Law of Traders and Business Organization

...

The place of Commercial Code under the classification of laws

- **Classification of law**: public law Vs. private law; substantive law Vs. procedural law; civil law Vs. criminal law, International Vs. National Law etc.
- **What is the purpose of classification of laws?**

A systematic grouping of law so as to understand easily.

- They may be:

1. stated effectively with a minimum of repetition, over lapping and potential conflict;
2. administered effectively;
3. taught effectively, and developed effectively for new situations.

…Continued…

- **Private law**: civil code and commercial code.
- **Continental legal system**:-separate codes for civil law and commercial law. For example, France, Germany, Spain, Portugal, etc.
- **Common law countries**:- don't recognize such distinction
- Some countries like **Italy** and **Holland**:- formerly acknowledge separate codes but later came to unity of private law by merging the two codes.

Ethiopia: separate codes ?

- **separate codes (civil law and commercial law) but how far distinct?**
- **The civil code as complimentary law**

Art.1. - *Scope of application of the Civil Code.*

Unless otherwise provided in this Code, the provisions of the civil Code shall apply to the status and activities of persons and business organisations carrying on a trade.

- **The new Commercial Code**

አንቀጽ 1 ስለ የፍትሐ ብሔር ሕግ ተፈጻሚነት

- በዚህ ሕግ በተለየ ሁኔታ እስካልተደነገገ ድረስ የንግድ ሥራ በሚሠሩ ሰዎችና በንግድ ማኅበሮች ላይ የፍትሐ ብሔር ሕግ ተፈጻሚ ይሆናል፡፡

አንቀጽ 2 ስለ ባሕር ሕግ ተፈጻሚነት

- የንግድ ሥራቸው ከባሕር ንግድ ሥራ ጋር የተያያዘ በሆኑ ሰዎች ወይም የንግድ ማኅበሮች ላይ አግባብነት ያላቸው የባህር ህግ ድንጋጌዎች ተፈጻሚ ይሆናሉ፡፡

Why we need to have a special commercial code?

1. **Less stability of commercial law**: needs frequent amendments.
   - ❑ Recognized in the commercial code(see preface of the comm. code)
   - ❑ Draft Commercial Code(Art. 6)
2. **Difference in contents/Substance**
   - Contract formality and evidence
   - Default notice
   - Interest rate
   - Period of grace
   - Period of limitations
   - ❖ Are these criteria in Ethiopia?

…Continued…

3. Some special privileges to merchants

- admissibility of one's commercial records as evidence
- ownership and protection of certain business assets unique to commerce (Good will, trade mark etc.)

4. Special Insolvency Proceedings (Bankruptcy):

- Given recognition under the commercial code
- Traders and commercial business organizations are subject to book V of the Commercial Code i.e. **bankruptcy**
- Non traders and non-commercial business organizations are subject to ordinary **insolvency** provisions of civil procedure code.

…continued…

5. Special Status and Regulation of Merchants

- subject to duty of maintaining books and accounts see Art. 63-85 Comm.C)
  - make daily entries of all his dealings
  - balance sheet and the profit and loss account.
  - All books and accounting documents shall be preserved for ten years
- NCC- አንቀጽ 61 ሒሳብ መያዝ ግዴታ ስለ መሆኑ

6. **Special court/bench /experts**

subjective Commercial Code vs. bjective Commercial Code

- Whether the commercial law be applicable to traders and only to traders/BO or will it be applicable to certain acts, called acts of commerce, no matter who the persons carrying out these acts are?
- A subjective Commercial Code is one which regulates a community of persons designated as “traders” and “Business organizations”.
- Whereas, an objective commercial code regulates acts known as “acts of commerce”, as opposed to persons.

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- በዚህ ሕግ በተለየ ሁኔታ እስካልተደነገገ ድረስ የንግድ ሥራ በሚሠሩ ሰዎችና በንግድ ማኅበሮች ላይ የፍትሐ ብሔር ሕግ ተፈጻሚ ይሆናል፡፡

አንቀጽ 2 ስለ ባሕር ሕግ ተፈጻሚነት

- የንግድ ሥራቸው ከባሕር ንግድ ሥራ ጋር የተያያዘ በሆኑ ሰዎች ወይም የንግድ ማኅበሮች ላይ አግባብነት ያላቸው የባህር ህግ ድንጋጌዎች ተፈጻሚ ይሆናሉ፡፡

Law of Traders and Business Organizations

- **Law of Traders and Business Organizations: composed of?**
  - Book I: Law of Traders and Business (**Commercial Code**)
  - Book II: Law of Traders and Business Organizations (**Commercial Code**)
  - The relevant provisions of the Civil Code-Art. 1
  - The relevant provisions of the Maritime Code-Art 2
  - Commercial Registration and Business Licensing Proclamation No. 980/2016
  - Business Mortgage Proclamation No. 98/1998
  - Commercial Registration and Licensing Council of Ministers Amendment Regulation (Amendment) 1150/2019
  - Council of Minister Commercial Registration and Licensing Regulation No.392/2016
  - Council of Minister Commercial Registration and Licensing Regulation (Amendment) No.461/2020
  - Trade Marks Registration and Protection Proclamation No. 501/2006

Law of Traders and Business Organizations: scope of application?

- **Scope Of Application?**
- **Applies to:**
  - Traders
  - Business Organizations
  - Public enterprises (ልዩ ህጎች እንደተጠበቁ ሆኖ በመንግሥት የልማት ድርጅቶች ላይ ተፈጻሚ ይሆናል።)
- **Doesn't apply to?**
  - Non-Traders. who are they?
    - a negative definition- individuals not trading
  - Non-Business Organizations. who are they?
    - a negative definition-(Organizations other than Business Organizations)

Business organizations

The 1960 Comm code

1. ordinary partnership;
2. joint venture;
3. general Partnership
4. limited Partnership;
5. share company;
6. private limited company;

New Comm code

1) የንብረት ሸርክና ማኅበር፣

2) ሁለት ዓይነት ኃላፊነት ያለበት የሸርክና ማኅበር፣

3) ኃላፊነቱ የተወሰነ የሸርክና ማኅበር፣

4) የእሸሙር ማኅበር፣

5) የአክሲዮን ማኅበር፣

6) ኃላፊነቱ የተወሰነ የግል ማኅበር፣

7) ባለአንድ አባል ኃላፊነቱ የተወሰነ የግል ማኅበር።።

Doesn't apply to?

- **አንቀጽ 4 ይህ ሕግ የማይፈጸምባቸው ተቋማት -the New Comm.code**
- Administrative agencies
- Religious organizations
- Civil society organizations
- Cooperative associations
  - በአንቀጽ 5 የተመለከተውን ሥራ ቢሠሩም አንኳን ግልጽ የሆነ ተቃራኒ የህግ ድንጋጌ እስከሌለ ድረስ የዚህ ሕግ ድንጋጌዎች ተፈጻሚ አይሆኑባቸውም፤
  - የንግድ ማህበር ውስጥ ባለአክሲዮን ወይም ባለድርሻ የሆኑ እንደሆነ ባለአክዮኖችን ወይም ሸሪኮችን የተመለከቱ አግባብነት ያላቸው የዚህ ህግ ድንጋጌዎች ተፈፃሚነት ይኖራቸዋል፣

Law of Traders and Business

- **Law of Traders and Business**
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..

- **Book I: Law of Traders and Business of Com Code**

Definition of Traders

- Who is traders? What are trading activities?
- 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.

Traders?

The commercial code of 1960

- Art. 5. - *Persons to be regarded as, traders.*
- Persons who professionally and for gain carry on any of the following activities shall be deemed to be traders:
- List of 21 commercial activities, and the list is exhaustive.

The new commercial code

- አንቀጽ 5፡ ነጋዴዎች የሚባሉ ሰዎች
- የሞያ ሥራቸው አድርገው ጥቅም ለማግኘት ሲሉ ከዚህ ቀጥሎ የተዘረዘሩትን ስራዎች ወይም ሌሎች ተመሳሳይ ሥራዎችን የሚሠሩ ሰዎች ነጋዴዎች ናቸው፡-
- List of 37 commercial activities, and the list is illustrative.

…Continued…

- **Art.5** define Traders…….‘’persons who professionally & for gain carry on z activities of ….’’

1. **<u>For gain/Profit</u>**: One who starts a business and engages herself in such business professionally does not become a trader unless she does so for profit.
2. **<u>Professionally</u>:** Who operates a business has to do so professionally(who operates a business as a pastime or in her leisure does not count a trader).
3. **<u>The activities of…</u>**

Whether the activities listed under Art.5 are exhaustive or illustrative?

Whether the activities listed under Art.5 are exhaustive or illustrative?

Exclusion based on scale of operation (Negative Definition)

1. አንቀጽ 6 በአነስተኛ መጠን ስለሚሠሩ ሰዎች /small scale operation in certain activities/
2. አንቀጽ 7 Handicraftsmen /የዕደ ጥበብ ባለሙያዎች
3. አንቀጽ 8 *Agricultural and Forestry undertakings.*/የግብርና እና የደን ማልማት ሥራዎች /

አንቀጽ 6 በአነስተኛ መጠን ስለሚሠሩ ሰዎች

አንድ ሰው በአነስተኛ መጠን ሰራ የሚባለው:/small scale operation

1. Human resource limitation -ሥራውን ብቻውን ወይንም ከሦስት ተቀጣሪ ሠራተኞች ወይም ሥራ ተለማማጅ ሠራተኞች በላይ ሳይኖረው
2. No accumulation of inputs-ሥራውን ለማካሄድ ከሚያስፈልገው ውጪ ግብዓት ሳያከማች
3. utilizes trained or experience based knowledge/skill - ያካበተውን ልምድ ወይንም በትምህርት ያገኘውን ሳይንሳዊ፣ ቴክኒካዊ ዕውቀቶችን ወይንም ደግሞ ሁለቱንም በመጠቀም ሥራውን የሚሠራ ሲሆን፣
4. Applicable only regarding certain activities-በአንቀጽ 5 በንዑስ አንቀጽ (4)፤(5)፤ (31)፤ (32)፤(33)፤(35) እና (36) የተመለከቱትን ተግባራት

አንቀጽ 6 በአነስተኛ መጠን ስለሚሠሩ ሰዎች -Applicable only regarding certain activities-

Applicable only regarding certain activities-በአንቀጽ 5 በንዑስ አንቀጽ (4)፤(5)፤ (31)፤ (32)፤(33)፤(35) እና (36) የተመለከቱትን ተግባራት

- በሕግ የገጠር መሬት ለመጠቀም ባለመብት ከሆኑ ሰዎች ውጪ ያሉ ሌሎች ሰዎች እንስሳትን የማርባት ስራ እና ከእንስሳት የሚገኙ ምርቶችን የማምረት ሥራ የሚሰሩ፣
- ዓሳ የሚያጠምዱ እና የሚያረቡ፣
- የማማከር፣ የኡዲት ወይም መሰል የዕውቀት አገልግሎቶችን የሚሰጡ፣
- የሰዎችን ሆነ የእንስሶች የጤና ምርመራ እና የህክምና አገልግሎት መስጠት
- የትምህርት አገልግሎት መስጠት፣ የዕውቀት ማስተላለፍ እና ማሰራጨት ሥራዎችን የሚሠሩ፣
- የንብረትም ሆነ የግል ደህንነትን የመጠበቅ አገልግሎት የሚሰጡ፣
- ሰነድ ማዘጋጀትን፣ ማባዛትን ጨምሮ ማንኛውንም ዓይነት የቢሮ ሥራን የሚደግፉ አገልግሎችን መስጠት፣

አንቀጽ 7 Handicraftsmen /የዕደ ጥበብ ባለሙያዎች

I. Handicraftsmen -persons who carryon an independent activity, who live mainly on their own manual work-የእጅ ጥበብ ሙያ ኖሮአቸው በእጅ ሥራቸው ብቻ የሚኖሩ ሰዎች ናቸው፤

II. human resource-(family plus upto 3 employees)ብቻቸውን ወይም በቤተሰብ አባላት እየተደገፉ ከሦስት ተቀጣሪ ሠራተኞች ወይም ተለማማጅ ሠራተኞች በላይ ሳይኖራቸው

III. Input limitation- buy such material only as is necessary for carrying out their activities without setting up stocks/የሚሰሯቸውን ሥራዎች ለመሥራት ከሚያስፈልጋቸው መጠን በላይ ግብዓት ወይም ጥሬ ዕቃ ሳያከማቹ/

IV. The Method of production- mainly manual work-ሥራቸውን በአመዛኙ በእጃቸው እየተጠቀሙ የሚሠሩ but እንደ ሁኔታው በአነስተኛ መሣሪያ ወይም ማሽን ሊጠቀሙ ይችላሉ፤

…

- What activities in art.5 are listed as activities of handcraftsmen?
- What common characteristics?

የዕደ-ጥበብ ባለሙያ በሚሰራው መጠን በሆነ አኳኃን

- (7) የማዕድን፣ የነዳጅ ዘይት ...የሚያወጡና ...፣
- (8) ለህንፃ፣ ለመንገድም ...የድንጋይ ማውጣት እና መፍለጥ ሥራዎችን የሚሰሩ፣
- (9) የጨው ማዕድንን የሚያወጡ፣
- (10) የምግብ ዕቃዎችንና፣ ዕቃዎችንና ካላቸው ተንቀሳቃሽ ነገሮች የሚያመርቱ፣ የሚለዋወጡ፣ የሚቀይሩና፣ እነዚህን የሚጠግኑ፣
- (11) የግንባታ ሥራና የግንባታ ---ቤትን፣ ህንፃን፣ መንገድንና ማንኛውንም ሌላ ዓይነት ሥራዎች ንዑሳን ክፍሎችን የመስራት፣ የመጠገን፤ የማፅዳት ሥራ የሚሰሩ ፣
- (12) የመደልደል፣ የመደደቅ፣ የውሃ መውረጃ ቦዮች የመሰንጠቅ ስራ የሚሰሩ፣
- (13) የማጓጓዝ...ሰዎችን፣ እቃዎችን፣ እንደ ፖስታ ባሉ የተያዙ መልእክቶችን .. ፣ እቃዎችን የማሸግና ከዚሁ ጋር የተያያዙ ስራዎችን የሚሰሩ፣
- (15) ደረቅና ፍሳሽን ጨምሮ ማንኛውንም ቆሻሻ የማጓጓዝ፣ የማስወገድ ወይም መልሰው ለጥቅም እንዲውሉ የማድረግ ሥራዎችን የሚሰሩ፣
- (17) ተቀሳቃሽ እና የማይንቀሳቀሱ ነገሮችን የመጠገን፣ የማጠብ እና የማፅዳት ሥራዎችን የሚሰሩ፣

Exercise : Compare and contrast the two:

- በአነስተኛ መጠን ሰራ /small scale operation
- Handicraftsmen /የዕደ ጥበብ ባለሙያዎች

አንቀጽ 8 የግብርና እና የደን ማልማት ሥራዎች /exception to art.6?

- (1) በዚህ ሕግ በአንቀጽ (5) በንዑስ አንቀጽ (4) እና (5) ሥር የተደነገገው እንደተጠበቀ ሆኖ(
  - (4) በሕግ የገጠር መሬት ለመጠቀም ባለመብት ከሆኑ ሰዎች ውጪ ያሉ ሌሎች ሰዎች አነስተኛ ከሆነው መጠን በላይ እንስሳትን የማርባት ስራ እና ከእንስሳት የሚገኙ ምርቶችን የማምረት ሥራ የሚሰሩ፣
  - (5) አነስተኛ ከሆነው መጠን በላይ ዓሳ የሚያጠምዱ እና የሚያረቡ፣)
- Raw products- ማናቸውም ከእርሻ፣ ከደን ማልማት፣ ከችግኝ ማብቀል፤ ከእንስሳት ማርባት ጋር ወይንም የግጦሽ ሣር ከማሳደግ ጋር የተያያዙ ስራዎችን የሚሰሩ፣
- Further processing-ከሚጠቀሙበት መሬት ያገኟቸውን ምርቶች የሚሸጡ ወይም ከሚጠቀሙበት መሬት ባገኙት አላባ እየቀለቡ ያረቧቸውን እንስሳት የሚሸጡ ሰዎች፤ የዘወትር ልማድ መሠረት በማድረግ ከሚያለሙት ወይም ከሚያዙበት መሬት ላይ ያገኙትን ሰብል ወይም የእንስሳት ተዋአዎችን አቀናብረው የሚሸጡ ሰዎች ነጋዴዎች አይባሉም፤

Exercise

How different is article /አንቀጽ **8 የግብርና እና የደን ማልማት ሥራዎች / from what is provided in art 6?**

Is it an exception to art.6?

Rights and duties of traders

- **<u>Rights of Traders</u>**
- **Art. 41 of FDRE Constitution**: Every Ethiopians have the right to engage freely in economic activities and pursue livelihood, including the right to choose one's occupation and profession.
- **Art. 16 of Civil Code**: Every person is free to exercise any activity which he deems proper in that which concerns his calling and his leisure.
- **Art. 21-22 of the New Commercial Code**: any person or BO has the right to carry on trade but there may be certain limitations.

Exceptions

- The right to engage in any trade has its own exceptions.

1. <u>Capacity</u>:

✓ Art. 192 ff minor, judicially interdicted person, legally interdicted person(?)

✓ Even the tutor may not carry on trade on behalf of the incapable

✓ **Emancipated minor can trade (New CC- Art 12)**

<u>2. Married Persons: Art. 15- 20 of New comm. Code</u>

Objections shall be registered

Trading spouses has two options regarding the objections made against his trade:

- (1): Setting aside of objection(Art. 18 comm.code) (to the family arbitrators):

(2): proceed on trade and pay debts from personal assets.

<u>Issue:</u> <u>income/profit: is it common property of spouses?</u>

3. Trade by Legal persons:

- BO(Art. 26)-
  - there might be certain restrictions –e.eg. Partnership may not undertake banking, other financial institution & insurance but only share company.
- Non business organizations-subject to special laws if they need to engage in trade
  - Administrative agencies
  - Religious organizations
  - Civil society organizations
  - Cooperative associations

Obligations of traders

1. **Registration** : Commercial registration & business licensing Proc 2016.
   - ✓ To distinguish legal/illegal traders;
   - ✓ to provide reliable information to the public about the business
   - ✓ evidentiary role,
2. **Business License**:
3. **Books & Accounts** (Art 63-83): Exception for petty traders(Art.84).
   - ✓ Tax purpose
   - ✓ Evidentiary role: Art 71 & 72:- books and accounts properly kept could be availed by a party keeping them as evidence against other persons.

- Art 2016 of the civil code denies a party to avail his own books and accounts as evidence in his own favor while it could be used against himself.

4. Subject to **bankruptcy proceeding** as opposed to the ordinary rules of civil procedure on insolvency of civil debtors.

5. Subject to other specific rules of the Commercial Code as opposed to civil code where difference in content of the two exists.

excercises

- Are all traders required to maintain books of accounts? Or are there exemptions?
- Can traders avails books of accounts in their favour? For how many years they should keep the books of accounts?
- Are all traders required to register? Or are there exemptions? Where should they register? At federal or regional office? What is principal registration and how about summary registration? What is registration number?
- What facts should be registered? Can they change facts in the register? When? What is the effect of failure to register?
- Are the registers public or private? Can anyone see the records? Why?
- When registration could be cancelled?

Chapter TWO: Businesses

- **Businesses:** Art.124 of the Comm. Code defines business as “an incorporeal movable consisting of all movable property brought together and organized for the purpose of carrying out any of the commercial activities specified in Art.5 of this Code.”
- **Elements of Businesses:(Art.127.ff)**
- Mainly of a goodwill.
- It may also consist of trade-name, patents or copyrights.
- May consist corporeal elements(equipments and goods)
- Assets, liabilities and immovable's, except the right to the lease of z premise of business are excluded from the ambit of the elements of a business(Art.129,124).
- In a nutshell, the term “business” embraces tangible and intangible assets, including tools, equipment's, 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.

Purpose of the Concept of Business

- The very justification for the birth of the concept of business is to simplify transactions by treating all the elements of business as a single unit i.e. subjecting several properties to single transaction for the sake of simplicity.
- It is held that in case of trader the concept of business stems from the need to distinguish some properties which a trader can deal with as unit from his patrimony (sum of all assets and liabilities) because it is not feasible for an individual to deal with his patrimony in totality at once.
- Do you think that the concept of business is necessary for business organizations?

Concept of Business …ctd

- For the case of business organizations treating the undertaking as a whole/as a unit for all transactions (sale, mortgage, etc.) is feasible and no need to segregate some properties of the undertaking/business organization forming a business and excluding others not to be elements of business.

Business as Incorporeal Property

- the owner's right in the business is "a sort of intangible property right, similar to an industrial property right or a literary or artistic right: an exclusive right for the exploitation of an idea, namely the organization of the business enterprise.
- The basis for this right is made up of a group of elements which may be separated but which have one essential common factor, the purpose attributed to them by the merchant".

Protection of Business and its Elements

- **Goodwill**: goodwill may be described as the attractive force that draws customers to a certain business which is invisible but of much value.
- **Protection/preservation of Goodwill:** a trader may avail himself the **contractual or extra-contractual** alternatives to protect a treat to his goodwill/business. The contractual preventive remedies indicated in some of the above provisions points out the potential suspects that might usurp the goodwill of the trader by virtue the access they have the traders business. Some these prime suspects are commercial employees-art.30(2), commercial agents-art 55, seller not to compete with buyer-art.158(2), and the lessee may not compete with owner upon termination of lease-art.205).
- Hence, the law advises the trader to restrain these persons by way of contract from potential treat against unfair competition and usurpation of his customers.

Protection/preservation of Goodwill… ctd

- The contractual remedy may not be adequate either because the trader did not use a restraining contractual clause or else the treat comes from persons not contractually bound not to unfairly compete.
- Hence, the trader has the general remedy based on extra-contractual liability. Once again the law has listed the potential suspects and imposed prohibitions failure of which leads to tortuous claim by the trader(*Art. 30, 40, 47, 55, 144, 158, 159, 204 and 205 of this Code*).
- **The Right to Lease of Business Premises and its Protection(Art. 142-147)**
- **Trade Name; Trade Mark/ special designation under which trade is carried on/; Patents and Copyrights, and Their Protection(Art. 135-141).**

Dealings in Business :

- sale, mortgage, hire, etc.

Excercises **About business** ስለንግድ መደብር

- What is business? What it is composed of (see art 109 of NCC)? Where does it fall in the classification goods as incorporeal and corporeal in the law of property? How about in relation to classification of goods/things into movable and immovables?
- Can a trader have more than one business? When and how?
- Is it possible to lease a business? If yes, who is the trader? The owner? The lessee? Or both?
- **Transactions Related To Business**
- How transactions related to business regulated? Sale, lease? Which law governs? What items compose the business (the sale/lease) includes? Who is liable for liabilities/debts of business?
- What are the formality requirements, see art…NCC, and art 2266 ff of CC on sale? Are insurance benefits, employees rights transferable see 2587 of the civil code?What restrictions apply to the seller/lessor? Duty not to compete? Where is the limit on duty not to compete? In relation to lease, can the lease of business premise be transferred?

Excercises **About business** ***ስለንግድ መደብር…ctd'***

- What and when the buyer is liable to debts/claims of creditors against the seller?
- When the price be paid to the seller? Why do we need publication in news paper? Whose obligation is it? When is title deemed transferred? In which new paper? How many days? What is expected of creditors? What if they are late to object?
- **mortgage of business /** ***ንግድ መደብር***
- Can we a business as security? How? Is it pledge or mortgage? What is the source of security on business? Contract or legal mortgage? What is legal mortgage(see art***144 of NCC***)? Which of the items are part of the mortgage?
- What formality requirement? Where should it be registered? Register of immovables or in the trade registry? What laws govern mortgage of business? The civil code on mortgage? But the civil code is about immovable but business is movable, the how regulated? Is there registry of securities on movables? See NCC art.245(3)

Dealings in Business ...ctd'

- Business is a property which therefore may be subject of any transaction. It may be sold, let out for hire, mortgaged (as special property), contributed for business organization, etc.
- Art 151(2) provides that the provisions governing sale of business apply only to sale of business as a whole or at least sales involving the good will. Sale of other individual elements is governed by laws governing individual elements , not as business. Thus, a certain corporeal chattel forming part of the business may be sold, pledged, hired, etc. by the rules governing corporeal chattels, not business.
- Also business as (the various elements as a unit) property can be mortgaged. Though it is taken as special movable, it is subject to mortgage rather than pledge (Art. 1710). It can also out for hire (Art.194) and its formality requirements are provided. It can as well be contributed for business organizations.
- Several properties shall be dealt with a single contract formality (be it sale, mortgage, hire, etc.) under the concept of business which otherwise might need several independent contracts and formalities.

Law of Business organizations

Law of Business Organizations-Composed of ?

- Book II: Law of Traders and Business Organizations (**Commercial Code**)
- The relevant provisions of the Civil Code-Art. 1
- The relevant provisions of the Maritime Code-Art 2
- The relevant provisions of Book I (Law of Traders and Business)of the **Commercial Code-art 3**
- Commercial Registration and Business Licensing Proclamation No. 980/2016
- Business Mortgage Proclamation No. 98/1998
- Commercial Registration and Licensing Council of Ministers Amendment Regulation (Amendment) 1150/2019
- Council of Minister Commercial Registration and Licensing Regulation No.392/2016
- Council of Minister Commercial Registration and Licensing Regulation (Amendment) No.461/2020
- Trade Marks Registration and Protection Proclamation No. 501/2006

Forms of doing Business -revision

1. Trader/Sole Proprietorship: In this type the individual entrepreneur:

- supplies the entire capital;
- He organizes and manages the business; himself and takes the entire risk;
- His legal liability covers all his possessions; and
- the creditor can collect his personal property.

- It is applicable:
  - For small scale business requiring small capital which can be spared by one man.
  - Where the risk covered is not too heavy.
  - Where management by one man is possible.
  - Where local market is available.

2. Business Organization

- **What** are **Business Organizations?** How are they established? .
- When do they acquire legal personality? What is the purpose of the organization? What is memorandum of association? Are there business organization without MOA? What should be the content of the MOA? Should it be standardized? How restrictive of freedom contract the content MOA could be? How MOA and contract differ? See art. 173 of NCC How do they run business? Who runs it among the members? Who represents the BO? Are there invalid MOAs? When? Which of the business organizations can issue transferable securities?
- When would the BO come to an end?
- How many business organizations recognized? How many persons need to be organized to constitute a BO?
- ***1)*** *የንብረት ሸርክና ማኅበር፣*
- ***2)*** *ሁለት ዓይነት ኃላፊነት ያለበት የሸርክና ማኅበር፣*
- ***3)*** *ኃላፊነቱ የተወሰነ የሸርክና ማኅበር፣*
- ***4) የእሸሙር ማኅበር፣***
- ***5) የአክሲዮን ማኅበር፣***
- ***6)*** *ኃላፊነቱ የተወሰነ የግል ማኅበር፣*
- ***7)*** *ባለአንድ አባል ኃላፊነቱ የተወሰነ የግል ማኅበር።።*

Partnership agreement

- **Article 211**: Certain elements may be deducted from this provision of the law.
- Art. 211: Five Elements

1. **Contract**: a partnership agreement is a contract. Required to fulfill the condition of the contract[Art. 1675 ff].
2. **Join together and cooperate**: Two or more persons who intend to join together and cooperate. Except Share Company where at least five persons are required (Art. 307(1)).
   - A minimum of two people's requirement ousts the possibility of one man business organization.
3. **Contribution**: Each party must contribute: these persons are to contribute to the capital of the company and are to participate in its profits and losses ((Art. 215; Arts. 229-232). A business organization arises from deliberate act. It does not arise from possession of status such as being heirs to one person and joint ownership of property.
4. **Profits and losses** ((Art. 215; Arts. 229-232): Except, Art 254 a partner in ordinary partnership who contributed skill may be exempted from sharing in losses.
5. **Economic activity** : Purpose is to carry out economic activity .

Partnerships(Art. 212(a- d); 227- 303 of the Comm. Code)

- 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. C**omes to an end when a partner dies or becomes insolvent**. Art. 260(1), 298 & 303.
- 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. Art. 250, 274(2), 282(1) & 303.
- Partners in a business are like spouses, they depend greatly upon each other, must cooperate, can create liability for each other, and often end up with irreconcilable differences.

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 except Art. 333 for share company(the possibility of restriction via article of association or special general meetings) and Art. 523(2) for PLC(3/4 vote for non-member transfer)
- Members of a company are not entitled to take part directly in the management of the company unless they become directors.

Questions

1. Which form of business will be easiest for them to organize?
2. Which will provide the greatest protection for Abel's and Eden's uncommitted savings?
3. Which form will provide the greatest relief from tax liability?
4. Which form will be best suited for raising necessary operating capital if Abel's and Eden's contributions should provide inadequate?
5. What are the potential risks and advantages of becoming shareholder in an internet café?

Factors to be considered in selecting the form of Business Organization

1. Limited Liability
2. Taxation
3. Formalities
4. Financing
5. Management
6. Life of the business
7. Liquidity of Investment
8. Size & Nature of the business

Limited Liability

- **Sole Proprietorships:**
  - ✓Takes all the risk
  - ✓They have unlimited liability
  - ✓They may lose assets in the event of a debt needing to be paid.
- **Partnerships:**
  - ✓ Unlimited liability, each partner is responsible for the debts of the business
- **Company:**
  - ✓Shareholders have limited liability.
  - ✓If company has a lot of shareholders risk is minimal.

Taxation

- **Sole Proprietorships:**
  - ✓ Single Taxation
- **Partnerships:**
  - Single Taxation
- **Company:**
  - Double Taxation(Income tax as a company + Dividend payment from each shareholder)

Formalities

- **Sole Proprietorships**
  - ✓Very easy to form/dissolve.
  - ✓Minimal working capital required.
- **Partnerships:**
  - Easy to form as compared to company
- **Company:**
  - The legal formalities of forming a company are more complex, time consuming & expensive than forming other business structures .

Financing

- **Sole Proprietorships:**
  - Difificult to raise capital
  - Can be difficult to raise all start up finance and as a result loans are required
  - They can be expensive on the business start ups
  - Financial records do not have to be revealed to the public
- **Partnerships:**
  - Financial details not open to be viewed by public
- **Company:**
  - ✓ Can raise finance for business start ups or expansion through selling of shares.
  - ✓ A lot of paperwork including financial audits, reports e.t.c .

Management

- **Sole Proprietorships**
  - ✓ Sole traders have full control of how business is run.
  - ✓ Decision making is quick.
  - ✓ Long working hours are common and holidays are difficult to arrange due to the commitment needed to be a successful sole trader.
  - ✓ Difficult to attract qualified employees e.g. can't offer fringe benefits.
- **Partnerships:**
  - ✓Decision making is shared.
  - ✓Responsibility is shared.
  - ✓Specialization – specific duties assigned to different partners.
  - ✓Disagreements can easily occur.
- **Company:**
  - ✓ Greater likelihood of professional Management

Life of the business

- **Sole Proprietorships**
  - If he/she dies then so does the business
- **Partnerships:**
  - If a partner leaves or a partnership ends a new partnership must be agreed.
  - If someone dies the business is discontinued.
- **Company:**
  - Companies can continue to exist even if a shareholder or director dies.

Liquidity of Investment

- **Sole Proprietorships**
  - It can be easily changed into partnership, company etc.
  - It is hard to sale the business for third party
- **Partnerships:**
  - A partner cannot transfer his membership to an outsider or third party without the consent of all the other partners
- **Companies:**
  - Shares/membership in a company are freely transferable

Size & Nature of the business

- **Sole Proprietorships:**
  - For small scale business
  - Where local market is available
- **Partnerships:**
  - Suitable for family or close friends business
- **Companies:**
  - Preferable for large scale investment
  - Financial Institution(banking, insurance & micro-financial services