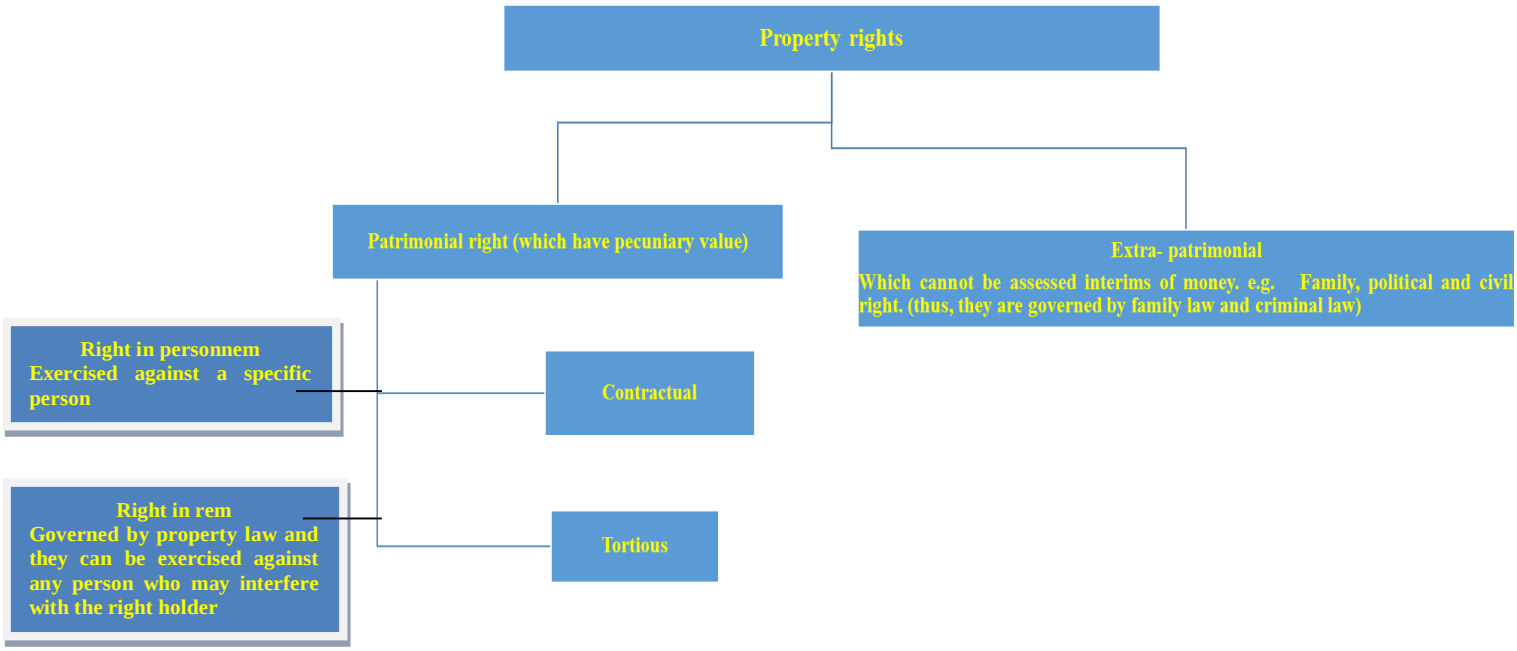
Unit One

General Overview of Patrimony, Property and Property Law

What are the rights protected under the civil law and the concept of patrimony?



Q. what are the essential elements of patrimony?

- ✓ The totality or unity of patrimonial rights and obligations of a person constitutes his patrimony.
- ✓ However, the modern conception of patrimony, including the one contained in the German Civil Code, ***restricts the definition of patrimony to the totality of a person's patrimonial rights only.***
- ✓ According to this conception, *a person's patrimonial obligations are the charges/burdens over a person's patrimony rather than constituting its elements.*

Q. what are the main features of patrimony?

- ✓ Accordingly, the characteristics of patrimony are to be sought in the nature of personality. Hence, it follows that:
    1. *Every patrimony presupposes a person who is its holder*
    2. *Every person has a patrimony*
    3. *A person can have only one patrimony*
    4. *Patrimony is inseparable from the person of its holder.*

The Concept of Property

Q. if so, what is property?

- ✓ 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 and the follow the thing and its fruits in the hands of any person who might have unlawfully taken it.
- ✓ Property rights are rights in-rem in the sense that it creates an obligation, on all other persons, to refrain from any act of interference in the use and enjoyment of a thing one owns or possesses. (see art 40 of FDRE constitution)

a) Theories of Property

Q. what are the major theories of property?

- ✓ There are two main groups of theories of property;
  a. 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.
  b. The other group of theories tries to explain the economic and asocial reasons behind the recognition and protection or condemnation of private property.

A. Theories Regarding Origin of Property

i. The Positivist Theory

- ✓ According to Jeremy Bentham, one of the prominent utilitarian political philosophers, property is the basis of expectation of deriving certain advantages from a thing which we are said to possess, in consequence of the relation in which we stand towards it.
- ✓ Property and law are born together and die together. Before laws were made, there was no! Property; take a way laws, and property ceases.
- ✓ However, this theory is criticized on the ground that the state and private property are the results of the same social and economic forces and we can hardly say one is the creation of the other.
- ✓ John Locke argues that the state is the result of a social contract in which the society transferred some of their rights to the state for the purpose of protection their rights including the right to property.

ii. The Hegelian Theory

- ✓ According Hegel, a human person is merely an abstract unit of free will or autonomy that does not have a concrete existence until that will acts on the external word.
- ✓ Thus, 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.
- ✓ Similarly, Professor Margaret Jane Radin has argued that to be a person, an individual needs some control over resources in the external world.
- ✓ Locke says that "every man has a property in his own person," from which it immediately follows that "the labor of his body, and the work of his hands… are properly his."

iii. The Occupation/ First Possession/ Theory

- ✓ In the beginning of the world The Creator gave to man dominion /ownership/ over all the earth and over the fish of the sea and over the fowl of the air and over every living thing that moves up on the earth.
- ✓ This is the only solid foundation of man's dominion over external things.
- ✓ Possession thus means a clear act where by the entire world understands that the pursuer has "an unequivocal intention to appropriating the thing to his individual use". A clear rule of this sort should be applied because it prevents confusion and quarrelling among persons.

iv. Labor or Entitlement Theory

- ✓ God, who has given the world to men in common, has also given them reason to make use it to the best advantage of life and convenience. The earth and all that is there in is given to men for the support and comfort of their being.
- ✓ 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.

B. Theories Regarding the Justification of Private Property

- ✓ The theories discussed above in connection with the origin of private property are also used to justify or condemn the existence of the institution.
  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. This, thus, the existence of the person and hence his/her property is just.

e. **Marxist Theory-** 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. Hence, private property is the evil that has to be abolished. Please read the following excerpt from the Communist Manifesto.

b) OBJECTS OF PROPERTY

Q. what is objects of property?

- ✓ The phrase 'objects of property' may be defined as the goods or things over which a right of property may be exercised.
- ✓ The French Civil Code uses
  - a) '***Choses'*** should refer to anything, which exists in nature, whether susceptible of appropriation, while the term
  - b) ***'beins'*** should refer to objects of riches or fortune, i.e., things that are susceptible of appropriation.
- ✓ Here it is important to note that all 'beins' are 'choses' while not all 'choses' are 'beins'.

Q. what are the elements of objects of property?

- ✓ For a certain matter to be considered as an object of property, it must have:
  - a. **A certain element of permanence**, as opposed to events and facts, for example a puff of smoke may not be considered as a thing since it lacks permanence.
  - b. **A certain element of physical unity** i.e. organic unity as in the case of an ox or a sheep, or inorganic unity as in the case of a house made of bricks.
- ✓ *Hence, the phrase objects of property refer to things in the sense of any possible matter over which legal right of property may be exercised.*

Q. what things may be considered as objects of property /things or objects/ in the Ethiopian property law?

- ✓ Under Ethiopian law, objects of property, herein after called thing /good may refer to;
  - i. **Things /goods which have material existence**: corporeal things/ (Art 1127), as well as claims and rights contained in securities to bearer which are incorporeal or intangible by nature but which are assimilated to corporeal things (Art 1128) and
  - ii. **Things which have no physical or material nature but which are perceptible by senses:** for example natural forces of economic value such as solar and wind powers which are mastered and put to use by mankind (Art 1129)

Intrinsic Elements of Things

Q. what is intrinsic elements of good/things?

- ✓ Art 1132 of the Civil Code defines intrinsic elements of goods as *things, movable or immovable, which are regarded by custom as forming part of a thing, or which is materially united to a thing and cannot be detached there from without destroying or damaging such thing.*

Q. What about trees and crops? Are they intrinsic or accessory?

- ✓ Trees and crops are considered as intrinsic elements of land until they are separated there from or until a contract for their separation is concluded. (see art 1133)

Q. what is the effects of things treated as intrinsic part of certain property?

- ✓ The treatment of things as intrinsic elements other things will have the following effects.
  - i. *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.* (Art 1132/1/)
  - ii. *A thing that becomes an intrinsic element of another thing ceases to exist as a distinct movable thing.* For instance, a water pipe fitted in a building or a newly bought windshield glass fitted to a vehicle ceases to exist as a separate thing or object of property. (See Arts 1134 and 2162-2163 of the Civil Code.)

Accessories of Things

Q. what makes the thing accessory parts?

- ✓ Art. 1136 of the Civil Code defines an accessory as *anything, movable or immovable, which the owner or the possessor / the Amharic version limits to the usufructuary and no other possessors/ of the thing has permanently destined for the use of another thing*.

- ✓ For instance, if an owner of a car puts a jack permanently for the use of his car the jack shall be considered as the accessory of the car.

Q. what is the effects of things being accessory parts?

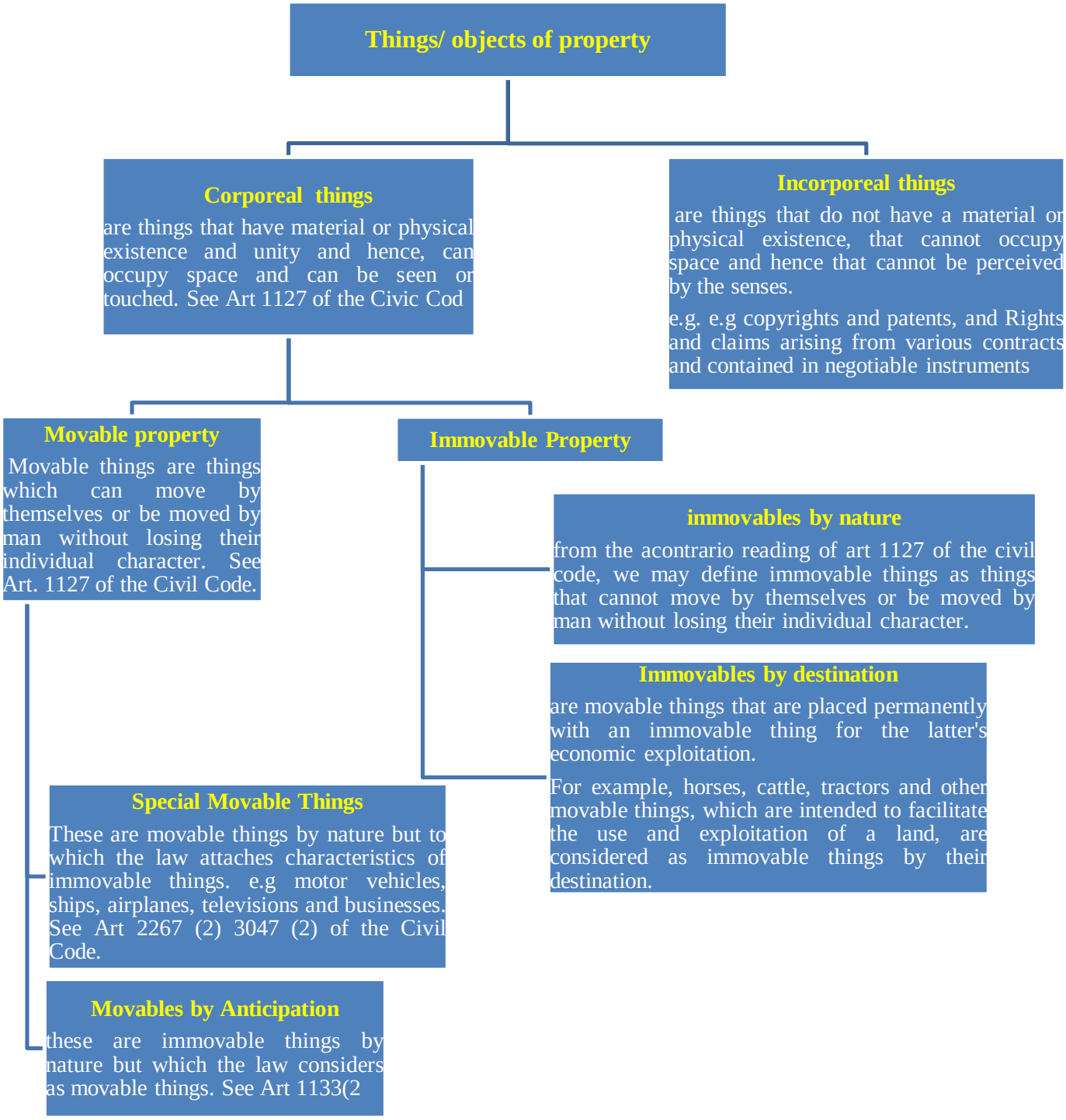
- ✓ The treatment of things as accessories of another thing shall have the following effects.
  1. *In the absence of an express provision to the contrary, rights on and dealings relating to the principal thing shall apply to the accessory.* See Art 1135 of the Civil Code.
  2. *Temporary separation of the thing shall not, in any way, terminate the character of accessories.* See Art 1137.
  3. *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. Hence, the owner of the principal may not raise the treatment of a thing as an accessory to another thing against the owner or possessor of the accessory.* See Art 1138/1/.
  4. *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*. See Art 1138/2/.
  5. *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.* See Art 1139 of the Civil Code.

Classification of Objects of Property

Q. Why we needs to classify objects of property?

- ✓ The main reasons for classification of objects of property /things or goods/ into various categories are the following;
  a. The economic and social values attached to things are not the same, i.e., certain things are more important than others are. For instance, buildings or houses and land / immovable things/ have a much higher economic and social importance or value than most movable things. (See Articles 1723, 1195 and 1193 of the Civil Code/.)
  b. It helps the legislator to enact special rules governing the particular category of things.

Q. Discuss on the major classifications of property?



N.B. Natural forces of an economic value such as solar and wind powers used for generation of electricity are considered as incorporeal things from the moment they are controlled and put to his use. Though these things are incorporeal by nature the law, for the sake of convenience, regards them as corporeal things. / See Art 1129 of the Civil Code/

Q. why Art. 1128 singled out claims and rights incorporated in securities to bearer are considered as objects of property governed by property law?

- ✓ Securities are one type of negotiable instruments particularly, documents containing rights for payment a certain amount of money. Shares or stocks and bonds or debentures issued by companies or treasury bills issued by the government through the national or central bank are the typical examples of securities.
- ✓ Securities to bearer, on the other hand, are securities that do not specify the name of the beneficiary of the rights, i.e., the person to whom the money is to be paid is not specified in the document.
- ✓ Rights contained in securities to bearer may be transferred by simple delivery of the document, and any person who holds the document is presumed as a lawful holder and payment shall be made to such person.

Q. if so why 1128 art exclude other forms of securities and includes only security to bearer?

- ✓ Claims and rights incorporated in negotiable instruments in general and securities in particular should not fall within the scope of property law because the rules governing most other types of property are not applicable to these rights and claims.
- ✓ Though Art. 1128 considers theses rights and claims as corporeal movable things governed by property law, specific provisions of the law of property provide otherwise.
- ✓ *For instance, Art. 1165 provides that stolen corporeal movable things may be reclaimed by the owner even from a person who has acquired them in good faith, while this is not possible in respect of currencies and securities to bearer.*

Q. what are the special features of the land?

The following are special characters of land that distinguishes it from other properties.

a. Land is more enduring than other properties; hence, future interests in land have definite value.
b. It is important for purposes of security because of the fact that land cannot be moved and it is permanent as opposed to furniture or vehicles that may be easily hidden.
c. A risk of destruction of the land, for example, by storm or fire is minimal.
d. Land can be subdivided without necessarily losing its value.
e. Land is still very necessary for expansion of industries, large farms and creation of means of transport.

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.

Q. what is the importance of classifying property as real and personal?

- ✓ This classification has the following important effects;
  a) The rules of intestate succession are different for the two types of property. Compare the paterna-patternis materna-maternis rule under Art 849-851 of the Civil Code.
  b) Only personal property can be owned absolutely, whereas real property could be split up in to successive interests-tenancy, lease usufruct…etc.
  c) Personal property was primarily liable for the payment of debts.
  d) Special rules of transfer apply to immovable things. Compare Arts1723/1/, 1185, 2877 and 2878 of the Civil Code, contracts relating to immovable things have to be made in writing and registered.

Miscellaneous Classifications

A. Chose in Action and Chose in Possession

- ✓ English law divides all personal property into chose /things/ in possession and chose /things/ in action.
  a) **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. Patent rights, copyrights, probably right of action for breach of contract and right of action for damages are also chose in action.
  b) **Chose /things/ in possession**: 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. See Art 1148 of the Civil Code.

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, on the other hand, are movable or immovable things, which in ordinary dealings, are determined by their specific identity. A land or a vehicle is a non-fungible thing and contracts involving such a thing shall be performed by delivering that specific thing and not by delivering any vehicle or land.

Unit Two

Possession

Theories and Definition of Possession

A. Theories of Possession

i. SAVIGNY'S/Classical/ Theory of Possession

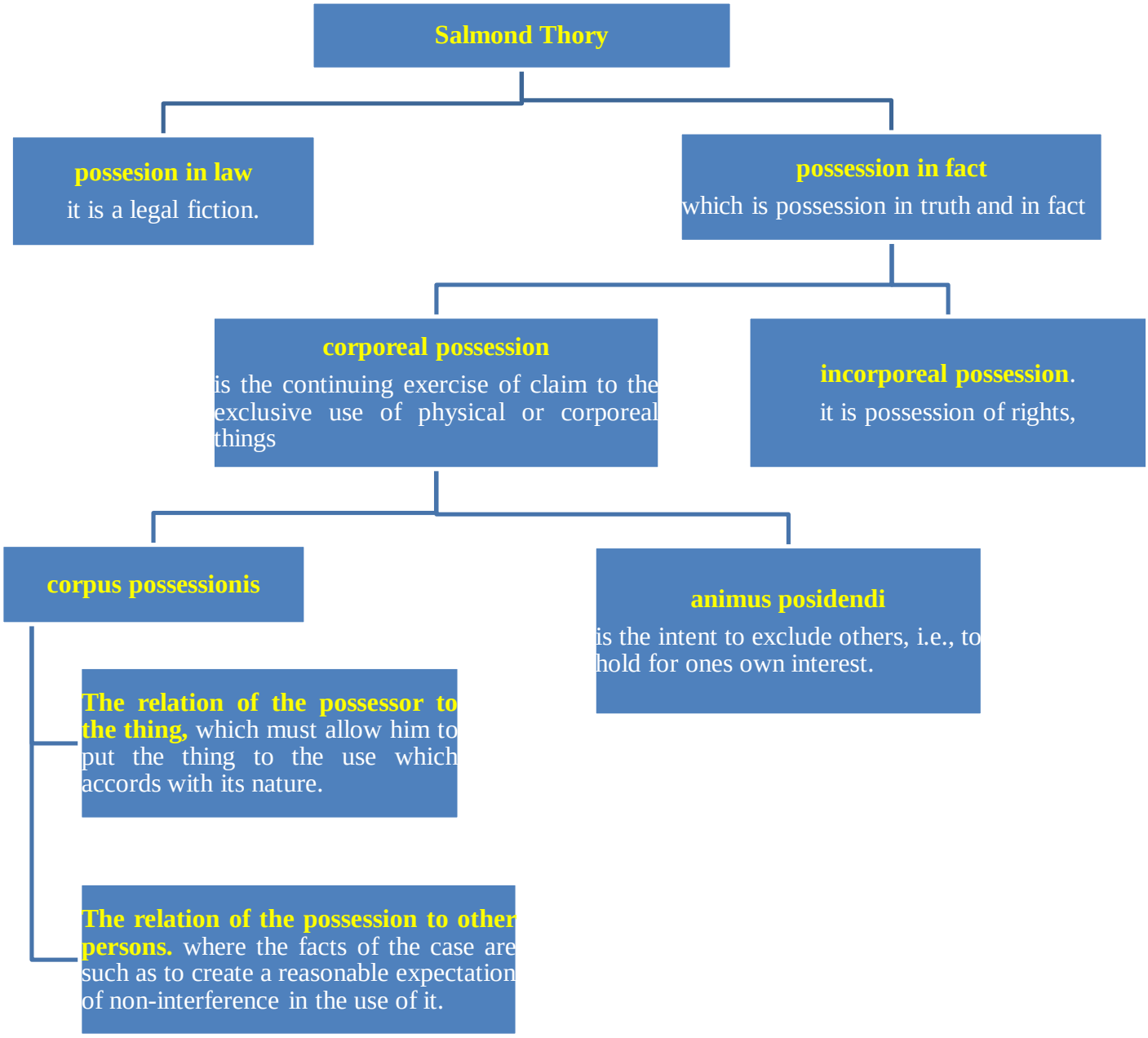
- ✓ Possession consisted of two ingredients,
  - **a.** Corpus possessions, i.e., effective control and
  - **b.** animus domino, i.e., the intention to hold as an owner **for one self and not on behalf of another**
- ✓ This theory explains why the tenant, the borrower, and the agent are not possessors in Roman law, i.e., they did not intend to hold in their own right.

i. 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.
- ✓ He contended that the animus element was simply an intelligent awareness of the situation or fact.
- ✓ In other words, a possessor is a man who, in relation to a thing resembles an owner, i.e., who has direct physical control of such thing.
- ✓ The anomaly in this theory is that not every detentor is a possessor and it fails to explain these exceptions. (e.g. borrower are in physical control but the law denied them the ownership)

ii. Salmond's Theory

- ✓ A Modified version of Savigny's theory has exerted a considerable influence on English writers the term is not confined to physical control.



Q. What is the critics on Salmond theories?

- ✓ Critiques argue that expectation of non-interference is not necessary for the continuation of possession. For example, a man continues to possess his pocket book although pickpocket, who would interfere with his use of it in a few moments, is pursuing him.
- ✓ Nor is it necessary for its commencement, where for example a child or a ruffian may both make for a purse lying in the street, but if the child is the first to pick it up, he gets possession even though the ruffian is certain to interfere the very next moment.

- ✓ The other point of criticism is the assumption that corpus and animus, which are only conditions for the acquisition of possession, are possession themselves.

Q. If so what is possession?

- ✓ The term 'possession' may be defined as 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. Refer to Art 1140 of the Civil Code.
- ✓ If a person has a thing in his power, without intending to exercise to it a real right, the situation is more specifically called simple occupancy or holding, or detention.

Q. what is the difference between the holder of property and possessor of property?

- ✓ The distinction between detention and possession follows from a proper analysis of the fact that possession is made up of two elements
    a. The Corpus or element of physical control
    b. The Animus or element of intent with which such control is exercised.
- ✓ Accordingly, 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.
- ✓ On the other hand, the mere holder holds the thing not for his own benefit but for the benefit of another person.

Q. what are the possible relation of the person in relation to a possession of things?

- ✓ Hence, the following three situations became possible in relation to possession of a thing;
    a) A man could have physical control without possession and its advantages. (agents)
    b) He could have possession and its advantages without physical control. (indirect possession)
    c) He could have both, i.e., he may have physical control as well as the advantages attached to possession. (direct possession)

ACQUISITION OF POSSESSION

Q. when the possession of property is said to be acquired?

- ✓ The acquisition of possession is realized if the two constitutive elements concur, i.e.,
    a) Where the present and exclusive power to act physically with regard to the thing (corpus) and
    b) The manifestations of an intention to keep the thing as owner (Animus) exist.

N.B. The action by which a person obtains the present and exclusive power to act physically with regard to thing is called seizin (apprehension).

- ✓ The intention to control a thing for one's own interest/ animus/ must be manifested by an external act which is usually represented by the taking of possession itself or entering in to an agreement or other legal transactions.

Defects of Possession

Q. what are the grounds for defective possession?

- ✓ According to Art 1146/1/ of the Civil Code also provides that defective possession shall not give rise to any right. The following are the grounds that can render a possession defective.

a) Precarious Possession

- ✓ It occurred when the person does not have a right of ownership in relation to the object he holds.
- ✓ Thus, precarious possessions refer to the possession of those who hold a thing for another on basis of an agreement or in such quality that, at the expiration of the agreement, or where they lose their quality, they must return the thing.
- ✓ e.g. usufructuary, a limited user /usage/, a tenant farmer, leaseholder or a pledge, a creditor secured by antichresis, a tutor with regard to a minor's property is affected by the defect of precariousness.
- ✓ Simple occupants lack the animus element (intent to hold for themselves).

Q. What are the effects of precarious possession?

- ✓ Those simple occupants who hold a real interest in the thing, such as a usufructuary, a holder of a use right, and a pledgee are considered as possessors in relation to all persons other than the person to whom they have the obligation to return the thing.
- ✓ The defect of precariousness can be healed only by change in the nature of the possession resulting from a legal ground originating in a third person or from the owner, or from a formal contest by the simple possessor against the person for whose account he has been holding.

b) Clandestine Possession

- ✓ Possession is clandestine, that means not open, 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.
- ✓ This defect can be healed as soon as it is revealed by material acts openly carried out.
- ✓ Thus, the possession could be considered clandestine only if the occupant took extraordinary precautions to hide the continuation of his enjoyment.

- ✓ Clandestineness is purely a relative defect that can be subject to claim only by those who could not have known about the possession.

c) Volence

- ✓ Violence is another defect that may mar possession. In other words, a possession acquired or continued by acts involving physical or psychological violence is vitiated by a defect of violence.
- ✓ If the defect of violence is healed by peaceful enjoyment of possession
- ✓ The Ethiopian law does not clearly declare violence as a cause for defectiveness of possession. See Art 1146 of the Civil Code. However, we can deduce from the provisions of Art 1148.

d) Ambiguity/ Dubiousness

- ✓ Possession is said to be ambiguous where it is not clear whether the person is holding a thing in his own name or in the name of another person. According to Art 1146/3/,
- ✓ Hence, in the circumstances, it is doubtful whether the thing belongs to the person who claims to be the possessor or whether he holds the thing on behalf of another person. This type of defect clearly related to the mental or animus element of possession.
- ✓ An ambiguous possession shall not have the effects of possession. For instance, it cannot be the base for acquisitive prescription. See Arts 1146/1/, 1168 and 1150 of the Civil Code.

Effects of Possession

Q. What are the major effects of possession?

1. **Possession may create ownership either by occupation** see Art 1151 and 1168 0f the Civil Code.
2. **Possession is a prima facie evidence of ownership** See Art 1193 of the Civil Code.
3. **Possession is the basis for certain remedies because the law protects a possessor**. See Art 1206 of the Civil Code.

c) Protection of Possession

Q. why the law protects possession?

- ✓ The law protects possession for the following reasons,

1. It aids the criminal law by preserving the peace and order
2. to determine persons who are tortious liable
3. It is protected as part of law of property because it is difficult to know that the possession in question is unlawful.

Q. if so, what are the major protections of possessory rights under Ethiopian property law?

- ✓ the major protections under the civil code are;

a. Possessory Actions

Q. What is the difference between possessory actions and negatory actions?

- ✓ Possessory actions are legal actions or suits instituted by a possessor who has been disposed of his possession or whose possession is interfered with or whose possession is threatened by the actions of another person.
- ✓ **Thus,** in contradistinction from negatory actions that are based ownership or title, possessory actions are those that are based exclusively on possession without touching the basis of the title. Compare Arts 1149 and 1206 of the Civil Code.

Q. which objects of property are subjects to possessory action?

- ✓ Things and interests with regard to which a possessory action can be brought are corporal immovable, their usufruct, servitudes and immovable rights of enjoyment and use.
- ✓ However, since possession of corporeal movable things /chattels/ is equivalent to ownership, the action applicable to them is negatory actions, i.e., actions based on title or ownership and that are intended to recover the same.

Q. if so, on which immovable that possessory action will apply?

- ✓ Corporeal immovable things can be the object of possessory action bearing on possession of the land itself, accordingly the immovable property shall be
  a. **Only if they are in-commerce /private domain/ and are susceptible of being acquired by adverse possession/ acquisitive prescription.** Hence, it shall not apply to things that are considered as part of the public domain. See Art 1444-1447 of the Civil Code.
  b. **Only private interests are contested:** the defendant cannot plead the character of public domain possessed, according to him, by the immovable in issue. The possessor of land expropriated for public purposes can bring a possessory action against the municipality, which would contest his right to be compensated.

     Provided that, this action does not aim at retention or recovery of possession, but at the recognition for the purpose of establishing his title to the compensation. Immovable things in the private domain of the state, the departments and municipalities can be acquired by adverse possession; hence they can be the objects of possessory actions.
  c. Immovable things which are found on a land belonging to another person but which can be possessed separately from it, can be a separate object of a possessory action. This principle

applies not only to buildings constructed on someone else's land, but also to trees and crops planted on the land of another.

d. **Usufruct, use and habitation right**s can be the object of possessory actions in as much as they are related to corporeal immovable things in-commerce/ belong to the private domain.

e. **Legal servitudes or servitudes established by law** can give rise to a possessory action provided that the plaintiff still is or was, at the time when the interference occurred, in possession of the servitude.

Q. why our law grants a mere holder the protection of possessory actions?

- ✓ This is because of the need to preserve peace and order, since denying him such remedy would encourage unlawful actions of usurpers that threatens public order.
- ✓ However, a mere holder is not allowed to bring the other types of possessory actions that aimed at recognition of possession, since in these cases the acts are not considered as a threat to public peace and order.

Q. When shall be possessory action shall be brought?

- ✓ according to Art 1149/2/, a possessory action of any type shall be barred if not brought within a period of one year/ the Amharic version provides two years/ from the day of the usurpation or interference.
- ✓ This means that the possessor loses his right to require the restoration of the thing or cessation of interference where he fails to institute legal action with in the period of two years.
- ✓ However, he may still recover the thing by instituting action for restitution/ nugatory action/ under Art 1206 of the Civil Code provided that he can prove his right of ownership and as long as he has not lost his ownership through extinctive prescription. See Art 1168 and 1189 of the code.

Q. what are the remedies in possessory action?

- ✓ Art 1149/3/the major remedies are;
  - The cessation of interference or
  - The restoration of the thing unless the defendant can prove forthwith and conclusively the existence of a right in his favor justifying his conduct.

b. Use of Force (self-help)

- ✓ According to Art 1148 of the Civil Code, the possessor or holder has the right to defend his possession by using a reasonable force to prevent a person who intends to dispossess him or to retake possession of a thing which has been taken away from him by force or which has been stolen from him *provided that the usurper is caught in the act or when running away.*

Transfer of Possession

Q. what are the major modes of transfer of possession?

- ✓ The transfer of possession may result from contracts such as sale, donation or operation of the law.
- ✓ Possession may be transferred by the delivery or handing over the thing or documents representing the thing such as a bill of lading, consignment note, a ware house goods deposit certificate.
- ✓ It may also be transferred through delivery bravemanue, i.e., *an agreement between the holder and the person for the account of whom the former exercises possession and in which the holder ceases to hold in the name of another and begins to possess in his own name.*
- ✓ Alternatively, it may be transferred through constructive possession in which the possessor agrees to cease to hold in his own name and to begin to hold for the account of another who is considered as the actual possessor. See Arts 1143-1145 of the Civil Code.

Loss of Possession

Q. When a person loss his right of possession?

- ✓ Since both animus and corpus are necessary for possession, possession is lost when one of the two elements ceases to exist. The isolated continuation of one element does not suffice to maintain it.
- ✓ Possession is lost only by deliberate abandonment or by a physical obstacle that makes it impossible to restitute, at any time the possessor desires, the state of affairs that construed the possession. However, this principle does not apply absolutely and we have to make the following distinctions. See Art 1142 of the Civil Code.

Q. What if the person temporarily abandon the possession of certain property?

- ✓ 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.

Q. what if the immovable property is occupied by third party?

- ✓ Furthermore, possession is not necessarily lost just because a third person has occupied the immovable. It shall be lost only if he occupies the immovable for a year. /Compare Arts 1142 and 1149 of the Civil Code/.
- ✓ If the former possessor lets this period elapse without any act of enjoyment or any claim for return of possession, he shall lose his right of possession.

Unit Three

Ownership

Q. What is ownership?

✓ Right of ownership is the widest and the ultimate property right that may be had in relation to things or objects. Ownership may be defined as legal relationship that gives rise to certain rights and obligations between persons in relation to an object.

Q. Why ownership right is an absolute right?

✓ Ownership is said to be absolute in the sense that the owner may do as he likes with the thing that is his own. The rights of an owner include;

1. **The right of use and enjoyment**, which includes the right to determine the fate of the object. See Arts 1205/1/ and 1270-1271 of the Civil Code.
2. **The right of possession** that includes the right to exclude others. See Arts 1204, 1148 and 1149 of the Civil Code.
3. **The right to transfer the thing and its fruits for consideration or gratuitously**. See Arts 1205/2/ and 3049/2/ of the Civil Code.
4. **The right to leave or abandon the thing or its fruits at will.** See Art 1189 of the Civil Code.

Q. If so, what are the major elements of ownership right?

✓ a right of ownership is composed of the following main elements;

a) The right to use the object himself (the usus)
b) The right to collect and use fruits - such as crops or rents (the fructus)
c) The right to dispose of it and its fruits by alienation by destruction (abandonment) and the right to charge it with pledge or mortgage (the abuses)

Q. discuss on the ownership right as exclusive right?

✓ Ownership is said to be 'exclusive' because these rights are in principle available only to the owner, and is "perpetual" since these rights are neither extinguished by non-usage nor limited by duration. See Art 1204 of the Civil Code.

Q. What is the difference between ultimate ownership and complete ownership?

✓ **Ultimate Ownership-** in which other persons hold the rights of present enjoyment temporarily through contracts such as usufruct or lease and the residual magnetic core is left to the owner.

✓ **Complete or Beneficial Ownership-** in which the owner enjoys all the rights and privileges emanating from it.

Restrictions on the Right Ownership

- ✓ Even if ownership is said to be absolute and exclusive right a person may have relation to things, it may be made subject to various restrictions. See Art 1204/1/ of the Civil Code.

Q. What are the major restrictions on the right of ownership by law?

- ✓ Restrictions on the powers which ownership right usually involves can prevent these conflicts.
  a) It is prohibited to undertake on one's estate works or operations that may materially endanger a neighboring estate. See Arts 1210 and 1225 of the Civil Code.
  b) The law prohibits owners from causing nuisances to a neighbor by noise, smoke, gases odor if it exceeds limits considered tolerable. See Art 1225. See Art 1226.
  c) The law prohibits an from directing water to another's holding waters other than proceeding from rain or a spring and flowing naturally from higher to lower grounds. See Art 1246 (1) of the Civil Code.
  d) The owner of a building must construct the roof so that rainwater falls in to the public road or on his own land. See Art 1245.
  e) The owner/holder of land is required by law to allow access to his land/ holding in some circumstances. – see Arts. 1217, 1218, 1219, 1220, 1252, 1253), 1221-1224, 1249(2))

Property Rights With Regard To Land and Water

Scope of Right of Ownership/Use of Land

- ✓ The ownership/holding and use right/ of land includes what is above it. In other words, the air space is exclusively the owner's/ holder's/ and he can erect in it structures, he may demand the destruction of works which, in any way infringes his air space, or the cutting of branches which grow in to it. See Art 1211 and 1212 of the Civil Code.
- ✓ There is a presumption that the owner/holder of the land owns what is constructed on it. However, this presumption is refutable if the owner of a building is different from the owner/holder of the land on which it stands. See Art 1214 and 1200 of the Civil Code.
- ✓ 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.

Acquisition of Ownership

- ✓ *Principle of property law that no one can transfer a better title than he/she has. This means that, ordinarily, the transferor, in order to transfer a perfect right of ownership to the transferee, he must have a perfect right of owner ship himself.*

Q. How ownership can be acquired?

- ✓ the civil law legal system classify the acquisition of ownership in to two; see art 1184
  a) **Derivative Acquisition;** It is a mode of acquisition in which the right of the transferee is dependent on the right of the transferor. Hence, the governing principle here is that no one can transfer a better title or right than he has, and where the transferor is not an owner or if his right is defective, the transferee will not acquire right of ownership or will acquire a defective right.
  Derivative acquisition may result from contracts such as sale and donation/ Arts 2266-2426 and 2427-2470; will of a deceased person/ testate succession/ or the operation of the law, in cases of in testate succession/ Arts 826-1125 of the Civil Code/.
  b) **Original Acquisition;** this mode of acquisition involves the creation of new property a right, which is independent of any preexisting rights over the same thing. This mode of acquisition of ownership includes occupation, possession in good faith, accession and usucaption/ acquisitive prescription.

Q. What are the major modes of acquiring original ownership?

I. Occupation 1151-1160

- ✓ 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.

Q. What are the major subject matters of occupation?

- ✓ Occupation or first possession as a mode of acquisition of ownership right is limited to the following cases.
  a. **Wild Animals;** art 1152
- ✓ A person may acquire ownership right of wild animals living in natural freedom through the act of hunting and fishing.
- ✓ However, this cannot apply to semi-domesticated animals that customarily return to the same habitat, for example, pigeons, bee swarms. See Art 1152 and1153 of the Civil Code.
  b. **Treasures;**
- ✓ A treasure is anything hidden or buried to which nobody can show an ownership title and which is discovered by chance.
- ✓ According to Art 1159/3/ of the Civil Code, for a thing to be considered as a treasure it must be found buried or hidden, in an immovable or movable thing, for a period of at least 50 years on the date it is discovered and nobody can prove it belongs to him/her.

- ✓ The rule is that the owner of the immovable or movable thing in which a treasure is discovered shall acquire ownership to it by occupation or his discovery.
- ✓ However, where the treasure is discovered by a person who is not the owner of the thing in which it is found, the finder shall be entitled to half of the value of the treasure he discovered.
- ✓ However, a person shall not acquire ownership of archeological discoveries and antiques because of the historical importance attached to these categories of treasures.

c. **Lost things;**

- ✓ Lost things and misplaced things have an owner but the owner does not know where to find them. However, the law attributes ownership to the finder after a lapse of certain period of time, or completion of certain requirements such as announcement of the find or report to the authorities.
- ✓ Under Ethiopian law the finder of a lost thing has the duty to comply with rules requiring him to report the find. See Art 1154 and 1155 of the code.
- ✓ However, the owner retains the right to ask for its return as long as he has not lost his right of ownership, i.e., with in a period of ten years from the date of loss of the object. See Arts 1157/1/ and 1192 the Civil Code.

d. **Abandoned things**;

- ✓ Are things to which the owner has clearly renounced his right of ownership and hence which are without a master or owner. See Art 1191 of the Civil Code.
- ✓ Hence, a person who finds and possesses an abandoned thing or a derelict thing with the intention of becoming an owner shall acquire ownership right through occupation. See Art 1151 of the Civil Code.

II. Possession in Good Faith 1161-1167

- ✓ *Acquisition of ownership through 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****. See Art 1161(1) and 1162(1) of the Civil Code.*
- ✓ *In order to* ensure security of transactions by enabling the bona fide purchaser to acquire a new right of ownership by protecting him from any claim by the true owner of such thing 1161(2).

Q. When good faith shall exist?

- ✓ A purchaser is presumed to be in good faith in the absence of contrary evidence showing that the purchaser knew, at the time of taking possession, that the seller was not the owner of the thing.

- ✓ However, a proof that the purchaser discovered the fact that the seller was not the true owner of the thing after he took possession may not rebut this presumption. See Art 1163.

Q. Can the former owner exercise his right of recovery always?

- ✓ The former owner may not claim or recover the thing from the good faith acquirer except where the thing is stolen. The owner of a stolen property must exercise such right within a period of three years from the date of theft. See Arts 1165 and 1167 of the code.
- ✓ However, the owner cannot exercise this right of recovery where the thing is a currency or a security to bearer even where it is stolen from him.

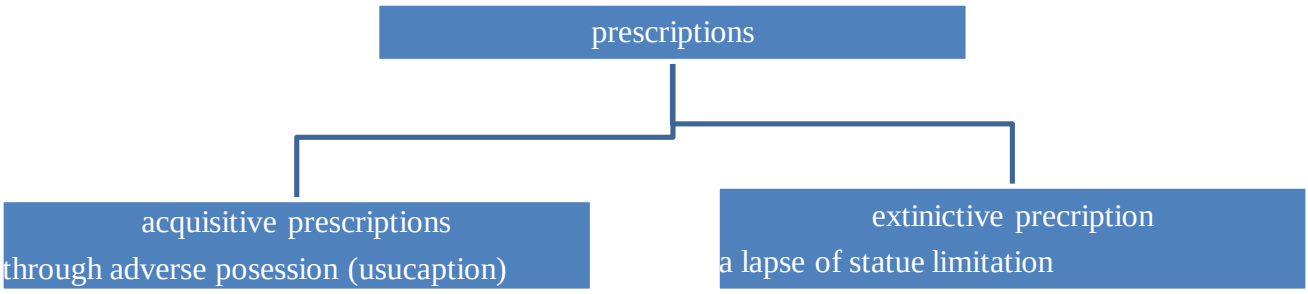
Q. If so, when the good faith purchaser can claim the right of recovery?

- ✓ ***The good faith acquirer who bought such thing from a trader who sells similar things, or in a public auction, or in an open market / market overt / has the right to require the seller to reimburse him with the price he had paid for the thing.*** See Arts1166 of the Civil Code.
- ✓ However, this provision seems to imply that a good faith acquirer who purchased a stolen thing under other circumstances will not be able to claim reimbursement from the seller, which is contrary to the rules governing contracts of sale. See Art 2282 of the Civil Code.

Q. Which forms of properties are subject to possession in good faith?

- ✓ This mode of acquisition is not applicable to immovable things and special movables such as vehicles in respect of which there is a requirement of registration and special mode of proof, i.e., production of title deeds, is required.
- ✓ Provided that the only type of property is corporeal chattels or movables.

III. Acquisitive Prescription (Usucaption)



Q. if so, what is acquisitive prescriptions under property law?

- ✓ **Acquisitive prescription** is a mode of acquiring ownership title or some real interest through possession that is free from defects, exclusive and continuous (see Art 1168 and1150 junction of possession).
- ✓ Furthermore, the possession must be adverse, i.e., contrary the to the owners will, which means that where the possessor had acquired possession of the immovable with the consent of the owner the rules of usucaption or acquisitive prescription shall not apply.

Q. What is the defense available for possessor of property?

- ✓ Limitative/extinctive prescription is a defense through which it is generally possible to resist a claim on the sole ground that the claimant failed, for a certain period, to bring the action or to exercise the right on which it is based.

Q. why acquisitive prescriptions is provided under the law?

- ✓ Acquisitive prescriptions, similar to limitative prescription provide a defense against an action for restitution by the former owner; and a restitution claim against any adverse possessor, including the former owner.
- ✓ The rationale behind this principle is that owners must not leave their property unattended for a long period of time.

Q. What are the essential requirements under art 1168?

- ✓ the following requirements shall be fulfilled cumulatively:
  - **a) The possession should be adverse**, i.e., the possessor must have a claim contrary to the right of the owner and persons who possesses an immovable thing on the permission of the owner may not acquire right of ownership to it.
  - b) **The possession should also be continuous** /see also Art 1150 of the code/ and free from defects under Art 1146 of the code.
  - c) **Payment of taxes relating to the immovable for 15 consecutive years**. The English version of Art 1168/1/ generally requires payment of taxes relating to the immovable, the Amharic version of the same provision specifically ***requires the payment to be made in the name of the possessor.***

N.B. Since, the official Amharic version provides that a possessor of an immovable is require to pay the taxes payable on the immovable in his own name. This mode of acquisition very difficult and limited, as tax authorities may not be willing to issue tax payment vouchers in the name of a person who is not an owner.

Q. what is the remedies for person who possess immovable property less than 15 years?

- ✓ a person who possessed, for more than two years but lesser than fifteen years, an immovable belonging to another and whose possession is defect free shall be considered as a lawful possessor protected by the provisions of Art 1148 and 1149 of the code.
- ✓ The same shall be true of a person who did not comply with the tax requirements of Art 1168/1/ of the code.

Q. what if the land is belonging to the family member or communal ownership?

- ✓ According to Art1168/1/ second paragraph the rules governing acquisition of ownership through ususcaption are not applicable to rural land in parts of the country where land is the common property of the family, /rest holding/.

Q. what is the subject matter of acquisitive prescription?

- ✓ the application of this mode of acquisition is restricted to immovable things and
- ✓ that an owner of a movable thing who failed to exercise his right of ownership /to claim restitution of the thing for a period of 10 years/ loses his right of ownership and the thing becomes a thing without an owner /res nullius/, which can be acquired by occupation. See Arts1192 and 1152.

IV. Accession **1170-1183**

Q. what and when accession exit?

- ✓ Accession is a mode of acquisition of ownership 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. In other words,* ***for a thing to be acquired through accession, the two things must belong to different persons.***

Q. what are the remedies in case of union of things belongs to two or more persons?

- ✓ In principle, when the two things now joined belonged to different persons before the union, each owner should be able to request their separation.
- ✓ However, in majority of cases such separation cannot take place without deterioration of the things or often it is impossible. Hence, the solution is to attribute anything formed by such union to one person and compensate the other, based on the maxim ***"Accessio cedit principali,*** i.e., the owner of the principal owns the new thing, See Art 1183(2) or require it to be commonly owned by the owners of the component parts in certain proportion. See Art 1183(1)

- ✓ 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. See Art 1171.
- ✓ Similarly, a person who owns a thing also owns its natural fruits, in cases of ownership of things capable of bearing fruits. See Art 1171 of the Civil Code.

Accession of Movable Things to Immovable Things

1. **Crops sown on the land of another person** who sows seeds on a land that belongs to another person against a clearly expressed objection of the owner/holder shall not become the owner of the crops. (See Art 1172 - 1174)
2. **Plantations on a land belonging to another-** Where a person plants trees on a land belonging to another person against a clearly expressed objection of the landowner/holder, the latter will acquire ownership to the trees and the former will not have the right to claim the trees or compensation. (See Art 1175 - 1177)
3. **Buildings on a land belonging to another person**, where a person, against a clearly expressed objection of the owner/holder of the land, constructs a building on a land that does not belong to him, the owner/holder of the land shall acquire the ownership of the house through accession. (See Art 1178 - 1180)
4. **Using materials belonging to another-** where a person uses materials belonging to another for building or other works, he shall become the owner of such material by accession, and the former owner of the materials cannot demand the return of the materials. See Art 1181 and Art 1134.

Accession of Movable Things to Movables

- ✓ Accession of one movable to another can take place in one of the following forms:-
  1. **Adjunction:** It is a union of two things belonging to different owners in which the things form a single whole though each is a distinct and recognizable part of the new thing formed by the union. For instance, where an owner of damaged vehicle / a wreck / uses parts of a wreck belonging to another, the owner of the new thing /the principal/ shall become the owner of such parts/ the accessory/. (See Art 1183(2)
  2. **Transformation (specification)** - is the act of making anew thing with material belonging to someone else, the worker shall become the owner of the new thing if the labor supplied is of great value than that of the material, for example, a painter who uses canvas and ink belonging to another person shall be the owner of the painting he has done. See Art 1182.

3. **Commingling /fusion/** - occurs when two dry or liquid things /matters belonging to different owners are commingled or fused so that they cannot be separated without difficulty. In such cases, the persons, in proportion to value of the material each owned, shall jointly own the new to thing so formed. See Art 1183(2).

Transfer of Ownership Rights

Q. what are the modes of transfer of ownership?

- ✓ According to Art 1184 of the Civil Code right of ownership may be transferred from the owner to another person by the agreement of the owner which may be a contract of sale (see Art 2266) or contract of donation (see Art 2427) or a contract of barter according to Art 2408 and 09 or by will.
- ✓ It may also be transferred, in cases of in testate successions, by the operation of the law. see Art 842
- ✓ On the other hand, transfer of ownership right over immovable things and special movable things is effected by striking out of the name of the transferor and entering the name of the transferee in the registers of immovable things and special movable things respectively, and issuing a new title deed in the name of the transferee. See Art 1185 and 1189 of the code.

In this regard the principle applicable is ***"nemo dat qoud non habate"*** which means that the transferor may not transfer a better right than he has on the object. Therefore, in order for a person to transfer a perfect right of ownership he/she must have a perfect right of ownership.

Proof of Owner Ship Rights

- ✓ The mode of proof of the existence of a right of ownership varies depending on the type of the object of the right.
  a) The owner of an ordinary corporeal movable object / a chattel/ shall prove his right to the thing by the mere fact of possession. The same is also the case for rights contained in bearer negotiable instruments. See Art 1193 of the Civil Code and Art 721 of the Commercial Code.
  b) The owner of an immovable object or a special movable object may establish his ownership by producing a title deed, which is given by the keeper of register of immovable things or the organ registering special movable things. See Art 1593-1561 of the Civil Code. See also art 1195-1203.

Extinction of Ownership Rights

Q, what are the grounds of extinction of ownership rights?

a. **Absolute extinction**: in the sense that the owner or another person may no longer exercise right of ownership in relation to that thing;
   i. Because the thing is destroyed, or it has lost its individual character. See Art 1188
   ii. If the thing is expropriated for public purposes.
   iii. Ownership of wild animals will be extinguished absolutely if they regain their natural freedom and become res nullius. See Art 1152(1).

b. **Relative extinction:** i.e., only in relation to the present owner, if it is acquired by another person through acquisitive prescription /usucaption, or transfer or waiver or renunciation.

c. Where the owner, with the intention to have it acquired by the first finder or occupant, abandons the object. See Art 1191 of the Civil Code.

d. The owner of a corporeal movable object shall lose his right as an owner where he fails to exercise, for a period of ten years, the rights arising out of ownership. See Art 1192 of the Civil Code.

e. Ownership of immovable things and special movable things in respect of which there is a requirement of registration/ Art 1723, 1185 / shall be extinguished when the registration is cancelled / Art 1190 /.

Unit Four

Joint Ownership

Q. what is ownership right mean?

✓ Joint ownership or Co-ownership is the right of ownership exercised by two or more persons in relation the same object.

✓ In other words, it refers to the right of use and enjoyment, right of possession and exclusion of others and the right to transfer a thing or to charge it with pledge or mortgage exercised jointly by several persons. See Art 1257 (1) of the Civil Code.

Q. what are the main features of joint ownership?

✓ The following are the main characteristics or natures of joint ownership;
   a) The thing, which is jointly owned, is undivided and,
   b) Each joint owner is considered as owner of each and every part of the thing.

Q. what is the scope of the applicability of joint ownership provisions under property law?

✓ 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.

- ✓ Hence they do not apply to things held jointly as a result of a partnership agreement, i.e., an agreement to join resources with the purpose of undertaking commercial activities and earning a profit. See Arts 211 and 228 of the Commercial Code.
- ✓ Similarly, 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.

Q. if so, when the provisions of the civil code will be applied?

- ✓ The permissive provisions of the Civil Code shall apply where there is no agreement or a provision governing the various aspects of joint ownership or where such agreement or provision is defective or invalid. See Arts 1263, 1275, 1260 1268/3/ of the Civil Code.

Advantages and Disadvantages of Joint Ownership

Advantages

- ✓ The fact that a thing may be owned by two or more persons helps people to acquire certain property very important for their lives, which they would not have otherwise acquired because of lack of sufficient financial capacity by joining or contributing a lesser amount of money.
- ✓ Joint ownership will also help in achieving efficient utilization of scarce resources.

Disadvantages

- ✓ It is generally accepted that a free and swift transfer of goods is an essential precondition for effective commercial transactions, which may bring about economic development to a country and benefit the public.
- ✓ However, it is usually difficult to obtain the agreement of all joint owners to reach a certain decision to/ for transfer or disposition of the thing.

Q. What are the sources of joint ownership?

- ✓ Joint ownership may arise from an agreement/ a contract/ or a will or the provisions of the law.
    a. **Joint Ownership Arising from Contracts**- a contract is a common source of joint ownership. No special form is required for validity of contracts of joint ownership. Accordingly, contracts creating joint ownership over immovable things and special movable things have to be in writing. See Arts 1719-1730, 1282 and 1283 of the Civil Code.
    b. **Joint Ownership Arising from the Law** – Joint ownership may also arise from the provisions of the law. See Art 1060, 1393, 1176/1/ cum 1177/3/ and 1183/1/ of the Civil Code.

Rights and Duties of Joint Owners

- ✓ Joint owners have the following rights and duties;

a) **Right to Use and Enjoy the Undivided Thing/Property, and its Fruits**: he must exercise such rights without preventing other joint owners from using it. See Arts 1263 and 1264 of the Civil Code.

b) **Right to Administer the Thing:** See Art 1265 and 1266 and 1259 of the Civil Code.

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

d) **Each joint owner has the right to dispose of his share of rights i**n the undivided interest in the thing jointly owned. See Art 1260 and 1261 of the Civil Code.

e) **Each joint owner has the right to request termination of joint ownership.** Each co-owner has the right to request the court, at any time, for partition or division of the thing or the sale by auction of the thing and division of the proceeds of the sale. See 1271. This right cannot be waived by agreement. See art 1272 and 73.

However, the right to require termination of joint ownership of immovable things may be waived for a period not exceeding 5 years by the agreement creating the joint ownership or by subsequent unanimous agreement (see Art. 1274).

Special Cases of Joint Ownership

Q. What are the special cases of ownership?

A. **Perpetual Joint Ownership:** represents a joint ownership in which joint owners do not have the right to demand termination. This kind of joint ownership exists where continued joint ownership is in accordance with the nature or purpose of the thing or where sale or partition is impossible or unreasonable. See Art 1276 of the Civil Code.

e.g. lanes, passages, yards, wells, sewer pits, paths, roads, dams, canals, party walls, and common portion of condominium houses, in which partition or division would not leave each house owner a separate space necessary for /his/her needs.

B. **Party Walls:** A party wall is a wall placed on the boundary line between two estates, and belonging in common to their owners, including the land on which it rests. See Arts 1201 and 1278-80 of the Civil Code. See also 1202 of the Civil Code.

C. **Co-Ownership in Buildings in Which Floors or Apartments are Separately Owned:** The Condominium Proclamation No 370/2003, which applies in Addis Ababa and Dire Dawa City Administration, defines a condominium as a building for residential or other purposes and which has five

or more individually owned units and common elements in a high-rise building or in a row of houses that includes the land holding on which it rests. See Arts 2/1/ and 3.

Unit Five
Usufruct

Q. what is usufruct right mean?

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

Q. who are parties in usufructuory right formation?

- ✓ usufruct represents a case in which the constituent elements of a right of ownership are divided or partitioned among two or more persons, i.e***., the owner of the thing, called the bare owner***, and the person who has the present right of possession and use of the thing/uses/ and the right to collect and use its fruits /fructus/, called the ***usufructuary.***

Q. why the owner of the thing is called bare owner?

- ✓ Though the owner has transferred these rights, he retains one of the major elements of right of ownership, i.e., the right to dispose of the thing.
- ✓ We can also deduce from this that the usufructuary has the duty to preserve the thing and restore it at the time of extinction of the usufruct.

Q. what are the subject matter of usufruct?

- ✓ a right of usufruct may be created in relation to
    a) Incorporeal things
    b) Corporeal things
    c) Movable things
    d) Immovable things

Q. what about things that are consumed by their first use?

- ✓ By its nature usufructs 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, such as money, grains wine…etc. may be the object of a right called quasi usufruct. see Art 1327 of the Civil Code of Ethiopia

Q. what are the source of usufruct right?

- ✓ Art 1310 of the Civil Code provides that, in the absence of provision to the contrary, the rules governing the acquisition, transfer, extinction of right of ownership shall apply to the acquisition, transfer or extinction of usufruct right.
- ✓ Usufruct may arise from; the ***law, Contract*** *(shall be made in writing 1723)* ***and Will.***

Q. how long the usufruct right may continue to exist?

- ✓ Usufruct may be created for a limited period of time or for lifetime of the usufructuary. See Art 1322(1) of the Civil Code.
- ✓ Usufruct created in favor of bodies corporate or properties with specific destination shall terminate after 30 years or such shorter period provided by the contract or will creating it. Refer to Art 1322(2) of the Civil Code.

Rights and Obligations of the Usufructuary

- ✓ The following are the major right and duty of the usufructury;

1. **The Conservation of the Substance of the Thing:** - The usufractuary shall have the obligation to conserve the thing, its form, structure and particular identify. See Arts 1309(1) and 1330(2) of the Civil Code. However, the usufructuary can make changes that increase the value of the thing without changing its form

   However, he may not claim payment of compensation, at the time of the extinction of the usufruct for improvements, for the improvement he has brought to the thing under usufruct. See Art 1336 of the Civil Code.

2. **The usufructuary has the right to use and enjoy the thing, and its fruits.** However, he has an obligation to exercise due care and diligence like a diligent head of family and must use the thing following the pattern established by the owner and he must follow the prior use of the thing. See Arts 1312, 1330/2/ and 1328 of the Civil Code. See also Art 1324 of the Civil Code.
3. **The obligation to up-keep the thing: -** The usufructuary has an obligation to have regular maintenance and repair works done at his cost. See Art 1313 of the Civil Code. See also Arts 1337 and 1338(2) of the Civil Code.
4. **The usufructuary has an obligation to pay all the charges** encumbering the profits of the thing such as annual taxes such as land tax, building tax or income taxes and other charges that are normally payable out of the income derived from the thing. See Art 1314 of the Civil Code.

5. **The usufractuary has an obligation to inform the bare owner about any act of interference by a third person in the rights of the bare owner.** See Art 1342 of the Civil Code.
6. **The usufructuary as a possessor of the thing, shall have a right to bring possessory action and to use force to protect his possession** in case where any person, including the bare owner, interferes with his possession of the thing. See Arts 1341, 1148 and 1149 of the Civil Code see also 1319(2)
7. **The usufructuary has an obligation, at the time of extinction of the usufruct, to restore or restitute the thing to the bare owner or his agent**. See Arts 1317 of the Civil Code.

Rights and Obligations of the Bare Owner

✓ The bare owner shall have the following rights and obligations;

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

Extinction of Usufruct

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

1) **Death of the usufructuary**- a right of usufruct is sometimes called a personal servitude because it depends on the life of the usufructuary. In other words, the right of usufruct shall terminate up on the death of the usufructuary. See Art 1322(1)
2) **Lapse of the period for which it is created.** see Art 1322(1)
3) **Extinctive prescription** – lack of exercise of any of the usufruct rights or complete absence enjoyment, use possession by the usufructuary or by his agent in relation to chattels/ ordinary corporeal movable things/ shall result in the termination of usufruct. See Art 1310 c999999999999um 1192.
4) **The loss or destruction of the thing;** Similar to the case of loss of ownership right, usufruct shall also be extinguished as a result of the loss or destruction of the object of property. See Arts 1319, 1310 cum 1188 of the Civil Code.
5) **Consolidation or merger of the position of the bare owner and the usufructuary** See Arts 1676/1/ cum 1842 of the Civil Code.

6) **Forfeiture or waiver of right by the usufructuary**; See Arts 1310 cum1191 of the Civil Code. Refer also to Art 1676/1/ cum 1825 of the Civil Code.
7) **Acquisitive prescription in favor of a third party;** See Art 1310 cum 1168 of the Civil Code.

Right of Use and Habitation

Right of Use

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

Right of Habitation /Occupation of Premises/

- ✓ This right is merely a particular type of right of use, i.e., a right of use exercised over residential houses or premises.
- ✓ Hence, the rules discussed in relation to usufruct and use rights are applicable to the right of habitation or right of occupation of premises. See Art 1353-58 of the Civil Code.

Unit Six

Servitude

Q. what is servitude right constitute?

- ✓ Servitude is a right in rem / real right/ over a definite plot of land, called the servient tenement and annexed to another plot of land, called the dominant tenement.
- ✓ In other words, it is a property right vested in the owner/holder of one plot of land to use a land belonging to another for certain purposes.

Q. if so, does it mean the two lands shall be adjacent each other?

- ✓ Servitude is a right that can only exist in relation to two or more plots of land belonging to two or more persons.
- ✓ However, these lands are not required to be adjacent. See Art 1359(1) (2) of the Civil Code.

Q. is all obligations or acts are subject to servitude?

- ✓ An obligation to perform personal services or positive acts cannot be made the subject matter of servitude. See Art 1360 and 1373 of the Civil Code.

Q. what is the difference between servitude and usufruct right?

- ✓ As any real right, not only the burden of servitude runs with the servient land its benefit also runs with the dominant land.
- ✓ This is the essence of a real right (servitude) as opposed to personal servitudes, such as the right of usufruct, use and habitation that are also called personal servitude. See Art 1361 of the Civil Code.

Q. is there any conditions that may require the servient tenement to perform positive acts to the dominant tenement?

- ✓ As a rule servitude shall not create an obligation to perform positive acts on the owner of the servient tenement. See Art 1359/2/ of the code.
- ✓ One exception to this rule is provided under Art 1360 and 1373 of the Civil Code, which allows the parties to make an agreement in which the owner of the servient tenement undertakes to perform works necessary for the enjoyment and preservation of the right of servitude.

Purpose of Servitude

- ✓ The main purpose of servitude is to enable the owner of the dominant tenement to derive the best possible use and benefit from his land by giving him certain rights on the land belonging to another person, called servient owner.

Q. if so, what are the legal safeguards to protect the interest of the servient tenement?

- ✓ The law tries to restrict the number and extent of encumbrances or servitudes on the servient tenement in the following ways;
  a) Servitude should be used exclusively for the purpose of using or exploiting the dominant land and it must be used exclusively for that purpose.
  b) The law also limits the rights of the owner of the dominant tenement to use the servient tenement only to purposes for which the servitude was created at its inception. See Art 1376 of the Civil Code.
  c) The law also imposes various obligations on the owner of the dominant tenement with the intention of the preventing him from increasing the burden of the servient tenement. Refer to Arts 1375, 1377, and 1380 of the Civil Code.

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

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

f) Art 1365 of the Civil Code, provides that where it is not clear as to whether the provisions of a contract create a servitude running with the land or a personal obligation on the owner of the land, such doubtful provisions shall be interpreted to have created a personal right or obligation and not a servitude. Also refer to Art 1369.

Sources of Servitude

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

a) **Servitudes arising from contracts**; see Art 1362/1/ of the Civil Code

b) **Servitude may arising from the will of the deceased** See Art 1362/2/ of the Civil Code.

c) **Acquisitive Prescription**; servitude may arise from enjoyment of the servient tenement for a period of ten years. However, this mode of acquisition applies only to apparent servitude. See Art 1366/2/ and 1367 of the Civil Code. See also Art 1368 /2/ of the Civil Code.

d) **Servitude arising out of the provisions of the law.** See Arts 1217, 1218, 1219, 1220, 1221-1224, 1245-1254, 1372/2/ of the Civil Code.

Rights and Duties of the Parties

Rights and Duties of the Servient Owner/Holder

✓ The owner/holder of the servient tenement shall have the following rights and duties;

a. the obligation to allow the owner/holder of the dominant tenement to use his land for the purpose for which the servitude is created and refrain from exercising certain rights such as the right to prevent other persons from entering his land or using his land. See Art 1359 of the Civil Code. See also Art 1379 of the Civil Code.

b. the obligation to perform works related to the construction, maintenance and repair of the means necessary for the exercise of rights of servitude by the owner of the dominant tenement, where under the instrument creating the servitude, he has undertaken such obligation. See Art 1373/2/

c. Has the right to redeem the servitude where he can prove that the damages or inconveniences caused by the servitude are way higher than the benefits or advantages derived by the owner of the dominant tenement. See Art 1383 of the Civil Code.

d. He may require that the servitude be exercised on such other part of the servient tenement as will be equally convenient to the owner of the dominant tenement. See Arts 1380,1220(3)

Rights and Duties of the Dominant Owner/Holder

a. He must exercise his rights in a manner, which causes minimum inconvenience or damage to the servient tenement. In addition to this, he may not make any alteration that would increase the burden of the servient tenement. See Art 1375

b. Where the dominant tenement is divided, the right of servitude shall continue for the benefit of the owners/holders of each parcel of land. However, such division shall not increase the burden of the servient tenement, and the owners/holders of the divided parcels of land shall exercise their rights, for instance right of way, using the same area or piece of the servient land. See Art 1377.

c. Similarly, where the servient tenement is divided, the owner/holder of the dominant tenement shall have the right of servitude on each of the new parcels of land. See Art 1378.

Types of Servitude

A. Urban Servitudes and Rustic/ Rural Servitudes

✓ Urban servitudes are servitudes created and enjoyed in urban areas. They include right of view, right of way and the various other servitudes arising out of the law such as the right to install water, gas or electrical lines.

✓ On the other hand, 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. See Art 1371 of the Civil Code.

B. Continuous and Discontinuous Servitudes

✓ This classification is based on whether or not the right of servitude can continue without continuous human intervention

a) **A continuous servitude** is a servitude that continues without continuous human intervention. For example, Servitudes of view and drawing water are considered as continuous servitudes.

b) **A discontinuous servitude** is a servitude that cannot exist without a continuous human intervention. Therefore, for such kind of servitude to continue to exist, the beneficiary must

continue to use /exercise the right created by it. Servitudes of way or passage, pasturing cattle and servitude of extracting quarry are examples of discontinuous servitude.

N.B. See Art 1382 of the Civil Code, which indicates that apparent servitudes are discontinuous servitudes since such servitude shall be extinguished if the owner of the dominant tenement fails to exercise his rights for a period of ten years.

C. Apparent And Non-Apparent Servitudes

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

D. Positive and Negative Servitudes

- ✓ It is based on the content of the right of servitude. Accordingly, a servitude is considered positive where it entities the owner of the dominant tenement to use the servient tenement for a specified purpose. Servitude of way, extracting quarry, drawing water are examples of this type of servitude.
- ✓ A servitude is considered a negative servitude where it imposes on the owner of the servient tenement the obligation to refrain from doing certain activities on his land, for example, from erecting certain kinds of buildings or planting trees. See Art 1359(2). Right of view is a very good example of a negative servitude.

Extinction of Servitude

- ✓ Right of servitude shall be extinguished for any one of the following reasons.
  1. **Waiver /release by the owner of dominant tenement.** See Art 1381(1) and (2) of the Civil Code.
  2. Disappearance of the apparent signs in cases of apparent servitudes or failure to exercise the right arising out of the servitude, and the cancellation of the entry of the servitude in the register of immovable properties up on the application of the owner/holder of the servient tenement. See Art 1381(3) and (1) and Art 1366 of the Civil Code.
  3. **Redemption of the servitude by the owner of the servient tenement**; see Art 1383, 1384 and 1385 of the Civil Code.
  4. **Surrender of the servient tenement to the owner of the dominant tenement**; See Art 1374.

Unit Seven

Right of Recovery and Restrictions on the Right to Transfer Certain Things

A. Right of Recovery

Q. what is the right of recovery?

- ✓ Right of recovery is a right of a person to recover a thing sold by an owner from the buyer by paying the price and costs the latter has incurred. See Art 1386 of the Civil Code.
- ✓ In other words, right of recovery is a right where by its beneficiary can force the buyer of a thing to sell it to him.

Q. what are the purposes of granting the right of recovery?

- ✓ The right of recovery is intended to keep things within a certain group of persons, such as a family or joint owners. It is intended to keep the thing among persons having a blood relationship because of the economic or social value immovable things have among the society.
- ✓ It is also intended to keep a property among persons who have close relationship, in cases of joint owners, and keep strangers out there by securing peace and co-operation.

Q. What is the source of right of recovery?

- ✓ This right is always the result of legal provisions. Therefore, this right 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. See Arts 1387 and 1397 of the Civil Code.

Q. who have the right of recovery?

- ✓ There are two classes of persons to whom a right of recovery is granted by law.
  a) **Relatives by consanguinity**; According to Arts 1389 and 1394/2/ of the Civil Code relatives by consanguinity of the seller of an immovable thing have the right to force the purchaser of such immovable, against payment of the price he has paid, to sell it to them. See also Arts 1124 and 1125, 1391 and 842-851 of the Civil Code. see also arts 1390, 1393 1392 1396
  b) **Joint Owners** shall have a right of recovery where one of the joint owners sells his share of right in thing jointly owned. See Art 1260, 1261, 1388 and 1394 of the Civil Code. See also Arts 1393 and 1262 of the Civil Code.

Q. what conditions should be fulfilled in order to claim the right of recovery?

- ✓ The beneficiary of a right of recovery must declare his intention to buy the thing or usufruct within two months from the date he is informed of the transfer of ownership or usufruct to a new owner or usufructary, (if he is notified). See Art 1400.
- ✓ However, if he is not notified, then he may exercise his right with in a period of one month from the date the joint owners knew of the transfer.
- ✓ On the other hand, where the right is exercised by relatives, the beneficiary must declare his intention to exercise his rights within six months from the date of transfer of possession.
- ✓ Such declaration of intention to buy/ exercise a right of recovery/ must be accompanied by securities, which may be in the form of pledge, mortgage or personal guarantee to secure the payment of the price and other expenses. See Art 1403.
- ✓ According to Art 1398 of the Civil Code, a right of recovery may be exercised where the owner sells the thing or where creditors of the owner attach the thing.

Q. is it possible to claim the right of recovery in case of transfer of the thing gratuitously?

- ✓ The right of recovery may not be exercised where the owner transfers the thing gratuitously, for instance, where the owner donates the thing.
- ✓ However, Art 1407/1/ indicates that right of recovery may be exercised even where the thing is transferred without consideration.

Q. when the right of recovery may not be claimed?

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

Effect of Right of Recovery

- ✓ The new owner or usufructuary shall transfer the thing or usufruct to the beneficiary of right of recovery up on of receipt of the price where he acquired the thing for consideration or the value of the thing where he acquired the thing on donation. See Arts 1406, 1407, 1408 and 1409 of the Civil Code.

Loss of Right of Recovery

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

Promise of Sale and Right of Pre-Emption

These restrictions are contractual, and they may be broadly classified in to three sections, i.e., promise of sale, right of pre-emption and prohibition of assignment or attachment of certain things.

Q. what is promise of sale?

- ✓ It is a contract where by the owner of a thing undertakes to sell it to the promisee or another person specified if and when the promisee or such other person decides to buy it. (See Arts 1410 (1), 1416 and1417).
- ✓ In other words, the owner cannot sell the thing to another person who might have offered a better price, nor can he refuse to sell the thing to the beneficiary of the promise, which, an owner under normal circumstances is entitled to do, provided that the beneficiary has made his decision to buy the thing with in the time agreed up on the contract.

Q. what is the right of pre-emption?

- ✓ It is a right arising out of a contract where by the owner of a thing is obliged to sell it to a specified person if and when he/the owner/ decides to sell it. (See Arts 1410(2) and 1418).
- ✓ In other words, if the owner decides to sell the thing with in the period agreed up on in the contract, he can sell it only to the beneficiary and at the price determined in the contract and his right to choose among potential buyers is restricted.

Q. what is the subject matter of the right of pre-emption and promise of sale?

- ✓ Promise of sale and Right of pre-emption represent a restriction on the right of ownership of a person and a property right of the beneficiary of the rights only if they are made in relation to immovable things or special movable things in respect of which there is a requirement of registration.
- ✓ In other words, contracts creating these restrictions in relation to chattels or ordinary movable things shall not constitute a restriction on a right of ownership of a person nor a property right /real right or right in-rem/ in favor of the beneficiary.
- ✓ Hence, the rights and duties arising from these contracts are governed by the law of contracts or obligations and not by property law. See Art 1411, 1426, 1427, 1428 and 1430 of the Civil Code.

Q. how long the promise of sale and right of preemption can be maintained?

- ✓ The period with in which such right may be exercised cannot exceed a period of ten years.
- ✓ Where the period fixed in the contract exceeds ten years, it shall be reduced to the maximum period provided by the law, i.e., ten years. See Art 1413 of the Civil Code.

Q. can a person transfer his right of pre-emption or promise of sale?

- ✓ The rights arising from such agreements cannot be transferred by contract or inheritance and the creditors of the beneficiary cannot exercise them. See Art 1415 of the code.

Rights and Duties of the Parties

A. Promise of Sale

a. The maker of the promise/ the owner of the thing/ may not alienate or sell the thing or charge it with real rights /rights in-rem/ such as usufruct in the period for which the promise is effective. However, he may pledge or mortgage it for an amount not exceeding the price fixed in the contract creating the promise. See Art 1416

b. Where the thing is attached by court order, the owner must notify the promisee of such proceedings. (See Art 1417)

c. Where the owner of the sells the thing to a person other than the beneficiary, the latter shall have the right to force the buyer of the thing to sell it back to him at the price agreed up on in the contract creating the promise.

B. Right of Pre-Emption

a. The owner has the right to create any kind of right in-rem on the thing, but he may not sell or transfer it to another person. Where he decides to sell the thing, he has the obligation to inform the

beneficiary of his intention to sell the thing and the chargers/ such as mortgage, usufruct, and servitude etc/ on the thing. See Art 1418 /1/ and/2/.

b. In case of attachment, the owner of the thing must notify the situation to the beneficiary. See Art 1418 (3)
c. The beneficiary must exercise his right with in two months from the date he received the notice. However, this period of notice may be extended to a period not exceeding one year. Where the period is extended for more than a year, it shall be reduced to one year. See Art 1419.
d. The beneficiary must exercise his rights before the thing is sold by auction in case of attachment. See Art 1421.
e. In case the thing is sold to a third party in violation of the contract creating the right of pre-emption, the beneficiary may recover it from such third party against payment of the price determined in the contract creating right of pre-emption. See Art 1422.

Extinction of Rights of the Beneficiary

✓ Rights arising out of contracts creating a promise of sale and right of pre-emption shall be extinguished because of one of the following grounds,

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

B. Prohibition of Assignment or Attachment

Q. What is prohibition of assignment or attachment? And who may impose it?

✓ Prohibition of assignment or attachment arises from a contract or will where by certain things are transferred and where by the transferor prohibits the transferee from assigning or transferring the thing to another person.

- ✓ The producer, maker, seller or owner of such thing may impose these prohibitions. See Art 1426 of the Civil Code.

Q. is the prohibition or restriction is automatically binding?

- ✓ Such provisions may freely be made with respect to ordinary movable things (chattels).
- ✓ However, such restrictions will bind only the person who accepts them and hence, it does not create a real right that can be raised against third parties. See Art 1426/2/ of the Civil Code.

Q. is it possible to impose such restrictions and prohibitions o immovable properties?

- ✓ Prohibition of the right of attachment or assignment with respect to immovable things is possible only in cases allowed by the law. See Art 1427, 1428 and 929-936 and Art 2460 of the Civil Code. see also art 1416.

Q. What should be the forms of restrictions and prohibitions?

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

Rights and Duties of the Parties

a) A property that is subjected to a provision prohibiting assignment or attachment cannot be sold or transferred. If it is sold in violation of the provision, the person stipulating it may recover it form the buyer. See Art 1440 (2), 1442 and 1438.

b) The person making the provision may prohibit the acquirer from assigning or selling it for a period not exceeding 20 years. See Art 1431.

c) The person who made the provision prohibiting assignment has the right of recovery against the buyer. Such right has to be exercised within two years from date of the assignment or from the expiry of the period fixed in the contract. See Arts 1442 (1) and 1441.

d) In cases of attachment, the person making the provision must exercise his right prior to the attached immovable thing being sold by auction where he has been informed of the attachment. However, where he is not informed of the attachment, he must exercise his right with in a period of two years from the sale of the immovable by action. See Art 1437.

Unit Eight

Collective Exploitation of Property

Preliminary introduction

- Things or property forming part of the private domain of the state are treated in the same manner as the private property of individuals and are governed by the rules governing privately owned property.
- On the other hand, property forming part of the public domain of the state are governed by the rules dealing with collective exploitation of property rather than the rules governing privately owned property.

Q. what does public domain means?

✓ according to Art 1445 of the Civil Code, defines public domain as a property belonging to the state or its various administrative units or organs and which is directly placed at the disposal of the public or which is destined to public service.

Q. what things are constitute public domain?

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

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

Q. what are the distinctive features of public domain properties?

a. **Inalienable in nature:** they cannot be transferred by sale or inheritance or donation or any other mode of transfer unless they are declared that they no longer form part of the public domain. See Art 1454 of the Civil Code.

b. In addition to this, properties forming part of the public domain may not be acquired by possession in good faith or usucaption or acquisitive or extinctive prescription. See Art 1455 of the Civil Code.

Properties forming part of the public domain may not be occupied by a private person without the authorization of a competent public authority. See Art 1456 of the Civil Code.

Expropriation

Q. what is expropriation mean?

- ✓ Expropriation or eminent domain may be defined as the power of a sovereign state to take or authorize the taking of private property for public purpose or use without the owner's consent but conditioned up on payment of commensurate/just compensation in advance.
- ✓ Art 1460 of the Civil Code defines expropriation as a proceeding whereby the competent authorities compel an owner [against payment of commensurate compensation in advance see Arts 1470-78 of the code] to surrender the ownership of immovable required for public purposes.
- ✓ It can also be used to acquire or extinguish usufruct, servitude or other property rights /rights in rem/ on an immovable or it may be used for terminating, prior to the agreed term, a contract of lease relating to an immovable owned by public authorities.
- ✓ According to Art 40(8) of the FDRE Constitution private property shall not be taken or expropriated by the state unless it is required for public purposes or use and unless compensation that is equal to the value of the property is paid in advance.

INDIRECT EXPROPRIATION

- *Where the work or project intended does not seriously impair the rights of the owner or the possessor or does not notably reduce the value of the immovable, for example installation of underground pipes, aerial lines, electric or telephone poles, the competent authorities may use indirect expropriation.*
- *In other words, such authorities or service providers may undertake such works without the need to follow the procedures required for expropriation.*

The person whose right is affected by this procedure has the right to claim, with in a period of three years of the completion of the work, a compensation for the damages he suffered as a result. See Arts 1485-1488 of the civil code.

8.2.2. PUBLIC PURPOSE

Public purpose is a crucial element/requirement before the expropriation of private property. It is a requirement of due process of law in the context of expropriation, and failure to comply with it may render the taking of private property unlawful and unconstitutional. See Art 40/8/ cum 9/1/ of the FDRE Constitution.

As to what constitutes public purpose, however, is open for debate and it differs from time to time and from system to system. Generally, there are two main views as to what the concept refers to.

- ✓ The first view holds that public purpose is equivalent to public benefit, utility or advantage. Hence, any taking which tends to enlarge resources, increase industrial energy and productive power of any substantial number of inhabitants or a section of the state or a purpose which leads to the growth of towns and creation of new resources for the employment of capital and/or labor, which contributes to the general welfare and prosperity of the whole community serves a public purpose and is justifiable.

According to this view, expropriation of private property is justified if the undertaking for which the property is taken produces direct or indirect benefits to the public at large or to the section of the community. However, this view may open the way for unlimited interference by the government in the property right of citizens.

The second view holds that public purpose exists only where the undertaking for which the property is to be expropriated is to be directly used or enjoyed by the public, Such as schools, hospital, roads etc.

- ✓ When we examine the rules of the civil code in this regard, we find that the civil code does not provide the concept of public purpose. However, it clearly provides that the state may not expropriate private property solely for the purpose of generating income or financial benefits. See Art 1464/1/ of the code.

- ✓ However, where the project for which the land is required would also benefit the local community/ the public/ by increasing the value of properties in the area the project shall be deemed to serve public purpose and expropriation is possible. See Art 1464/2/ of the code.
- ✓ . In other words, indirect public benefit from the proposed project constitutes public purpose under the civil code.

According to Article 1463 of the Civil Code, the competent authorities must determine whether the project for which the land is required serves public purpose or not and a notice to this effect has to be published. See Art 1465 of the code.

According to Art 2/5/ of the Expropriation of Landholdings for Public Purposes and Payment of Compensation Pro No 455/2005 a proposed project shall be deemed to serve public purpose where the appropriate body decides, pursuant to the urban structure or development plan;

1. That it ensures the right of the public to benefit directly or indirectly from the use of the, land
2. That it helps to achieve and consolidate sustainable socio-economic development.

8.2.3 EXPROPRIATION PROCEDURES UNDER THE CIVIL CODE

The first step in the expropriation procedure under the civil code is to determine as to whether the proposed project serves a public purpose or not as we have seen in the preceding section. The competent authorities that are authorized by law to expropriate private property make the determination or declaration of public purpose. The competent authorities may hold, where it appears necessary, a public inquiry as to whether the proposed project serves public purpose. See Arts 1463 and 1465 of the code.

According Article 1466, after the declaration of public interest, the competent authority shall determine the land required for the implementation of the project, and personal notice shall be given to the owners, bare owners, usufructuaries of the immovable he intended expropriation. They are entitled to express their views on the necessity of such expropriation with in a reasonable period of time. Where there is no opposition or the opposition is not accepted, the competent authorities shall make or issue the expropriation order. The order shall transfer the ownership and other rights on the immovable, free of any charge o r encumberance, to the competent authority concerned. Art 1467 of the code.

Expropriation orders, issued by the competent authorities, must be served on the owner of the immovable and other persons, if any, whose rights on the immovable are entered in the register of the immovable to be expropriated, i.e., the dominant owners who have servitude rights over the immovable, the usufractuary, the mortgagee, lessee…etc. See Art 1468 of the code.

The person whose property right is affected by the expropriation shall notify the competent authority the amount of compensation he claims for such rights with in a period of one month from the date of service of the order. However, any interested person, such as a creditor, may object to the amount of compensation fixed below a certain amount or may oppose the payment of compensation in fraud of his rights. This opposition or objection shall be made with in the period of one month from the date of service of the order. See Arts 1470 & 1471 of the code.

If the competent authority does not agree with the amount of compensation claimed by the person entitled, the amount to be paid shall be fixed the Arbitration Appraisement Committee, which shall be constituted according to rules to be enacted. /Art 1472 and 1473/1/ of the code.

The committee will have the duty to fix the amounts of compensation but it cannot decide on disputes regarding the right giving rise to compensation. The amount of compensation or the value of replacement land shall be equal to the actual damage, which shall be assessed on the day when it makes the decision. See Arts 1473-1474 of the code.

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

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

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

Where the expropriated person is to be given a replacement land, with or with out monetary compensation, the competent authority shall take possession of the land only after it hands over such land to the person. Where the appeal is ledged by the authority, the owner shall remain in possession of the land until the court gives the decision. If the decision is not given with in a period of one year from the date of appeal and compensation is not paid, the expropriation order shall be invalid and the owner is not required to comply with it. See Art 1478/4/ of the code.

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

8.2.3 EXPROPRIATION PROCEDURES UNDER PRO NO 455/2005

Who has the power to expropriate?

Art 3 (1) of the proclamation provides that only a woreda administration, where the land to be expropriated is situated in rural areas, and a city administration, where the land to be expropriated is situated in urban areas, shall have the power to expropriate land. Generally, a land holding may be expropriated only where the project for the implementation of which the land is required serves public purpose. According to Art 2/5/ a proposed project is said to serve a public purpose where it is in accordance with urban structure plan

or development plan, brings about a sustainable socio-economic development and, directly or indirectly, benefits the public.

Expropriation order may be made where a woreda or city administration or higher federal or regional government organs, decides that the land holding in question is should be used for ‘ a better development project’ to be carried out by the government, public enterprises, private investors, co-operatives or other organs. Furthermore, expropriation order may be used to terminate a lease contract where the holder fails to comply with the obligations he under took in the contract of lease and the relevant laws. See Art 3/1/ and /2/.

The woreda or city administration, which decided to expropriate a land holding according to Arts 2/5/ and 3, shall notify, in writing, the landholder of the expropriation order. The notice must indicate the time when the holder must vacate the land and the amont of compensation to be paid to him. The period within which the holder must vacate the land may not be less than 90 days. The landholder who has been given notice of the expropriation shall vacate his land with in 90 days of the date of payment of compensation or from the date of deposit of the compensation a blocked account to be opened in the name of the organ issuing the order where the holder refuses to accept the compensation. However, where there are no crops, trees or other properties in the land to be expropriated, the holder must hand over the land with in 30 days of receipt of the expropriation order. The expropriating body may use police force to vacate and take possession of the land. See Art 4.

The implementing agency, w/c may be a federal or state organ or public enterprise, private investor, cooperative or any other organ intending to implement the project must prepare data relating to the land required for its use, its exact location and send to the woreda or city administration at least one year before commencement of the project and obtain the permission to use the land. It shall also pay compensation to the person whose landholding is expropriated. See Art 5.

Where utility lines, such as water, sewerage, telephone, electric or gas lines cross over or under the land required for the project, the implementing agency shall request, in writing, the owner of the lines to remove them. The request must indicate the exact location of the lines. The owner of the lines who received the

request must determine the cost of removal and reinstallation of the lines and send details of its evaluation to the implementing agency with in a period of 30 days. The agency shall pay the compensation with in a period of 30 days from the date of receipt of valuation. The owner of the lines shall remove the lines and vacate the land with in 60 days of receipt of compensation. See Art 6.

A. VALUATION OF COMPENSATION

Where the property to be expropriated is located in rural areas, the compensation tobe paid shall be assessed by the committee consisting of not more than five experts having the relevant qualification and assigned by the woreda administration. However, where the land to be expropriated is situated in urban areas, a committee composed of experts with relevant qualification and assigned by the urban administration shall valuate compensation. Where the assessment of compensation requires special knowledge and experience, the woreda or urban administration shall experts having such special qualification. See Art 10.

A party dissatisfied with the amount of compensation determined by the committee may lodge his compliant to a tribunal established for the purpose or to a regular court having jurisdiction, where such tribunal does not exist in that urban center or where the land to be expropriated is situated in rural areas. The tribunal or the court before which such compliant is lodged shall give its decision with in the period of time to be determined by the region. Where a party is not satisfied with the decision of the tribunal or a court, he may appeal, with in 30 days of the date of decision, to the regular appellate court. The decision of the appellate court shall be final. However, the person whose land is expropriated must prove that he has handed over the land to the woreda or city administration to be able to appeal. See Art 11.

B. PRINCIPLE AND AMOUNT OF COMPENSATION

A landholder whose holding is expropriated shall be entitled to,

1. Compensation for the property he produced on the land by his finance, labor and for permanent improvements he has made to such land. Such compensation shall be equal to the replacement cost of the property. However, compensation for permanent improvement on the land shall be equal to value of capital and labor expended.

2. The cost of removal, transfer and re-erection, where the property can be re-erected and resume its service such as floor mills, machinery and other type of property. See Art 7.
3. Displacement compensation, for a person whose rural landholding is permanently expropriated, which is equal to ten times the average annual income he earned during the last five years preceding the expropriation. However, where it is temporary expropriation of rural land holding or expropriation of communal holding, the displacement compensation shall be equal to the income he has lost because of the expropriation. The loss shall be calculated based on the average annual income he has earned during the five years preceding the expropriation. The compensation shall be payable for the period until the holding is returned to the holder. However, this compensation shall not exceed the amount payable in cases of permanent expropriation. Furthermore, where an appropriate replacement land, which can be easily cultivated and yield a comparable amount of produce, is granted to the holder displacement compensation shall be equal to the average annual income the holder generated during the five years before expropriation. See Art 8/1, 2 & 3/.
4. Displacement compensation for an urban holder shall be equivalent to the estimated annual rent of the house, or he shall be allowed to live in a comparable house, owned by the city administration, free of rent for a period of one year. He shall also be provided with replacement plot of land for the construction of a dwelling or business house. The size of replacement land shall be determined the urban administration concerned. See Art 8/4 & 5/.
5. Displacement compensation for a person whose urban leasehold is expropriated is paid in the form of a replacement land/ leasehold/ for a remainder of the lease period under the original lease contract. Where the person is not willing to accept a substitute land, he shall receive the lease price he has paid minus the price of the period he has used the land. See Art 8/6/.
Note that displacement compensation is payable in addition to what is payable under Art 7.

UNIT NINE- REGISTRATION OF PROPERTY

9.1 NATURE AND TYPES OF REGISTRATION

Registration of properties refers to a system, established and managed by appropriate state organs, in which various property rights are entered. The main purpose of registration is to provide security to the right holder and to other persons to whom the property will be transferred.

Prior to the emergence of use of documents in contracts, people tried various techniques intended to ensure security of property rights. For instance, the seller of land used to transfer ownership and guarantee the buyer by handing over a handful of earth from the land to the latter in the presence of neighbors. Similarly, Owners of land used to declare their right to it using various signs, such as enclosures and inscriptions on trees. With the emergence and prevalence of documents, people tried to ensure security by developing customs, which require the deposit of acts creating or transferring rights on immovable things.

Today, the majority of states have put in place a comprehensive system of registration of immovable and some special movable things. The state, trough its agencies, is responsible for its management and guarantee a person who may suffer financial loss due to lack of proper management of the system.
Property registration systems may be 'documents or deeds' registration system or 'title or ownership' registration system. Under a documents registration system, documents or acts creating or transferring rights on immovable things are field or kept systematically to give notice interested parties a notice of the transactions involving the immovable concerned. However, registration of documents does not constitute a conclusive evidence of ownership on the immovable as the contracts or acts creating or transferring the right may be invalid, or the transferor may not be the true owner and cannot transfer a genuine right of ownership.

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

9.2 PURPOSES OF REGISTRATION

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One of the most important purposes of 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. The existence of a system of registration provides the owner of an immovable or a special movable thing with security or guarantee that his right

of ownership is recognized and protected against any claim or interference by other persons. An owner of a thing whose right is registered can fend off any contrary claim of title by other persons by the mere fact of such registration and the deeds issued there under. See Arts 1195-1198 of the Civil Code.

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

9.3 THINGS REQUIRED TO BE REGISTERED

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

Under the following sections we shall try to discuss the rules governing registration of immovable and special movable things required to be registered under Ethiopian law.

9.3.1 IMMOVABLE THINGS

Art 1553 of the Civil Code provides that keepers of registers of immovable property shall keep registers of immovable property in Awradja Guzat. Each area of conservation and each district shall keep two types of registers, i.e., a register of property and a register of mortgages. However, where the district does not

have a cadastral survey plan, which allows the adoption of such systems, there shall be a register of immovables. Furthermore, where there is no cadastral survey plan, which allows the adoption of register of immovables, the district shall have a register of owners. In other words, a register of property and a register of mortgages and register of immovables shall depend on the existence of appropriate type of a cadastral survey plan in the district. See Arts 1553-1558.

4.

5. A. REGISTER OF PROPERTY

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

C. REGISTER OF MORTGAGES

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

D. REGISTER OF IMMOVABLES

A register of immovables is a register, which shall be kept where the district in question does not have a cadastral survey plan, which makes keeping register of property and register of mortgages possible. In other words, it is an alternative system of registration.

Under this type of registration, all immovable things situated in a district shall be registered in the register of immovables under its number in the cadastral survey plan and a separate leaf shall be assigned to it. The register shall contain a summary of the description of the immovable in question on each of its leaf. The registration and descriptions should be in conformity with the indications and measurements of the immovable in the cadastral survey plan. It shall also contain a brief description of all acts, which are required to be registered. See arts 1575-1582.

E. REGISTER OF OWNERS

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

F. REGISTRATION PROCEDURES

Registers of property and mortgages shall consist of files made up of printed forms that are prepared and supplied, free of charge, by relevant state organ to the keepers of registers. The forms are made available to persons requesting registration. Any interested person may make a request for registration up on payment of the prescribed fee. The request shall be made by filling out the forms, in two copies, with necessary information and signing it. Up on receipt of the completed and signed forms, the keeper shall assign a serial number to the request that corresponds to the register. The keeper shall countersign and seal the forms with the seal of the place of conservation and return one copy to the person requesting registration. The other copy of the form shall form part of the register to which it is related. The insertion of the forms in the register shall be made in the order in which they are made. See Arts 1587-1601.

However, Art 3363 of the Civil Code provides that the provisions of the civil code we have discussed so far shall not be operational until a date to be fixed by an order to be published in the Negarit Gazeta. Such order has not been issued yet and hence the provisions of the civil code dealing with registration of

immovables, i.e., Arts 1353-1646 have not come in force. However, various municipalities have been registering immovables and issuing title deeds.

9.3.2 SPECIAL MOVABLE THINGS

Special movable things that are required to be registered by the law include ships, airplanes, motor vehicles, businesses and televisions.

Ships- According to Art 45/3/ of the Maritime Code, every Ethiopian ship should be registered at the port where her owner is domiciled or has his address for service. Registers shall be kept at ports designated by the Ethiopian government for the purpose of registration Ethiopian ship. See Arts 45-52 and 1-8 of the Maritime Code. Moreover, mortgages and rights in rem that may exist in relation to ships shall be entered in the register of ships. See Arts 36, 37 and 45 of the Maritime Code.

Vehicles- Art 3/9/ of the Road Travel and Transport Proclamation No 256/1967 defines a vehicle as any wheeled vehicle constructed or adapted for use and used primarily on roads and includes carriages, bicycles, motor vehicles, semi-trailers, trailers and trains.

A motor vehicle, according to Art 3/9/ of the same proclamation, is a vehicle propelled mechanical or electrical power and may be a commercial vehicle, motor cycle, private motor car, public service vehicle, hackney or truck tractor.

Art 6/1/ of the same proclamation provides that no vehicle, except a bicycle, may be driven or operated unless it has been registered at the Road Transport Authority. Furthermore, the Motor Vehicles and trailers Identification, Registration and Inspection Regulations No 360/1969 as amended by Regulation No 74/2001 prohibits the use or operation of motor vehicles or trailers in Ethiopia with out a valid annual registration sticker which has to be properly displayed on the motor vehicle or trailer. See also Art 42-45 of the same regulation.

Currently, the Federal Road Transport Authority registers vehicles engaged in cross country road transport services, vehicles owned by diplomatic missions and vehicles owned by the federal government. Similarly, Regional Trade, Industry and Transport Bureaus register vehicles engaged in road transport

services with in the region and vehicles owned by the regional government. See Art 50 of the Regulation cited above and Art 14/19-22/ of Proclamation No 9/ 1996/7 of the Regional State of Tigray.
Ministry of National Defense may also register it owns as per delegation from the Federal Roads Transport Authority. See Art 51 of the Regulation cited above.

Aircrafts- Art 7/14/ of the Civil Aviation Re-establishment Proclamation No 273/2002 provides that the authority shall have the power to register all civil aircrafts and any right related thereto. Art 20 the same proclamation provides that the Registration of Aircrafts Regulations No 306/1965 /as amended/ shall continue in force.

Businesses- Art 5 of the Commercial Registration and Business Licensing Proclamation No 67/1997 provides that a person may not engage in any commercial activity in the country with out being registered in the commercial register and after receiving license from the Ministry of Trade and Industry/ where the business is undertaken at a federal level/ or the Trade and Industry Bureau /where the business is undertaken at a regional level/. See also Arts 3 and the following of the Federal Government Commercial Registration and Licensing Council of Ministers Regulation No 13/1997. Art 171/3/ of the Commercial Code requires the registration of contracts creating mortgage on businesses. However, there is no clear provision requiring registration of other contracts in relation to businesses such as sale and lease. See Arts 142-147 and Arts 164-170 of the Commercial Code.

Televisions are also treated as special movable things, which are required to be registered. Try to assess the rationale behind and the legal basis of their registration.

9.4 LEGAL AND ECONOMIC SIGNIFICANCE OF REGISTRATION

One of the most important purposes of registration of immovable and special movable properties and issuance of title deeds creates security of property rights by recording the rights and encumbrances relating to the thing and providing evidence to the right holders. The existence of a system of registration provides the owner of an immovable or a special movable thing with security or guarantee that his right of ownership is recognized and protected against any claim or interference by other persons. An owner of a

thing whose right is registered can fend off any contrary claim of title by other persons by the mere fact of such registration and the deeds issued there under. See Arts 1195-1198 of the Civil Code.

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

Registration of properties also plays significant economic roles by facilitating commercial transactions and creating capital necessary for investment and economic development. In legal systems with developed, organized and all inclusive property registration systems, properties are used, in addition to their natural purposes, as a means of generating or creating wealth or capital and contribute a great deal in their over all development. In countries with proper property registration systems a house or a building, for example, is used, in addition to its use as a shelter or a business place, as a security or collateral for borrowing money for further investment or expansion of existing investments which creates more jobs, increases production. In such a way properties are used to serve dual purposes. It is common that a lender want to be sure that the money he lent is returned on time and hence, would require a security in the form of pledge or mortgage of property that he can attach if the borrower fails to repay loan recover its money. The lender will not be willing to lend his money against mortgage or pledge of property unless he is sure that the property belongs to the person who is mortgaging or pledging it or if it is already mortgaged or pledged. Therefore, the existence of an all inclusive property registration system creates a conducive atmosphere for such transactions by creating a system in which owners of particular properties can be easily ascertained.

The following part is taken from a book entitled The Mystery of Capital, written by Hernando Desoto and explains the significance of an all inclusive and effective property registration system.