General Orientation of the Commercial Code:

A subjective Commercial Code is one which regulates a community of persons designated as “traders”. Whereas, an objective commercial code regulates acts known as “acts of commerce”, as opposed to persons.

The expert draftsperson opted for the subjective system to be the basis upon which he would build the 1960 Ethiopian Commercial Code.

UNIT TWO

TRADERS AND BUSINESSES

Businesses are operated by persons, whether physical or juridical. However, sole businesses or sole proprietorships can only be run by physical persons. Physical persons who operate a sole business are referred to as traders.

Art.5 define Traders

‘’persons who professionally & for gain carry on z activities of ….’’

- **One cannot be a trader without operating a business or an enterprise.**

- **Who operates a business has to do so professionally.**
- One who starts a business and engages herself in such business professionally does not become a trader unless she does so for profit.
- the business objects of such person has to be carry out one or more of the activities listed in Article 5 of the Commercial Code.

  Are activities under Art.5 exhaustive or illustrative?

  "…the list is as complete as possible; I have decided that the enumeration should be limitative.'' The Drafter.

Exclusions: Articles 6-9, exclude z ff from the scope of the Code's applicability;

(farmers, fishermen and Handicraftsmen or artisans (kept the maximum number of employees**)**

Businesses: Article 124 of the Commercial Code defines business as "an *incorporeal movable* consisting of *all movable property* brought together and organised for

the purpose of carrying out any of the commercial activities specified in Art.5 of this Code."

Elements of Businesses: (Art.127ff)

- *Mainly* of a *goodwill.*
- *It may also consist of* trade-name, patents or copyrights.
- *May consist* corporeal elements(equipments and goods)
- *Assets &liabilities, except* the right to the *lease of z premise of business are* excluded from the ambit of the elements of a business

In a nutshell, the term "business" embraces tangible and intangible assets, including tools, equipments, raw materials, goods in stock, good will, trade name, trade mark, patent, copy right, and the right to lease of the premises. **But, immovable** properties cannot form part of the business (fonds de commerce), Even though they are owned by the trader himself.

To a greater degree, the business is regarded as an entity distinct from its constituent elements**, as long as the whole is more valuable than the sum of the constituent parts.**

Unfair competition law is nothing but one of the devices designed to protect or preserve the **goodwill (commercial reputation** for commercial benefit) of a business.

<u>Commercial Unfair Competition</u>

- acts of competition that are regarded as **unfair Competition are provided under Art.133 com.c (refer).** certain acts of commercial competition can be considered as unfair where:
    - contrary to honest practice of z community
    - **Misleading Commercial Practices(**mislead or confuse customers**) eg.** trademark infringement

False Discrediting Statements

- in the notion of commercial unfair competition are two ideas: **unfairness and competition.**

- Competition presupposes the existence of competitors.
- Competition are three elements: they must be **selling similar products (**the goods or services have to be at least substitutes**)**, in the **same area (market), and at the same time.**

The Trade Practice Proclamation prohibits two types of commercial behaviour: **anti-competitive and no-competitive behaviours.** The former comprises of three categories of acts, viz. anti-competitive agreements, unfair competition, and abuse of dominance while the latter consists of non-compliance with the legal requirements pertaining to indications of prices, labels, price lists of goods and services subject to regulation; conditions of distribution, sales and movement of same; orders for replenishment of stock of same; and the issuance and keeping of receipts.

In addition to the civil and administrative remedies the Ethiopian legal system affords victims of unfair competition a criminal remedy.

UNIT THREE

BUSINESS ORGANIZATIONS

Features of buss.org

1) **Plurality of member ship**
2) **Possession of distinct assets**
3) **System of management**

Definition

What is a Business Organization? Refer; Article 210 & 211 of the Commercial Code

A business organization is a contractual association of two or more persons who undertake to bring in contribution with a view to carrying out an economic activity. It is an essential character of a business organization that it should have a **profit motive**, this

being the feature which distinguishes it from an association.

Distinguishing between Business Organizations and Associations Article 404 of the Civil Code defines an association as “a grouping formed between two or more persons with a view to obtaining a result **other than** the securing or sharing of **profits**. “If profit is considered to be the underlying motive for the formation of a certain organization, then it is said to be a business organization. Associations are always formed for non-profit purposes. Examples are charitable organizations, religious groups, literary clubs, local and international NGOS, etc.

They are also governed by two different legal regimes.

Associations are expressly prohibited from engaging in any of the commercial activities listed in Article 5 of the Commercial Code. If they **engaged** sufficiently, this would serve as a ground for dissolution of the association by court

Cooperative Societies are groupings that are organized to provide an economic service without profit to their members. Cooperative societies are governed by the Cooperative Societies Proclamation.

Classification of Business Organizations

- **Partnerships and**
- **Companies**

1. **Partnerships**
   - A partnership is an aggregate or collection of individual members.
   - Personality of the individual partner has paramount importance. Incapacity, insolvency, death, or serious disagreement between partners may result dissolution of the partnership firm. (**comes to an end when a partner dies or becomes insolvent**.)

- Only persons who know each other very closely may enter into a partnership agreement giving rise to a partnership firm.
- Suitable for small business

- The partners are agents for each other. Therefore, they are jointly and severally liable

- a partner cannot transfer his membership to an outsider or third party without the consent of all the other partners.

2. Companies

- Company is an aggregate or collection of shares or capital
- It is entirely distinct from its members.
- Death or insolvency of a shareholder does not affect its existence.

- Shares/membership in a company are freely transferable
- Members of a company are not entitled to take part directly in the management of the company unless they become directors.

Forms of Business Organizations

There are six legal forms of business organizations provided for in Article 212 of the Com.Code:

I. **Partnerships(**Ordinarypartnership,Jointventure**,**GeneralpartnershipLimitedp.)
II. **Companies(**Share Company**&**Private limited company)

Distinguish between Commercial & Non-Commercial Business Org? Art.10 & 214 com.c.

Formation

Generally, any business organization must be formed by a contract known as partnership agreement... Article 211 of the Commercial Code defines the partnership agreement

Publicity; A further formality requirement imposed on the parties to a valid partnership agreement is publicity. According to Article 219(1) of the Commercial Code "any business organization other than a joint venture shall be made known to third parties." The policy consideration behind the publicity requirement is to protect third parties. Members are required to bring to the attention of the public that they have formed a business organization. This requirement is unique to partnership agreements, as distinct from other contracts, because the very existence of the business organization depends on its fulfillment.

"Business organizations shall acquire legal personality by registering in the commercial register without being publicized in a newspaper …for their establishment and amendments to their memorandum of associations."Art.2 (2) Proclamation No.376/2003

Article 210(2) of the Commercial Code stipulates that "any business organization **other than a joint venture** shall be deemed to be a legal person."

UNIT FOUR ORDINARY PARTNERSHIP

An ordinary partnership is one of the various forms of partnerships. The major distinction between an ordinary partnership and other partnership forms is that **commercial business organizations cannot adopt this form of business organization**. Article 213(2) provides that **"where a commercial business organization is created in the form of an ordinary partnership or where the form of the organization is not specified, the commercial business organization shall be deemed to be a general partnership."** The ordinary partnership, as business organizational form is a partnership which lacks in legal characteristics that make it a commercial partnership. (Art.227) Therefore, even if it cannot engage in commercial activities (i.e., those listed in Art.5), it can carry out any other economic activities which the ordinary partnership may legitimately carry out are virtually unlimited.

Contributions: Every partner must make a contribution, which may be in **money, debts, other property or skill**. Where contribution is made in kind, the use only of such property may be contributed. In the absence of a contrary agreement, contributions are deemed to be equal and of the nature and extent required for carrying out the purposes of the partnership [Article 2229].

Partnership Capital: Article 80(1) stipulates that "The capital is the original **value** of the elements put at the disposal of the undertaking by the…partners by way of contributions in cash or in kind". Capital refers not to the money or property contributed as such, rather to its value. Partnership property must be distinguished from partnership capital. z former refers to "property, debts and rights brought into or acquired by the partnership". Partnership property belongs to the partners in common under the terms of the partnership agreement. That is to

say, partnership property is held by the partners as joint owners

Creditors of the Partnership Art.255

The creditors of the partnership may claim against partnership assets & against the personal property of the partners.

Joint and several liabilities of the partners can be avoided by z partners' agreement. Also, it should be borne in mind that this feature marks off ordinary partnerships from other partnership forms.

Management

Types of Managers

(i). Statutory managers. These are managers specifically designated in the partnership agreement or following an amendment thereto and, as such, their names appear in the text of the partnership agreement.

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(i). Statutory managers. These are managers specifically designated in the partnership agreement or following an amendment thereto and, as such, their names appear in the text of the partnership agreement.

(ii). subsequently appointed managers. These are managers appointed by decisions of the partners at any point in time subsequent to the making of the partnership agreement.

(iii). Managers at law. Every partner, as per Article 236, has the right to act as a manager in the absence of both statutory and subsequently appointed managers.

(iv). Sole manager; where a single individual has been appointed as a manager.

(v). several manager; a situation in which two or more persons have been appointed managers and their duties have not been specified, they act jointly.

(vi). Joint mangers. In cases where joint managers have been appointed, decisions shall be taken by consensus.

Rights and Duties of Partners

The mutual rights and duties of the partners may be determined by the partnership agreement, subject to the mandatory provisions of the law.

General Duties:

- **Diligence;** the same **diligence** as a *bonus pater familias*
- **" strictest good faith" or "utmost good faith"** towards the partnership
- Indemnity

Mode of doing act to bind a firm

in order to bind a firm, an act or instrument done or executed by a partner must be done or executed in the name of the partnership & within the ordinary scope of the partnership.

Dissolution, Winding up, and Termination

The extinguishment of a partnership consists of three stages:

(1) Dissolution

(2) Winding up (liquidation) , and

(3) Termination.

Dissolution occurs when the **partners cease to carry on the business together**. Upon dissolution, the partnership is not terminated. Termination occurs when the process of winding up has been completed. The business is not automatically terminated upon dissolution, but has to go through the winding up procedure

Grounds of Dissolution

I) Grounds of Dissolution Applicable to All Forms of Business Organizations Art. 217-218:

(a). Legal Dissolution

- Where the business purpose has been achieved or cannot be achieved

- Where the term for which the business organization was formed expires

(b).Consensual Dissolution (agreement of parties)

(c) Judicial Dissolution; a business organization may be dissolved for good cause by the court on the application of a partner

II) Grounds of Dissolution Specific to Partnerships

(a). Dissolution by Notice; at any time by any partner by giving six months notice

(b). Dissolution due to Death, Incapacity, and Bankruptcy of a partner

Continuation upon Dissolution

Even if a partnership is to be dissolved, the partners can prevent dissolution by various ways.

The two situations in which continuation is possible in Ethiopia are:

1. Where a partner has given notice to dissolve, his partners may prevent dissolution by paying out his share.
2. Where a partner is declared bankrupt or where one of his personal creditors causes his share to be disposed of under Art. 256(3);

Winding up (Art. 264-270)

Whenever a dissolved partnership is not to be continued, the partnership must be liquidated. The **Process of liquidation**, called winding up, involves completing unfinished business, collecting debts, taking inventory, reducing assets to cash, auditing the partnership books, paying creditor, and distributing the remaining assets to the partners.

Distribution of Assets

After all the partnership assets have been collected and reduced to cash, they are distributed to creditors and the partners.

If the partnership is insolvent, the individual partners must contribute their respective share of the losses in order to pay the creditors (Art. 268(1)).

UNIT FIVE

Joint Venture

A joint venture is a grouping of people arising out of a partnership agreement, which is also known as a joint venture agreement in which two or more persons combine their labor and/or capital for the purpose of carrying out economic activities and participating in the profits and losses arising out thereof

The joint venture is the simplest form of business organization.

Although in practice the joint venture is frequently used for a single business transaction, it can also be used for a

number of transactions and for a more or less long period of time. This form of organization is not adapted to industrial enterprises, but commercial transactions in which great amounts of capital are involved are often dealt with by means of a joint venture.

Joint ventures have the following merits:

1. **Transactions or projects can remain** secret **by virtue of the secretive nature of the organization;** only the manager being made known to the public while the members remain in the shadows:
2. Joint ventures are exempted from registration, unlike the remaining legal forms of business organizations;

CHARACTERSTICS OF JOINT VENTURES

A joint venture, being one variant of partnerships, is subject to the general principles of law relating to

partnerships [Art.271]. Exceptions to the application of partnership principles to joint ventures include the following:

1. A joint venture is **not made known to third parties**. Joint venture agreement need **not be in writing** and is **no**t subject to **registration**
2. A joint venture does **no**t have **legal personality**. Thus, it is not going to be considered as a legal entity. That is to say, a joint venture may not have a firm-name; may not enjoy ownership right over the capital; may not incur liabilities; may not have a head office; cannot sue or be sued in its firm-name; cannot be declared bankrupt.

where a joint venture is made known to third parties, it shall be deemed, insofar as such parties are concerned, to be an actual partnership [art. 272(4)]. It shall be deemed to be a **general partnership,** because it is

commercial. And it is a ***de facto*** **business organization**, because it has not been registered.

Art.273; unless otherwise provided every partner owns his **contribution**.

Unless otherwise provided, every member retains ownership of the property which he contributes to the joint venture. Since the organization has neither legal personality nor capital, the contribution of the members cannot become the property of the joint venture.

Being the owners of their contributions, the members may freely transfer them to third parties. Finally, when the venture is dissolved, each of the members takes back the goods

MANAGEMENT

A joint venture may be managed by one or more managers, who need not be venturers. Many times, the manager is a venturer. In the absence of an appointed manager, each venturer shall have the status of a manager. Where there is a statutory manager, his/her powers should

be specified in the memorandum of association. But, a statutory clause restricting the powers of the manager, may not be set up against third parties.

The manager enters into legal relationships with third parties in his own name. The venturers who are not appointed to be managers enjoy the right to supervise the work of the manager. They may not actively participate in the external management, but in case they do participate they are jointly and severally liable with the manager. Venturers who are not managers and who deal with third parties can only do so in their own name.

DISSOLUTION; Article 278 sets out various grounds for the dissolution of joint ventures.

The venture is dissolved on the death, bankruptcy or incapacity of any of the members.

UNIT SIX

GENERAL PARTNERSHIP

Partners in a general partnership, as per article 280(1) of the Code are, “personally, jointly, severally and fully liable as between themselves and to the partnership for the partnership firm’s undertakings.” The same sub-article further stipulates that “Any provision to the contrary in the partnership agreement shall be of no effect with regard to third parties.”

Where the partnership is a commercial partnership each partner shall have the status of trader, Art.280 (2).

General partnerships shall have firm-names. The firm-names must contain at least the names of two of the partners accompanied by the phrase “General partnership”.

Contributions: the partners must make contributions, which can be in cash, kind, debt, and skill.

Transfer of shares

In principle, a unanimous vote of the partners is required in order that a share belonging to a partner is assigned or transferred to an outsider and thereby he becomes a

partner of the general partnership firm. However, majority vote may be enough if z memorandum stipulated for z same.

Memorandum of Association and Registration

A general partnership arises out of a partnership agreement, otherwise known as memorandum of association. In order for the memorandum of association to be valid, it must be reduced into writing. Also it must meet the legal requirement as the minimum contents listed in Article 284, which include the name, address and nationality of each partner; the firm-name; the head office and branches, if any; the business purpose of the firm; the contributions of each partner, their value and the method of valuation; the services required from persons contributing skill; the share of each partner in the profits and in the losses and the agreed procedure for allocation of the same; the managers and agents of the firm; and the period of time for which the partnership has been established.

UNIT SEVEN

LIMITED PARTNERSHIP

(Art.296-303)

A limited partnership consists of two types of partners:

1) General partners:
   - Fully liable; personally, jointly & severally.
   - Assume management responsibility of the partnership and, as such, have full responsibility for the partnership and for all the debts of the partnership.
2) Limited partners:
   - May not act as a managers
   - Not personally liable to the partnership's creditors

The formation of a limited partnership must be by a written memorandum of association signed by the

partners and registered by the official in charge of the commercial register.

A limited partnership shall have a firm name, which must contain the names of the general partners accompanied by the words “Limited partnership”.

UNIT EIGHT

Some Merits of Company

1) Financial Resource: **- If a business venture is to be promoted on a large scale, none of the partnership or sole proprietorship form of business organization can prove equal to the task of raising funds to the required level. It is only the company forms both private limited company and share company, which can mobilize huge funds, required by big business.**
2) **Limited liability: - the shareholders is not liable to pay anything more than the face value of the shares held by him. Even when the company becomes insolvent**

he will not be called upon to pay from his personal property to service the debts of the company. So, when compared with the partnership or sole proprietorship where the liability in unlimited, the company form is far more preferable for small investor because of the "low-risk and high return factor."

3) Scope of growth
4) Professional management: **The management of the company can be left to a group of professionals who, with their competence, specialized knowledge or skills, qualifications of training, can show better results in production, distribution or marketing etc.**
5) Stability of the company: **for the success of any business venture, continuity and stability of business are equally important and neither can be self-supporting without the other. With its perpetual succession of ownership theory, only the company form can ensure both continuity and stability whereas**

the partnership or sole proprietorship form may have to close the shop due to the death of sole trader

6) Positive social benefits:- **a company is beneficial not only to its members, creditors and employees but also to the public at large. It supplies goods and services at a competitive rates by introducing new and sophisticated technologies. it provides employment opportunities both direct and indirect to the needy and competent persons in the society.**

Share Companies

Nature :

- **Limited liability**: liability of the members is limited. No member is liable to contribute anything more **than the nominal value of the shares held by him.**

- **Perpetual succession:- unlike partnership share company will not be dissolved by the death or incapacity of its members.**
- **Transferability of shares: however it is possible to restrict free transfer of shares in the articles of association**
- **A founder may be an individual or body corporate.**

Memorandum and Articles of Association

Memorandum of association:

After registration of the business organization, the memorandum becomes a public document while the memorandum must comply with the provisions of the commercial code, all other documents of the company must comply with the memorandum.

Contents of memorandum

- **Name clause:**The general rule is that a company may be registered with any name it likes
- **Registered office clause:** the name of the state where the registered office of the company is situate
- **Object clause**: shows the object for which the company is formed & also determines the extent of the powers which the company can exercise in order to achieve the object
- **Liability clause**: the nature of liability that the members incur
- **Capital Clause**
-

Articles of association

Memorandum is like a charter, while the articles explain & supplement the memorandum. The articles of association are the rules and regulations of a company framed for the purpose of internal management of its

affairs. It deals with the rights of members of the company inter se. The articles are framed for carrying out the aims and objects of the memorandum of association. The articles are subordinate to and are controlled by the memorandum of association. The articles play a part subsidiary to the memorandum of association. Memorandum and articles are public documents. The memorandum and articles of association of every company are required to be registered with registration of office.

Securities ; Share Company can issue two kinds of securities:

1) Equity securities; are **shares** that are issued by the company & the buyer becomes shareholder.
2) Debt securities;
    - holders of debt securities are creditors of z campany, not share holders

- they are rank prior to the shareholders
- debt securities are issued for a defined term and are reimbursed to their holders
- Debentures are among debt securities
- Debenture is a document/certificate given by a company as evidence of debt, a acknowledging a debt, to the holder usually arising out of loan and most commonly secured by a charge, securing repayment.

Corporate Management

Management of the company is carried on by;

➢ The shareholders' meeting

- The time and manner of payment of dividends is decided on by the annual meeting
- Auditors are appointed by shareholders and are entrusted with the external control of the company.

- Any person who has an interest in the company cannot be an auditor

➢ board of directors

- It is established by general assembly from among the shareholders. The number must be not less than three and not more than twelve. If a legal entity is appointed as a director of Share Company, it must appoint an individual person. _
- board of directors must prepare annual accounts and a management report for submission to the general meeting

➢ General Manager

- Day to day activities is carried on by general manager. The general manager is appointed by the board. General Manager is not member of the board directors; however, the articles of association of a company may specify that

directors or one director may be responsible as a manager.

Dissolution and wind up

Companies are rarely dissolved. Rather than dissolve a company shareholders usually prefer to sell their shares. In certain cases however, dissolution cannot be avoided.

Causes of dissolution common to all kinds of business organization /Art 217-218/

Art.495; grounds of dissolution for share company

Liquidation of Share Company ;

The liquidation comprises all the operations required to complete its current transaction, to collect and realize its assets, to discharge its liabilities and repay its capital and to distribute any surplus of assets among its members.

The company continues to exist and has corporate personality for the purpose of the liquidation until liquidation in completed, this rule has general consequences.

If the members do not appoint a liquidator, an appointment is made by the court on the application of members, directors or auditors.

UNIT NINE

Private limited company

Nature:

- well adapted to small and medium–sized business
- it is hybrid of Share Company and partnership
- **limited liability**, its members liability is limited to the extent of their contribution

- Shares are not freely transferred to the outsiders. However, shares are freely transferred among the company members
- Shares can be transferred to outsiders with the consent of majority of the members
- When the shareholder dies his shares transmit to his heir
- may be formed to pursue any purpose or to carry on any activities, however, it may not take banking, insurance and similar activities, such business must be carried out by Share Company
- always of commercial nature even if it intends to carry on civil activities
- members shall be two-fifty persons
- shall be registered, like any buss.org., except joint venture
- shall have memorandum of association & articles of association

- The capital must be at least Birr 15,000
- the whole capital of private limited company must be paid-up when the company in formed (Art 517/g/)
- PLC issues shares of equal value. It does not issue transferable securities.
- **Management; PLC** is managed by one or more managers under the direction and control of shareholders
- The managers can be appointed either among the shareholders or outside the shareholders.

UNIT TEN

Conversion and amalgamation of business organization

Conversion (it is change of form of buss.org.)

The conversion of business organization is an operation by which its legal form is changed without being creating new legal personality (Art 544(1). Thus, private limited company may be changed into Share Company and vice versa. Such conversion does not result in the creation of a new legal person, but is treated for all purpose as a continuation of the original company.

The decision of conversion of one business organization into another form may pass by unanimous or majority required by the law or articles of association.

A conversion takes effect from the date of registration in the commercial registers

The **creditors** of the former business organization retain all their rights, as regards the new business organization. They may also object and demand their debt to be paid before conversion takes place.

Amalgamation (it is unification of buss.organizations/incorporation of bus. Org. by another bus. Org.)

An amalgamation is the operation by which two or more, business organizations group into only one business organization and by which the members of the amalgamated business organization receive shares issued by the business organization benefiting from the amalgamation. It may either result in the creation of a new business organization to which one or more business organization contribute their assets and debts or in the contribution of the assets and debts of one or more business organization to another existing business organization to another existing business organization (Art 549/1/).

The decision of amalgamation is taken by each business organization. Such decisions have to be approved by different classes of shareholders and debentures

In amalgamation, all property and rights forming the assets of the amalgamated business organization are transferred to the beneficiary business organization.