- **Form of Contracts**
  - It is the outward appearance of the contract, and so the way declaration of consent is apparent
  - In other jurisdictions formal requirements may be provided for:
    - As essential validity for contracts formation
    - In order to assert interest against third parties
    - To prove the existence of a contract
  - Under Ethiopian law some contracts are solemn and this is clearly stated under Article 1720
  - This makes it simple the need and purpose for formal requirements under our law: validity requirement
  - There are two principles with regard to form:
    - *Consensualism*
    - *Formalism*
- ***Consensualism*:**
  - refers to the contractual obligation in the parties' consent which can be purely tacit but must be true to their subjective state of mind.
  - It states only the agreement of the contracting parties is sufficient and we don't need special form (Article 1719(1))
  - Simple oral agreement is sufficient
  - Advantages:
    - It is cheap
    - Simple
    - expression of freedom
    - expression of equality
- ***Formalism*:**
  - will only acknowledged a contract where an exterior visible agreement was made,but even to the point where the actual will of a party becomes secondary, and sometimes irrelevant.
  - The contract will only be completed when it is provided in a special form.
  - **Advantages:**
    - Protect the parties from acting too fast

    - Protect the weaker party
    - Prevention against dispute

- **Disadvantages:**
    - Cumbersome, costly as it calls for the intervention of legal professionals and generates fees
    - It can be abused by parties who know the technicalities
    - It is an expression of state control

Ethiopian Law:

- There is no need for formal requirements and the agreement of the parties is sufficient to form a contract
- But there are exceptions to this principle:
    - When the law provided a special form (Article 1719(2))
        - Solemn forms
        - Forms that require registration and authentication (contracts relating to immovable, Special movables, etc.)
        - The law may also simply require a written document without any further registration and authentication requirements (pledge, suretyship, etc.)
    - When the parties by their agreement provided a special form (Article 1719(3)): this is the illustration of contractual freedom).

← **Whether Registration is a validity Requirement?**

← Article 1723-Contracts relating to immovable Property

← *Gorfe Gebrehiwot vs Aberash Dubarge et al* (File No.21448)

❖ It is a case of sale of immovable property

❖ Lower Courts (FFIC & FHC)

- Contract of sale relating to immovable property should be valid even though it is not registered before a court or notary. The reading of the provisions of 1723, 2877 and 2878 shows that the contract will not lose it validity for the mere fact of absence of registration.
- Article 1723 is made clear by special provisions of 2877 and 2878 of the Civil Code and registration is merely sought for evidentiary purposes and to assert a right against third parties.

- Article 1723 states that contracts relating immovable property shall be in writing and be registered in a court or notary.
- Article 2877 and 2878, special laws, state that only written requirement is sufficient and there is no need for registration.

❖ Federal Cassation Division:

- Contracts relating to immovable property shall be in writing and be registered before a court or notary.
- The reason why Article 1723(1) requires the contract of sale to be in writing and be registered in a court or notary is because it is a validity requirement. The contract can only be valid when it is in writing and it is registered in a court or notary.

- What is required is authentication and not registration and the same is a validity requirement. The Amharic provision says authentication and registration. In doing so the court departed from settled practices. It states Article 1723 is authentication and 2877 and 2878 are about registration.

- The *specialis* derogate over *generalis* is only applicable when two provisions are contradicting. In the case at hand there is no clear contradiction/irreconcilable contradiction between Article 1723(1) and 2877 & 2878. Article 2877 states that a contract relating to sale of immovable shall be in writing. But the provision does not say that registration is not important. The contradiction is apparent contradiction. A contract to transfer the ownership of an immovable property needs serious protection and consideration and the provision that affords more protection shall prevail over the other provisions.

- The organization of the civil code, its objective and coherence are other reasons for the decision of the cassation division. Accordingly, rather than looking for the situations where there are contradictions it gives much more sense to give the different part of the code a meaning that will fulfil similar objectives.

- The ground is partly based on public policy considerations. In principle the agreement of the parties is sufficient and there is no need for formal requirements. But exceptionally for different reasons the law requires forms. Contracts relating to immovable is one of them. In the case of contracts relating to immovable the law wants to give more protection and provides written form that is accompanied by registration. The law gives Special importance/attention to immovable properties. And due to the significance of immovable for individuals and a nation, almost all nations have similar provisions.

- Legal Scholars (George Krzeczunowick and others)
    - Registration is in no way a validity requirement.
    - It is for the protection of third parties/to assert a right against third parties

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