizer of another's property or Distract (2063)

9) Execution of a court order (2064)

10) Prescription 2065- it is a time limit in which one is supposed to bring an action, 1845. If she does not, she is barred from bringing her action by prescription.

CHAPTER VII

Other Interests

1) Injury to the Right of Spouses (2050)

2) Duty to Educate and Supervise (2052)- a good example to a fault by omission

CHAPTER IX

Liability Irrespective of Fault

Strict Liability (2066-2089)

Liability for the types of activities which the defendant peruses (2066-2089)

1. Liability for bodily harm or injury (2067)

2. Liability for the types of instruments that cause damages (2071_2085). These are further classified into:

A. Liability for animals (2071-2076)

B. Liability for buildings (2077-2080)

C. Liability for motor vehicles or machines (2081-2084)

D. Liability for manufactured goods (2085)

Defenses or justifications for strict liability 2086

CHAPTER X

VICARIOUS LIABILITY

Vicarious liability is "...liability imposed on one person for the wrong doing of another."

- under the Ethiopian tort law parents and others listed under article 2125 are liable for the wrongs done by a minor child.

-The state is liable for its civil servants and employees acts 2126

-bodies corporate are liable for their representatives, agents or paid workers act 2129

- The employers are held liable for the acts of their employees 2130

- The managing editor of the newspaper, the printer of the pamphlet or publisher of a book is liable for defamation committed by the author of the printed text 2135

The Rationale why one is held liable vicariously

- 1) The control test: This theory attributes to those who are made liable the ability to control the behavior and precise manner of the wrong doers. Eg. the employer
-4(1) of Labor Proclamation No 377\2003, under the authority of the employer, follow instructions given by the employer as per article 13(1).
- 2) Analogy with causation: The state, the employers or the bodies corporate are those who...set the whole thing in motion and that, therefore, they should bear the consequences of a third party who suffers through their employees wrongful conduct. Eg art 12 of z procl
- 3) Deep pockets- the father, the state, bodies corporate and the employers are richer. Hence they should pay. "So making A vicariously liable in respect of B's tort will help to ensure that those who have suffered loss. because of B s tort will be able to sue someone of substantial means for compensations for their losses.
- 4) Economic and moral consideration- This theory is based on the fact that "...the person who drives a benefit from the activity of another should also bear the risk of the damage inflicted by those acts."
- 5) Loss spreading- The employer does this "Either by charging his customers slightly higher prices or by making a claim on his liability insurance.

PART III:

REMEDIES TO EXTRA CONTRACTUAL WRONG

Chapter XI

Introduction to the Basic Notions of Damage

Conceptual Analysis of Damage- if an action for compensation is based on the provisions of extra contractual liability law, the plaintiff has the responsibility to prove that he has incurred damage because of acts or circumstances for which the defendant is liable under the law.

-proving damage is a prerequisite for compensation. The cross reading of Articles 2092 and 2102(2)

The word "damage" is derived from a Latin word "*damnum*" meaning loss or species of loss. It is a harm or injury caused to a person's legitimate interest, material (pecuniary) or moral (non pecuniary).

Classifications of Damage

A)Material Damage- is an injury caused to a person's economic or financial interest.

has two important components. These are present (actual) material damage and future material damage.

*present (actual) material damage covers the loss occurred from the date of the commencement of the injury up to the date of final assessment by the court.

-Present material damage can be further classified into two: a *damnum emergens*, a Latin term, which denotes the occurrence of a loss (diminution of estate), or a *lucrum cessans*, the Latin term, which denotes the prevention of a gain (non-increase of estate).

*Future material damage- the damage that will occur certainly or with a higher probability after the date of judgment. *damnum emergens and lucrum cessans* may affect both the past and the future damage.

-the dividing line between present damage and future damage is drawn in terms of time. The dividing date is that of the judgment assessing the damage.

assessment of future damage is very problematic because it is not related to the actual occurrence of loss at the time of assessment but only to the non-occurrence of expected future earnings or gainful opportunities.

under the *res judicata* prohibition of article 2151, he may be unable to bring a fresh action after the final prognosis for the plaintiff is technically prohibited to split his claim for present damage and future damage.

B) Moral Damage- the harm or injury inflicted to a person's feeling or non-pecuniary interest. It is an injury caused to a person's honor, reputation or personal feelings of the victim.

Chapter XII

Modes of Compensation

Modes of Compensation for Material Damage

1) The Rule of Pecuniary Compensation- Article 2090- it means compensation by means of money, the damage inflicted to the pecuniary interest of the victim has to be quantified and valued in terms of monetary equivalence so that the harm will be made good by the award of compensation expressed in terms of money.

2) Non-Pecuniary Compensation- may be awarded by the court in exceptional circumstances

2090(2)

Article 2118 through Article 2123 provides a partial enumeration of the “other modes of compensation” other than payment of monetary compensation.

Restitution, reparation in kind, retraction of defamatory publications, enjoining cases of unfair competition and injunction, not exhaustive but illustrative

Modes of Compensation for Moral Damage

A) The Rule of Non-Pecuniary Compensation- moral damage cannot be assessed in monetary terms. Article 2105

For example, an injury caused to a person’s reputation through defamatory publications can be made good through an order of retraction of the defamatory publication.

B) Pecuniary Compensation as an Exception-the phrase in 2105(2) “only in cases expressly provided by law” indicates the exceptional nature of awarding pecuniary compensation for moral damage.

-2105(2) is applicable only to such nominated cases of moral injury enumerated in Article 2106 through 2115 of the civil code. It may also apply to other moral harms expressly stated to such effect in other pertinent provisions.

* in the assessment of moral damage, Ethiopian courts have discretionary power in two respects: in awarding the compensation and in fixing the amount of compensation.

Chapter XIII

Quantum/ Extent of Compensation

Quantum of Compensation for Material Damage

The Rule of Equivalence- The principle of equivalence between material damage and compensation is incidentally mentioned in Article 2090 and explicitly laid down in Article 2091 of the civil code.

there are no rules and standards set under the law to regulate the methodology of assessment of damage. While assessing the damage sustained by the victim, both the material and the moral aspect of the damage must be quantified and valued in terms of money

However, there are situations where compensation that is less than the damage may be awarded.

Departures from the Rule of Equivalence- For various policy reasons

A) Compulsory Mitigation art 2098- are stipulated to the benefit of the defendant, that is, the defendant as of right can invoke them.

B) Discretionary Mitigation Articles 2099-2103 and 2157- The defendant can invoke them where relevant, but he is not as of right entitled to the mitigation.

C) Optional Mitigation Articles 2074, 2075 & 2078 - its application does not depend on the discretion of the court but on the discretion of the defendant himself.

there are alternatives other than paying money, therefore, the defendant can opt for an alternative to that of paying the damages otherwise due by him.

D) Nominal Damages Without the need to proving any real or actual damage, a very small fraction of money can be awarded to the victim simply as a recognition or declaration of his rights violated or infringed by the defendant. such as trespass, but has not shown there is any actual loss.

The term “nominal” connotes the symbolic (unreal) and insignificant nature of the award that does not correspond to any real damage sustained by the claimant.

Quantum of Compensation for Moral Damage- principle of equivalence of article 2090(1) cum 2091 is practically impossible in the case of moral damage.

our civil code uses the word “equitable” rather than equivalent as a standard for fixing the quantum of compensation for moral damage. Art 2106-2126

In Ethiopia there seems a general consensus among the general public, the legislature and the judiciary concerning the inadequacy of the one thousand birr which is set as a ceiling amount for compensating moral damage under the CC.

Eg. Article 34(4) of the Copy Rights and Neighbouring Rights Proclamation fixed minimum of 100,000 br.

Compensation for personal Injuries

***General Damages vs. Pecuniary Loss**

-General Damages- synonymous with moral damages refers to the monetary award granted to a person who suffered loss of amenity (the reduction in the capacity to enjoy life), pain and suffering due to the tortuous acts of another person. 2067, 2113.

It is logical to say that the quantum of the compensation should depend on the nature and gravity of the injury for equity to be meaningful in the objective sense.

-Pecuniary Loss resulting from personal injury - loss of earnings, medical expenses and other

outlays to date and future pecuniary losses.

***Injury of an employee-** In order to determine the quantum of compensation for the pecuniary loss sustained by an employee, it is a prerequisite to calculate the economic loss suffered by the employee due to the bodily injury. Based on the classifications made under Article 99 proc No. 377/2003.

For the purpose of assessment of bodily injuries suffered by employees, we have already classified disabilities into those that cause physical/mental injury of various degrees, and injuries resulting in death. Where a person suffers personal injuries other than death, the nature and extent of the harm can be assessed having regard to surrounding circumstances of the case and the interest frustrated by the injury.

***Injury of self-employed Persons** - do not work for wages pursuant to Article 2512 ff. but for remuneration or income as an independent entrepreneur pursuant to Article 2610 one doing intellectual work pursuant to Article 2632 ff., one in the medical profession pursuant to Article 2639 ff. ,an innkeeper (Article 2653 ff.), publisher (Article 2672 ff.),

However, depending on the nature of the bodily injury, the victim's pecuniary injury can be roughly assessed having regard to his pre-injury earnings. But the plaintiff may have kept no accounts.

*** Injury of Non-Employed Persons-** persons who are neither employees nor self-employed individuals.

The reasons for their unemployment could be lack of incentive, opportunity for permanent work, or ability to work.

***Compensation for Fatal Accidents 2095-** the purpose is to provide the widow and other dependants of the deceased, as would have been provided for them out of the earnings of the deceased had he not been killed by the tortuous of the respondent.

'annual dependency' refers to the amount of annual support provided by the deceased to the dependent at the date of the former's death due to the fatal accident.

'number of years purchase' refers to the number of years such support may continue, that is, the period between the date of the deceased's death and that at which he would have reached normal retiring age.

Finality of Assessment and Appeals Article 2150- assessment of the extent of damage is a prerequisite for determining the quantum of compensation.

Modes of Payment

1) Lump sum Payment: the Rule- From the very wordings of 2054(1) inference can be made that lump sum payment of compensation is the ordinary rule of compensation in Ethiopia.

As an exception to this rule, the court is conferred with a narrow discretion to order payment of compensation awards in the form of periodical allowances only for strong justifications. 2054(2)

2) Periodical Allowance: Exception- Having regard to the nature of the damage to be made good and other relevant circumstances, the court is at liberty to order the damage to be made good in the form of periodical allowance (structured settlement).

Chapter XIV

Action for Compensation

Who May Claim Compensation?

Independent Claimants- those who can institute a civil action for compensation on their own behalf

- The Victim Himself 2146(1), 2114 and 2115,

- Next of Kin in Case of Mortal Accidents (Dependants of the Deceased for Compensation of Material Damage 2095, Family of the Deceased for Compensation of Moral Damage Art 2116 & 2117)

The strong reason behind Article 2095 may be just to help persons enumerated there to get compensation for the material benefit frustrated because of the death of a person within the relationship defined there due to the tortuous act of another person.

Derivative Claimants- persons who can bring action for compensation by by subrogating (substituting) the victim (contractual or legal)

- Heirs of the Victim exceptions Article 2144(2), 2113

- Creditors of the Victim Article 2145(1)

Who May Be Sued in Tort? a person, be it physical or juridical, can sue and be sued

A) The Author of the Damage- The basis of his liability is his own faulty conduct or in exceptional circumstances his faultless activities or engagements. Art. 2136. but 2142(1)

B) The Vicarious Defendant- the author of the tort and the vicarious defendant (person answerable under the civil law) are jointly and severally liable for the damage caused to the victim. Article 2136(1) & 2155(1)

C) Heirs of the Person liable- liable claiming compensation for the material damage

Immunities – Art 2137 “Negus Aykesess Semay Aytareess”, Art 2138. But the provisions has to be construed in line with the existing administrative structure of the Federal system of Ethiopia.

Period of Limitation- Article 2143, there are two types

*the two years period that is stipulated under sub-Article 1.

*the period of limitation provided under the penal code Art. 2143(2).

Where the period of limitation prescribed under the penal law for the particular offence is less than two years, then the period of two years provided under 2143(1) becomes operative.

Whereas when the period of limitation set under the penal law for such criminal offence is longer than two years, this period becomes operative to the advantage of the victim of the tort.

However, in order for the longer period of limitation prescribed under the penal code to operate, the tortfeasor has to be convicted criminally for the same act that gives rise to tort liability.

PART IV

Chapter XV Unjust Enrichment

Doctrinal Foundation- Some authorities labeled this law as the third branch of civil liability along with contract and torts.

But some other authorities treat the law of unjust enrichment as a ‘gap filler’, that is, a law that only comes into operation when the laws of contract, property and tort fail to provide appropriate remedy for one or another reason in their respective province.

It is built upon the doctrine which prescribes “a person who has been unjustly enriched at the expense of another is required to make restitution to the other.”

It is recognized as a separate ground of civil action in Ethiopia.

General Provisions Applicable to Unjust Enrichment 2162

Grounds of Unjust Enrichment

A)Undue Payment- 2164(1)

B) Expenses- Article 2168

7 Law of Traders and Business Organizations

UNIT ONE

INTRODUCTION

A Brief Account of Ethiopian Law of Traders and Business Organizations

The era of Emperor Menelik II witnessed the first business organization- the Franco- Ethiopian Railway Company.

The second company to appear was the Bank of Abyssinia which was formed in 1905 as a branch of the National Bank of Egypt.

The next company that was formed in Ethiopia was the Agricultural and Commercial Development Company of Ethiopia.

Unlike its predecessors, the company was incorporated in Ethiopia, and thus, it was the first Ethiopian company, though its incorporation had not been made in compliance with no existing law other than an imperial decree issued to that effect.

The Company Law of 1933 provides for various forms of business organizations, namely, share companies, joint stock companies, private limited companies, ordinary partnerships, and limited partnerships.

In 1960, a more comprehensive commercial code was enacted. The final draft text of the Commercial Code was promulgated on May 5, 1960 and the Code came into force on September 11, 1960. Prof. Jean Eskara

General Orientation of the Commercial Code

A subjective Commercial Code is one which regulates a community of persons designated as “traders”. It sees the essence of commercial law to be the creation of a special status for traders and commercial business organizations.

An objective commercial code regulates acts known as “acts of commerce”, as opposed to persons. So it has the objective system

The distinctly subjective features of the Code can be gathered from Articles 5 and 10, i.e., the definitional provisions of traders and commercial business organizations respectively

The subjective features can also be discerned easily from the logical organization of the Law of Trades and Business Organizations as found in Books I and II.

According to Prof. Escarra, who opted for the subjective system, as he thought it to be, “it is the only logical system for determining the scope of coverage of the Commercial Code.”

Prof. Jauffret also says that he followed Prof Escarra's suit while drafting the text of Book I. Books II, IV, and V by Prof. Escarra, Books I and III by Prof. Alfred Jauffret

Scope of the Code

in Article 55(4) of the FDREC invests with the HPRs the power to enact a Commercial Code. This implies that the commercial code must be a uniform code, like the Federal Criminal Code, that applies to the Federation as a whole.

With respect to the relation between the Civil Code and the Commercial Code, Article 1 of the Commercial code provides that "Unless otherwise provided in this code, the Provisions of the Civil Code shall apply to the status and activities of persons and business organization carrying on trade. ."

UNIT TWO

TRADERS AND BUSINESSES

Traders: Defined Physical persons who operate a sole business are referred to as traders. Chapter 2 of Title I in Book I. Article 5.

The general condition (element) consists, in the existence of an enterprise or business, of a profession, and the goal of realizing profits while the special condition is such that the person carries out any of the activities enumerated.

A negative definition of the trader is also to be found in Articles 6-9, which exclude from farmers, fishermen and artisans from the scope of the Code's applicability.

Businesses Article 124 of the Commercial Code defines business as "an *incorporeal movable* consisting of *all movable property* brought together and organised for the purpose of carrying out any of the commercial activities specified in Art.5 of this Code."

Goodwill and Its Protection by Unfair Competition

Even if it is defined defectively in art 130, "[Goodwill] is only another name for reputation, credit, honesty, fair name, reliability."

To see the nexus between goodwill and unfair competition, we can look trademark infringement, dilution of goodwill and trademarks, use of similar trade or firm names, simulation of product packaging or configuration, false advertising, passing off goods for those of another, and theft of trade secrets.

Commercial Unfair Competition Art.133 Implicit in the notion of commercial unfair competition are

two ideas: unfairness and competition.

The Specific Standard 133(2)

A. Misleading Commercial Practices- It is sufficient that an act passes the test of likelihood of confusion as to the enterprise undertaking business, products and services, or commercial activities. eg similarity between two marks can make the case for unfair competition.

B.False Discrediting Statements- a party uses any false statement, it is the course of business, aims at misrepresenting the nature, characteristics, qualities or geographic origin of a competitor's undertaking, goods or services and, it is with the purpose of discrediting the establishment, products or services of a competitor.

Effect of Unfair Competition- 134(1) provides for certain remedies: damages and other orders that are deemed fit to put an end to the unlawful act.

* **Trade Practice Procl-** entered into force on 17th of April 2003, contains 31 arts under 4 Parts.

Part one, being general, deals with short title, definitions, objective, and scope of application whilst Part two contains rules regulating, as can be gathered from its caption, anticompetitive practices.

Part three establishes the Trade Practice Investigation Commission and defines its powers. Part four provides for such miscellaneous matters as indications of prices, labels, power to regulate prices of basic goods, issuing and keeping of receipts, administrative measures and penalties, it prohibits two types of commercial behaviour: anti-competitive i.e. anti-competitive agreements, unfair competition, and abuse of dominance

no-competitive behaviours comprises non-compliance with the legal requirements pertaining to indications of prices, labels, price lists of goods and services subject to regulation; conditions of distribution, sales and movement of same; orders for replenishment of stock of same; and the issuance and keeping of receipts.

The proclamation applies to all commercial activities except such “activities that are, according to investment proclamation, exclusively reserved for the Government.”

neither z CPC nor z Procl has a rule on pendency w/c precludes an admin tribunal from adjudicating a matter brought b4 it at any time subsequent to z institution of a civil matter in a competent court.

Criminal Unfair Competition- Although Art 719 of the Cril Code defines criminal unfair competition, Art 720 & 721 also criminalize such specific cases of unfair competition as infringements of

intellectual property rights.

UNIT THREE

BUSINESS ORGANIZATIONS

Introduction - from a legal viewpoint, BOs are undertakings with more than one member, having assets distinct from the private assets of the members and a formal system of management, which may or may not include members of the organization.

Essential features r

- initial plurality of membership - the possession of distinct assets
- a system of management (members wiz equal voice)

What is a BO ? Article 210 “any association arising out of a partnership agreement.”

210 and 223 reveals two important aspects of business organizations, namely the contractual and institutional (or, organizational) aspects.

Distinguishing Between Business Organizations and Associations

Art 404 Civil Code defines an association as “ a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profits. “

If profit is considered to be the underlying motive for the formation of a certain organization, then it is said to be a business organization.

Associations and BOs are governed by two different legal regimes which are independent of each other. Associations are regulated by Articles 408-482 Civil Code whereas BOs are governed by Book II of the Commercial Code.

While associations are being supervised by the office of associations of the MoJ or the respective offices of the Regional States’ Justice Bureaus, BOs fall within the jurisdiction of the Ministry of Trade and Industry or the respective Regional States’ Bureaus.

Associations are expressly prohibited from engaging in any of the commercial activities listed in Art 5 of the Com C. Art 25(1) provides that “associations may not carry on any trade.”

Cooperative Societies Distinguished

are groupings that are organized to provide an economic service without profit to their members & governed by the Cooperative Societies Procl No.147/1998.

Eg. Consumer purchasing cooperatives are formed to obtain lower prices through quantity discounts.

Classification of Business Organizations

Partnerships and Companies

(i) Partnerships. is an aggregate or collection of individual members. incapacity, death, or serious disagreement between partners may result in dissolution of the partnership firm.

are suitable for small business involving a relationship of mutual trust and confidence.

The partners are agents for each other. Therefore, they are normally jointly and severally liable for the acts of each other and the liability of each partner to third parties is unlimited, although they are liable to contribute to each other's liability and entitled to claim to an indemnity from the partner at fault.

a partner cannot transfer or assign his interest in the firm to an outsider or third party and make the transferee or assignee a partner without the consent of all the other partners. a partner can transfer his share in the firm, but the assignee does not thereby become a partner and is merely entitled to the assigning partner's share of the profits.

(ii) Companies. is an aggregate or collection of shares or capital. the company may own property, make contracts, and sue and be sued under its name. Also, it is entirely distinct from its members. death or insolvency of a shareholder does not affect its existence (has perpetual succession) shares in a company are freely transferable unless the company's articles of association otherwise provides, a shareholder can transfer his share and ordinarily the transferee becomes a member. Members are not entitled to take part directly in the management of the company unless they become directors. managed by a board of directors, general manager, shareholders' meetings, and auditors.

Forms of Business Organizations there are six

Though the main classification is between partnerships and companies, partnerships can be further broken down into four legal forms: ordinary partnership, joint venture, general partnership, and limited partnership.

Companies r share company and private limited company.

Formation- any business organization must be formed by a contract known as partnership agreement, Article 211

It is a **contract** whereby **two or more persons** intend **to joint together and to cooperate** undertake to bring together **contributions** for the purpose of carrying out **activities of an economic nature**

and of **participating in the profits and losses** arising out thereof.

Publicity - According to Article 219(1) of the Commercial Code “any business organization other than a joint venture shall be made known to third parties.” to protect third parties.

publication of notice, deposit of documents, and registration in the commercial register [Articles 220-224, Com.C.].

Legal Personality and its Attribute- Legal personality is a device whereby groups of people such as business organizations become the subject of rights and duties.

Attributes of Legal Personality

(a) Capacity- Art 22 of the Com C, Business organizations are expressly invested with the capacity to “carry on any trade in accordance with the provisions regulating such trade.”

(b) Firm name- The name of a business organization, is chosen by the members in pursuance of the rules governing firm-names.

(c) Head Office- is the place where its principal organs of administration and management are situated. it determines nationality of the BOs under consideration.

(d) Nationality: The general principle concerning bodies corporate whose head offices are situate abroad is that they have such nationality as is given to them by the laws of that country.

Articles 545-549 CC in conjunction with Articles 555-560 of the Com C.

UNIT FOUR

ORDINARY PARTNERSHIP

Introduction- The major distinction between an ordinary partnership and other partnership forms is that commercial business organizations (vested wiz art 5) cannot adopt this form of business organization. Article 213(2)

Contributions- Every partner must make a contribution, which may be in money, debts, other property or skill.

Where a partner contributes a debt, he guarantees only the existence of the debt and not the solvency of the debtor, unless otherwise agreed [Article 230].

the partnership capital- being the original value of the total money and property that the partners contribute and dedicate to use in the enterprise, it is a fixed amount that may change only through amendment to the partnership agreement.

Partnership Property found in the caption of article 245, refers to “property, debts and rights brought into or acquired by the partnership”.

Ownership and Possession of Partnership Property- is held by the partners as joint owners. Every partner is a co-owner.

Creditors of the Partnership- Article 255(1) stipulates that “The creditors of the partnership may claim against partnership assets.”

Zey ‘ve z right to “claim against the personal property of the partners who shall, unless otherwise agreed, be jointly and severally liable to them for the obligations of the partnership.”

Creditors of the Partners- Article 256

Management

Types of Managers

(i). **Statutory managers , 236-240**

(ii). **Subsequently appointed managers-** These are managers appointed by decisions of the partners at any point in time subsequent to the making of the partnership agreement.

(iii). **Managers at law-** Article 236

(iv). **Sole manager-** where a single individual has been appointed a manager.

(v). **Several managers-** two or more persons have been appointed managers and their duties have not been specified or where it has not been specified that they act jointly.

(vi). **Joint managers-** 238

The Authority of Managers- Article 3, 33-36

***Express Authority: The authority which acts as:**

- a) as specified in the partnership agreement.
- b) as stipulated in the contract of employment.

***Implied authority -** means the authority to bind the firm which arises, by operation of the law, from the fact of partnership. 2179 of the Civil Code, 236,275(2) and 286(2) com c.

Rights and Duties of Partners

(i). **General Duties-** Art 243(1), Art 2208(1), 2263(1), Civ.C., 2211(1), Art.243(2), Com.C

(ii). **Specific Duties-** Arts. 2213 & 2210, Art.244, Art. 245(3), Art.246, 247(2), Art. 232

Liability of Partners to Outsiders

(i) **Liability of a partner for acts of the firm-** Art. 255

(ii) **Liability of the firm for wrongful acts of a partner-** Art.2222

Dissolution (217-218, 256, 258,260), Winding up (264-270), and Termination ()

Upon dissolution, the partnership is not terminated but continues until the winding up, unfinished business is completed, receivables are collected, payments are made to creditors.

Whenever a dissolved partnership is not to be continued, the partnership must be liquidated. The Process of liquidation, called winding up.

UNIT FIVE

Joint Venture

have the following merits:

- Transactions or projects can remain secret by virtue of the secretive nature of the organization;
- Joint ventures are exempted from registration, unlike the remaining legal forms of business organizations;

Although in practice the joint venture is frequently used for a single business transaction, it can also be used for a number of transactions and for a more or less long period of time.

only the manager being made known to the public while the members remain in the shadows it does not have legal personality .It therefore does not have a firm-name; does not possess capital, assets or liabilities; does not have a head office; cannot be declared bankrupt. Being essentially an organization of persons, the joint venture cannot issue transferable securities representing shares in the organization.

Unless otherwise provided, every member retains ownership of the property which he contributes to the joint venture. the contribution of the members cannot become the property of the joint venture.

CHARACTERSTICS OF JOINT VENTURES

- Art.272

it will be presumed to be a *de facto* general partnership, because it is commercial. And it is a *de facto* BO, because it has not been registered.

MANAGEMENT - Many times, the manager is a venturer.275, Arts.276,277

DISSOLUTION- Article 278

EXPULSION OF A PARTNER in lieu of DISSOLUTION- Article 279

UNIT SIX

GENERAL PARTNERSHIP

Partners are, “personally, jointly, severally and fully liable as between themselves and to the partnership for the partnership firm’s undertakings.” 280(1)

The firm-names must contain at least the names of two of the partners accompanied by the phrase "General partnership".

Transfer of shares

a share may be transferred or assigned to a third party and thereby the latter is rendered a partner in the strictest sense of the term by virtue of a decision taken by a majority vote of the partners to the same effect [Art. 282(1) and (2)]

the transferee or assignee has limited liability for whatever debts and obligations the firm incurred prior to the transfer or assignment.

Memorandum of Association and Registration Article 284

Powers of Managers- Art 289(1)

-Where the Partnership Agreement Fails to Specify the Powers of the Manager

(a.) Implied authority- The managers, whether employees or partners, are agents of the firm. Hence, there exists the typical agent-principal relationship between the manager and the firm. Article 2202(1)

The character and scope of the partnership business and the customary nature of the particular business operation determine the scope of implied powers.

(b)Apparent authority - a third party to believe that the person with whom he was dealing was authorized to act on behalf of the principal.

The manager would be exempted from liability in cases where he acted in good faith, not knowing the reason by which his authority has come to an end.

-Several Managers - Article 288(1)

-Employee Managers 289

Liability of Partners- 294 , the creditors can bring a direct action against partners for the repayment of fictitious dividends which they have received.

UNIT SEVEN

LIMITED PARTNERSHIP

Art. 296-303

The reason why a limited partner is prohibited from acting as a manager even under a power of authority is that it is dangerous to allow them to act as a manager, because it leads to confusion as to the legal status of the partner in his relations with third parties.

UNIT EIGHT

Share Companies

Companies in General

the sole proprietor and partnership have certain limitation and disadvantages which make them unsuitable for large scale business operation with business opportunities growing at a faster pace as a result of discovery and exploitation of natural resources.

The company form had its humble beginning in the late 16th or early 17th century and since then on, it grew in size and power in different measures in different countries.

Share Company is defined as (a) one which does not have restriction on maximum number of members (b) inviting public to subscribe for shares or debentures of the company (c) transferability of shares are free.

private limited company is one which, by its status: (a) restricts the right of its members to transfer their share is (b) The number of members limited to 50 (c) No invitation to the public to subscribe for any shares or debentures of the company.

Distinction between Private Limited and Share Company

1. **Membership:** - only two persons are required to form a private limited company while a share company requires a minimum of five members to start with.

There is no limit on the maximum number of members in Share Company. Whereas a private limited company can have only 50 members at most.

2. **Directors:-** A private limited company is managed by one or more managers while Share Company is managed by directors whose minimum number shall be three.
3. **Public subscription :-** while a share company can invite public to subscribe to its shares and debentures, a private limited company can not go to public to raise its capital.
4. **Prospectus:-** A share company which goes to public to raise its capital is required to file a prospectus while a private limited company is exempt from this requirement because it can not invite public to subscribe to its capital.
5. **Minimum subscription:-** in share company all capital must be subscribed and 25% of the capital must be paid-up before registration. Private Limited Company be registered by fully paid-up capital.

Merits of Company

a)Financial Resource: - If a business venture is to be promoted on a large scale, none of the

partnership or sole proprietorship form of BO can prove equal to the task of raising funds to the required level.

b) Limited liability: - when compared with the partnership or sole proprietorship where the liability is unlimited, the shareholders are not liable to pay anything more than the face value of the shares held by him.

c) Scope of growth: - the company form of organization need not suffer for lack of financial resources with a huge capital at its disposal, collected from investors spread all over the country and even abroad also, the company can grow.

d) Professional management: - The management of the company can be left to a group of professionals who, with their competence, specialized knowledge or skills, qualifications of training, can show better results in production, distribution or marketing etc

e) Stability of the company: - the partnership or sole proprietorship form may have to close the shop due to the death of sole trader, a partner or die to any other reason including the internecine quarrels =amongst the partners.

f) Positive social benefits: - is beneficial not only to its members, creditors & employees but also to the public at large. It supplies goods & services at a competitive rates by introducing new & sophisticated technologies & by exploiting the natural resources in a most efficient & economic manner.

Share Company

Nature

Limited liability: - is a separate legal entity. It is the owner of its assets and liable to pay its liability (Art. 304(1)). No member is liable to contribute anything more than the nominal value of the shares held by him.

Perpetual succession: - unlike partnership share company will not be dissolved by the death or incapacity of its members. It is an entity with a perpetual succession.

Transferability of shares: - Even though it is possible to restrict free transfer of shares in the articles of association (Art. 333(1)). As a general principle shares of Share Company are freely transferable and can be sold or purchased in the share market.

Founders (Art. 307) - r persons (an individual or body corporate) who bring a share company into existence. no defin in z code

Roles: - the code is silent but they have the power of creating and modifying the company. (Art 308/2/)

Rights:-310

Liabilities: -309

Memorandum and Articles of Association

a)Memorandum of association:- It is a document which sets out the constitution of the business organization and is really the foundation on which the structure of the business organization is based.

The intending partner/ shareholder, who contemplate the investment of his capital can know within what field it is to be put at risk.

Any one who deals with the company can know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects.

(b) Articles of association - are the rules and regulations of a company framed for the purpose of internal management of its affairs. It deals with the rights of members of the company inter se.

Though the articles are subordinate to the memorandum, yet if there be any ambiguity in the memorandum, the articles may be used to explain it.

The articles should also not authorize the company to do anything which contravenes the provision of commercial code of Ethiopia. If they do, they would be ultra virus the memorandum of the law and will be null and void.

Articles and Memorandum Distinguished

- * MoA is the charter of the company and defines the scope of its activities. AoA of the company are documents which regulate the internal management of the company.
- * MoA defines the relation of the company with outside world, whereas AoA deal with the rights of the members of the company inter se and also establishes the r/p of the company with the members.
- * Memorandum is a supreme document of the company where as articles are subordinate to the memorandum; they can not alter or control the memorandum.
- * A company can not depart from the provisions contained in its memorandum, and if it does, it would be ultra virus the company. Any thing done against the provisions of articles, but which is intra virus the memorandum, can be ratified.

Deposit and Registration_(Art 323)

Amendment 388-416

Forms of shares /Art 325 & 326/ - are either registered in the name of a shareholder or the bearer. shares in the bearer- the issuer does not know the identity of the persons holding its shares and can communicate with them only by way of press releases, whereas shares in the name of a shareholder -the issuer has full access to the shareholders list.

Rights and duties of shareholders

Rights: When once a person becomes a member of Share Company he or she is entitled to exercise all the rights of member until he/she ceases to be a member in accordance with the provisions of the commercial code or statutes of the company.

Duties- in the case of liability of the company the liability of a shareholder of a company is liable to the amount.

Corporate Management - Management of the company is carried on by the shareholders' meeting and board of directors as well as general manager.

A) Shareholders' meetings-

- 1) **General meetings:-** are meetings which consists of shareholders or all classes. General meetings are in turn classified into *ordinary* and *extra ordinary* general meetings.

Ordinary general meeting – This meeting of the shareholders is held once every year to discuss financial and administrative affairs of the company

Extra ordinary general meeting – this is a meeting of the shareholders to consider a particular matter specially amendment of the statutes

- 2) **Special meeting:-** is a meeting that consists of shareholder's of particular class to transact business affecting their interest only.

B) Directors /Art 347-367/ r persons (Individuals or legal entities) by whom the business of the company is carried on.

The first directors may be appointed in the statute. Subsequent directors are appointed by ordinary general meeting of shareholders.

The board of directors has power given to it by the law of statute and decision of general meeting of the shareholders. 360, 362

C) General Manager- 348 - z one by whom day to day activities are carried on.

Accounts and audit

out of capital payment-445- 461- At the end of each fiscal year the board of directors must prepare

annual accounts and a management report for submission to the general meeting (Art 446).

dissolution and wind up – 495-509- Causes common to all kinds of business organization r in /Art 217-218/

Dissolution may result from the application of rules of law, from provisions in the statutes of the company/ partnership from the common agreement of the members to dissolve/ or from a judicial decision dissolving the companies for just cause.

UNIT NINE

Private limited company

Nature- 510- 543

PLC is the most popular form of company in Ethiopia. b/c

1)it is particularly well adapted to small and medium–sized business and currently, the Ethiopian business is at these stages.

2) it is hybrid of Share Company and partnership. On one hand it is limited liability, its members liability is limited to the extend of their contribution, on the other hand shares are not freely transferred to the outsiders, which is chief chrematistics of partnership.

it may not take banking, insurance and similar activities, such business must be carried out by Share Company (Art 513)

formations 510

Documents to be filed with the registrar- The memorandum of association ,the articles of association, document that states the evaluation of in kind contribution, if any

liabilities of members for the company's obligation

The liability can be enforced during the existence of the company as well as during wind-up.

members' meetings-537 &ff The essential role of the members of Private Limited Company is to take the major decisions which the company has to take.

Shareholders are above all entitled to be consulted on major matters, either by the holding of general meetings or by their wishing being solicited individually.

In company consisting more than twenty members a general meeting of shareholders must be held every year at the date fixed in the articles of association.

role of management - Private limited company is managed by one or more managers under the direction and control of shareholders (Art 525 & ff)

The appointment of the first managers may be made in the statutes of the company, and all other appointments are made by the resolutions passed by the members in general meeting.

Shares and transactions in shares- Unlike the shares of Share Company, the shares of private limited company are not transferable by the normal commercial forms of transfer.

Shares can be transferred to outsiders with the consent of majority of the members representing at least three-quarters of the capital unless a larger majority or unanimity is required in the articles of association.

Transfer inter vivos and mortis cause- Shares can be transferred to nonmembers only if any member is not willing to buy the shares. This is termed as “preemption clause”

Any person becoming entitled to a share on the death, on production of satisfactory proof as to his title may elect either

- To register himself a holder of share or
- To transfer the shares as the original members could have done

UNIT TEN

Conversion and amalgamation of business organization

Conversions - is an operation by which its legal form is changed without being creating new legal personality (Art 544(1). PLC may be changed into Share Company and vice versa.

The decision may pass by unanimous or majority required by the law or articles of association. it neither increases any liabilities upon member nor deprives the right of members partially or wholly.

Amalgamation - is the operation by which two or more, business organizations group into only one business organization and by which the members of the amalgamated business organization receive shares issued by the business organization benefiting from the amalgamation. 549

The decision is taken by each business organization. Such decisions have to be approved by different classes of shareholders and debentures (Art 550).

BOs incorporated abroad & operating abroad 555-560 not covered in z material