ARSI UNIVERSITY
SCHOOL OF LAW

BUSINESS LAW

FOR

ACCONTING AND FINANCE

CHAPTER ONE

Introduction to Law

1.1. Definition of Law

- **Black's Law Dictionary:-**

✓ **Law consists of rules of action or conduct.**

✓ **These rules are issued by an authority.**

✓ **These rules have binding force and are obeyed and followed by citizens.**

✓ **Sanction or other legal consequence may help the law to be abided by citizens.**

- **In general terms: The law is the rules used to govern the relation b/n persons, peoples and as well as the relation b/n peoples and government.**

1.2. MAJOR THEORIES OF LAWS

Two Major Theories

I. Natural Laws -"Higher Laws" Or "Divine Laws"

And

II. Man-made Laws "Positive Laws"

According to Natural law philosophers

- Law is based on, the built in sense of right and wrong that exists within every person at birth.
- The law exist in nature
- The law is Rational and Reasonable
- Discriminatory Laws should not be respected as law because they are unfair.

According to Positive law Philosophers

- Law is a self-sufficient system of legal rules that the sovereign issues in the form of commands to the governed. OR
- *Law is a command of the sovereign to his/her subjects and there are three elements in it:* Command; Sovereign; and Sanction.

  Command *is the rule given by the sovereign to the subjects or people under the rule of the sovereign*.

  Sovereign *refers to a person or a group of persons demanding obedience in the state.*

  Sanction *is the* ***evil that follows violations of the rule*****.**
- *These commands did not depend for legitimacy on extraneous considerations such as* ***reason, ethics, morals, or even social consequences.***

  However, the sovereign's will was law only if it was developed according to duly established procedures, such as the enactments of a national legislature.

1.3. Purpose of Law

The Purpose of Law Is :-

- To maintain: social, economic, political, and cultural orders of the society,
- To Protect Human Rights and Freedoms,
- To Limit Government Powers,
- To govern the relationship between Government and Citizens,
- To safeguard checking and balancing powers of the three branches of government
  - Legislative
  - Executive and
  - Judiciary

Generality, Normativety and Sanction

1. Generality

- Law is a general rule of human conduct.
- It does not specify the names of specific persons or behaviours.
- **Generality of the subject of the law may serve two purposes.**

➢ **Firstly,** it promotes **uniformity** and **equality** before the law. *Because, any person falling under the group governed by the law will be equally treated under the same law.*

➢ **Secondly,** it gives **relative permanence to the law.** Since it does not specify the names of the persons governed, the same law governs any person that falls in the subject on whom the law is made to be applicable.

2. Normativity

- Law does not simply describe or explain the human conduct it is made to control.
- It is created with **the intention to create some norms in the society.** Law creates norms by **allowing, ordering or prohibiting the social behaviour.**
- Based on this feature, law can be classified **as permissive, directive or prohibitive.**

A) Permissive Law

- **Permissive** laws **allow or permit** their subjects to do the act they provide.
- They give **right or option** to their subjects whether **to act or not to act**.

Most of the time such laws use phrases like:

- ✓ Has / have the right to
- ✓ Is /are permitted/allowed to
- ✓ Shall have the right
- ✓ Shall be entitled to
- ✓ May

B. Directive law

- **Directive law orders, directs or commands** the subject **to do the act provided in the law.** It is **not optional**.
- Therefore, **the subject has legal duty to do it whether s/he likes it or not, otherwise, there is an evil consequence** that **s/he incurs unless s/he does it as directed by the law**.

Directive law usually uses phrases like:

- Must
- Shall
- Has /have the obligation
- Is /are obliged to
- Is /are ordered to
- Shall have the obligation/duty

C. Prohibitive law

- **Prohibitive law** discourages the subject from doing the act required not to be done.

  If the **subject does the act against the prohibition**, **an evil follows as the consequence of the violation.**

All criminal code provisions are prohibitive laws.

Prohibitive Laws Usually Use Phrases Like:

- Must not;
- Shall not;
- Should not;
- No one shall/should;
- No person shall/should

D. Sanction

- **Each and every member of a society is required to follow the law.**
- ✓ Where **there is violation the law sanction** would follow. **Sanction** according to **Black's Law Dictionary,** is **a penalty or coercive measure** that results from **failure to comply a law.**
- **The main purpose** of **sanction** is to prompt a party (a wrong doer) to respond.
- ✓ In other words, **sanction will make the wrong doer to think that s/he made a fault and s/he should correct it.**
- ✓ **Sanction may be criminal.**
- **Criminal sanction is a sanction attached to criminal liability.**

If the fault committed is defined by criminal law, the person will be liable to a sanction provided under the criminal law.

1.5. Function of Law

- ✓ Maintaining Peace, Order, Security and Stability in the society
- ✓ Means of Regulation of Social Interaction
- ✓ Law as a means of Dispute settlement
- ✓ Law as a means of Social change
- ✓ Protection of Citizens from Excessive and Arbitrary Government Power
- ✓ Bringing Efficiency, Harmony and Balance in the Functioning of the Government Machinery
- ✓ Fighting Harmful Traditional Practices
- ✓ Protect and Encourage Innovative and New Ideas

LAWS

- **'Sources'** relates to the question: ***where does the judge obtains the rules by which to decide cases? In this sense, among the sources of law will be commonly listed:***

  - ✓ ***Statutes;***
  - ✓ ***Judicial Precedents;***
  - ✓ ***Custom;***
  - ✓ ***The Opinion of Experts;***
  - ✓ ***Morality; and***
  - ✓ ***Equity***

- **In the context of legal research, the term 'sources of law' can refer to three different concepts:-**

- *It can refer to the* ***origins of legal concepts and ideas*** *…*
- *It can refer to* ***governmental institutions that formulate legal rules****.*
- *It can refer to* ***the published manifestations of the law***

The two main source of laws are:-

A. Material source

B. Formal Source

Material source of Law

A. Legal Material Sources

- ***Statute law or legislation,***
- ***Precedent or cases,***
- ***Custom and***
- ***Agreement or conventional law***

B. Historical Material Sources

- ***Custom***

1.7.CLASSIFICATION OF LAWS

What is classification?

- **Classification is a shaping and developing of traditional systematic conceptions and traditional systematic categories in order to organize the body of legal precepts, so that 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.**

I. PUBLIC AND PRIVATE LAWS

- **Public laws** :- Regulates **the acts of persons who act in the general interest, in virtue of a direct or mediate delegation emanating from the sovereign**
- **It's** also the law that is **applicable to the state in its relations with its subjects**.
- **Private laws:- Regulates** the **acts, which individuals do in their own names for their own individual interest.**
- Public law is sub divided into **constitutional** and **administrative law**

II. INTERNATIONAL AND NATIONAL LAWS

A) **International law** – The law of nations of the 18th century was named as international law.

- It consists of rules which regulate relations between *State inter se*.
- It's the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other.
- It's also rules of conduct which states feel themselves bound to observe and therefore do commonly observe in their relations with each other and which includes also

✓ A. The rules of law relating to functioning of international institutions and organisations, their relations with each other and their relations with States and individuals; and

- B. Certain rules of law relating to individuals so far as the rights and duties of such individuals are the concern of the international community.

- International law is classified into public international law and private international law.
- **Public international law** regulates the relation between states. For example the relations between Ethiopia and Sudan are governed by public international law.
- **Private international law,** on the other hand, governs the relations between individuals of different nationals

B) National law- law that pertains to a particular nation (as opposed to international law)

- It is a law of a nation, for example the law of the United States of America, France, or Ethiopia. Such law is applicable all over a country in question. It is also known as law of the land

III. SUBSTANTIVE AND PROCEDURAL LAWS

- **Substantive law** is the law which **defines a right** while procedural law determined **the remedies.**
- **Procedural law** is also called ‘law in action’ as it governs the process of litigation.
- **Substantive law** is concerned with the administration of justice seeks to achieve while procedural law deals with the means by which those ends can be achieved. For example, law of contract, transfer of property, negotiable instruments, crimes etc are substantive laws whereas the laws of civil procedure or criminal procedure are procedural laws

IV. EVIDENCE LAW

- Law of Evidence is the law that consists of the rules and principles, which govern the relevancy, admissibility, weight and competency of evidence.
- It compress the legal rules regulating those means by which any alleged matter of fast, the truth of which is submitted to investigation is established or disproved

V. CIVIL AND CRIMINAL LAW

- **Civil law** is that branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters.
- The law enforced by the State is called **criminal law**.

  In Ethiopia, we have a civil law codified in 1960, which is known as Civil Code.
- Civil law is essentially territorial in nature as it applies within the territory of the State concerned.
- On the other hand, **Criminal l law** unquestionably forms part of public law.
- The state alone, representing the nation, has the right to punish. Prosecutions and condemnations are carried out in its name.
- The application of penalties is a part of the administration of a state.

1.8. Hierarchy of Laws

- The term “hierarchy” expresses the “ascending series ranks or degrees of power and authority with the correlative subjection, each to the one next above”.
- It is used to describe the structure of power relationship with varying amount of power and authority.
- It is believed that laws derive their validity from the authority that respective makers possess.

Thus, the superior and subordinate kind of relationship exists between the laws.

- Therefore, hierarchy of laws is “a chain of subordination” between laws. Hierarchy of laws is a system in which all the laws of a certain country are put at various levels or ranks according to their order of importance.
- The order of importance of laws is very much related to the order of importance of state organs that make laws.

- Under the 1994 FDRE Constitution, the constitution is the supreme law of the land. Hence it is at the top of the hierarchy of laws. Then, the constitution is followed by international treaties which have been given the place of proclamation at the federal level.
- Further, all laws (proclamations) made by the House of Peoples' Representatives are second to the Constitution. Then Regulations enacted by council of Ministers
- Other laws enacted by **subordinate bodies of the Federal State** (such as **regulations and then directives)** are **inferior to the proclamations.**
- **Regarding the regional states**, **State Constitutions are superior in hierarchy**. All laws (proclamations) made by council of states are second to the

CHAPTER TWO

The Concept of Legal Personality

2.1. Definition of Terms

According to the Black's Law Dictionary

- A person, in the first instance, is a **human being,** who is individual member of the society and it also refers to an **entity** (such as a corporation) that is **recognized by law as having the rights and duties of a human being.**
- So that, a person is **any being whom the law regards as capable of rights and duties**.
- Any being that is so capable is a **person**, **whether a human being or not**, and **no being that is not so capable is a person**, **even though he be a man**.
- **Persons are** the substances of which **rights and duties** are the attributes. It is only in this respect that persons possess **juridical significance**, and this is the exclusive point of view from which **personality receives legal recognition**
- **Hence, a person is a being or an entity that possesses rights and duties or is a subject of rights and duties before the eyes of the law.**

2.2. Types of Persons

There are two types of persons recognized by the law. These are:

I. Natural or Physical Persons

- A **natural person** is a human being, as distinguished from an artificial person created by law, who is an individual member of the society.
- **A natural person** is a being which is born physically in the appearance of a human person.

At the present time, every human being is considered as a person before the eyes of the law without the fulfillment of any other additional subjective requirement ***Or*** *when a person is born physically legal personality is presumed to it or automatically conferred up on it conferred up on every physical person automatically up on birth.*

- **Hence, every physical person is the possessor of rights and duties from the moment of its birth up until its death.(Art.1 of the Civil Code)**

II. Artificial or Juristic Persons

- **Artificial persons** are entities such as **corporations or associations and so on created by law and given certain legal rights and duties of a human being**.
- **An artificial person** is a **being, real or imaginary** that for the purpose of legal reasoning is treated more or less as a human being. Such persons are also termed as **fictitious persons, legal persons, and Moral persons**. (Arts 394 -549 of the civil code)
- **Legal personality is given to them by law, artificially,** for the sake of convenience in control up on the fulfillment of certain requirements, such as **application to the required office, registration, publications, legality of object of incorporation and so on**.
- The legal recognition of entities other than physical persons became **necessary when they started to take part in juridical relations as entities separate and distinct from their owners or members.** Such entities **acquire** personality upon recognition by laws and **upon their subsequent establishment, registration and publicity as the case may be.**
- **NB: Their personality may also be withdrawn by law for failure to keep up with the requirements of formation set by law the law.**

The Features of Legal Personality

The followings are the typical features of legal personality:

- ✓ The right to have a name (to be named) to be identified by it.
- ✓ **The ability to sue or be sued** by its own name.
- ✓ The **ability to own and administer property,** whether the property is movable or immovable; tangible or intangible.
- ✓ The **ability to engage in a Juridical Act** (an act to be effected by the law), such as concluding a contract, issuing of a WILL and so on.
- ✓ **The obligation (duty) to be pay taxes** as per the conditions prescribed by law.

Chapter Three

3.1. Sources of Obligation

- An obligation can be defined as certain duty (either contractual or legal) that has to be discharged or otherwise constitutes a fault and entails legal liability.
- Hence, regardless of the source or the nature of the obligation, the essence of an obligation lays in the fact that it requires to be discharged or it is obligatory to be performed and if one of the parties failed to discharge their obligation there is an obvious legal consequence- Liability.

Accordingly, there are two basic sources of an obligation. These are

1. Law: this is a legal obligation that mandatorily emanates from the direct operation of the law.

- The law directly imposes various imperative obligations on citizens to preserve various interests. The typical interest that such obligation stands to defend is public interest.
- The protection of the interest of the public at large is non-negotiable. Hence, every law stands to protect public interest. Legal obligations are mandatory in nature and require due obedience. Otherwise stipulated, such obligations may not be freely disregarded by the parties.

2

2 **Contracts:** as different from legal obligation sometimes the parties to certain contractual engagement may up on their own free will (volition or consent) create and impose an obligation towards one another.

- **This is not an obligation imposed on the parties by the direct order of the law.**

Rather, this is an obligation **created by agreement** of the parties- according to the principle of ***Freedom of Contracts*.**

As a result, most of the obligations involved in contracts are permissive in nature, which are imposed by the parties themselves.

A certain obligation is said to be permissive if it can be disregarded by agreement of the parties.

However, once a contract has been duly constituted before the eyes of the law, after fulfilling the requirements of formation, each provisions of the contract bind the parties as a law.

Hence, failure of either party to donor the terms of their agreements results in legal liability.

3.2. Definition of Contracts

- **Literally defined a contract is an agreement between 2 or more parties creating obligations that are enforceable or otherwise recognizable at law- Binding Contracts.**
- **Not all agreements are enforceable at law.**
- **Hence, only agreements that are enforceable at law result a contract.**
- **The law does not negotiate on the enforcement of contracts.**
- **However, the technical definition of a contract is stipulated under Article 1675 of the Civil Code of Ethiopia, according to this provision, "A contract is an agreement whereby two or more persons, as between themselves, create, vary or extinguish obligations of patrimonial nature."**

3.3. Formation of Contracts

3.3.1. Elements of a Valid Contract

- Formation of a valid (legally acceptable) contract requires the fulfillment of four essential elements.

These are: **capacity, consent, object and form.**

According to article 1678 of the civil code, No valid contract shall exist unless:

(a)The parties are **capable** of contracting

(b)The parties give their free and full **consent** sustainable at law;

(c)The **object** of the contract is sufficiently defined and is possible and lawful;

(d)The contract is made in the f**orm** prescribed by

3.3.2. Offer and Acceptance

1. What is Offer?

- Offer is a proposal or an invitation expressing the willingness of a party (called the offeror) to create contractual relationship with another party (called the offeree).
- In order to be binding an offer should fulfill the following characteristics:

A. An offer **may be declared orally, in writing, by gesture (symbol) or by conduct.** Though the oral and written forms of declaration are the most common and evident ones, what truly matters, at the end of the day, is whether the parties have clearly expressed their will and understand each other after the declaration of the offer.

✓ Hence, whenever an offer is made by sign (symbol) the parties should use a sign normally in use (conventionally known sign) justified by continuous general or local usage of the sign, such as a hand shake, nod of head or the knocking down of a hammer and so on.

✓ Similarly, when the parties declare their offer via conduct, such conduct should express that in the circumstance of the case there is no doubt as to the parties' agreement. Typical example of offer and acceptance by conduct may be calling a doctor home, using what is delivered, bringing a lost object in case of promise of a reward and so on.

B. **An offer** shall always **accompany an intention of the offeror to be bound by the terms of the offer** s/he made for the lapse of either a specified period mentioned on the offer (duration of the offer) or if no such time is fixed on the offer, for the lapse of a reasonable period of time to be determined having seriously considered the circumstances of the case.

- **A subtle offeror however stipulates a time limit on the offer and bind itself only to the lapse of such period mentioned on the offer.**
- In case an offer is made with no duration of acceptance, various factors should be considered to determine the binding life of the offer such as: the ***Present (conversing parties) or absent (corresponding) nature of the parties to the contract; complication in post office; seasonality and marketability; whether the parties have pre- existing business relationship; the nature of the transaction itself and so on.***

C. Be aware that, once an offer is made by the offeror for either a fixed duration of acceptance or with no duration of acceptance, it is the right of the offeree to bind the offeror (by the terms s/he made on the offer) for the lapse of the fixed period or a reasonable period of time.

- In order it can be an offer it has to be written down in definite enough terms and should encompass detailed (full-fledged) bargain or substance.
- An offer is different from a 'mere declaration of intention' made by the offeror to enter in to a contract with the offeree. A typical, binding, unilateral offer is an offer which is directly communicated to the intended (the particular) offeree or its agent.
- If it is not communicated to the particular offeree or its agent or if it is communicated (declared or made) to another person (in the absence of the offeree), it only amounts to a mere declaration of intention and not a binding offer.

D. An offer is different from ‘an invitation to offer’ or ‘an invitation to threat’.

- As a result, the posting up of tariffs, price-lists or catalogues or the display of goods or symbols for sale or menus or the release of advertisements(ads.) by mass media such as product advertisement or advertisement of an auction, are not by themselves binding offers rather they amount to an invitation made by the *offeror* to the interested *offerees* to look for such symbols or tariff or price tags and make an offer to the party who originally announced the advertisements.
- Hence, the contract begins when a customer look for a displayed good, get attracted by it and then requests the vendor to buy the good.
- The *offeror* is the customer and the vendor becomes the *offeree*.

E. An offer may be made to a particular person (specific offer) or generally to the public at large or a particular group out of the public at large (general offers).

In this regard, you should understand that real offers are those that are made to a particular *offeree*.

This is the case because when offers are made to large number of people it creates various practical legal complications due to the fact that it can be accepted by more than one person.

- Typical example of a binding general offer in Ethiopia is 'Public Promise of a Reward.' This is an advertisement made to (addressing) large number of persons via a mass media of wider circulation stating that a reward will be given to that particular person who has performed (knowingly or unknowingly) a particular activity advertised by the *offeror*.
- Public promise of a reward is an exception to the principle that advertisements are not valid offers. (Refer to articles 1681-1695 of the civil code)

Acceptance

Acceptance is the agreement of the *offeree* to the terms of the offer made by the *offeror*.
The following are the essential characteristics of a valid acceptance:

I. An acceptance may be made in writing or orally or by symbol or implied from conduct and it has to be communicated to the *offeror*. However, if a particular type or mode of acceptance is required (dictated) by the *offeror* the accepter should comply with the same.

II. An acceptance always implies an agreement and an intention to be bound by the terms of the offer. Or a serious intention to accept should be there.

III. Acceptance shall be made while the offer is still in force or not withdrawn by the offeror. *Where the offer is made in alternative terms, the acceptance must make it clear to which set of terms it relates*.

IV. A person cannot accept an offer of which he has no knowledge.

V. 'Cross-offers' do not constitute an agreement or acceptance. Cross

VI. An acceptance shall be made in the form and in conformity with the terms specified on the offer or the *offeror* controls the offer or the method of the acceptance should be reasonable to the method of the offer. We say there is an acceptance and there by a contract, if and only if the terms of the offer and the acceptance mirror each other this is called the mirror image rule. If the acceptance is not the mirror image of the terms of the offer there will be no meeting of minds we have discussed earlier.

VII. An acceptance shall be made absolutely (totally or as is), unconditionally and unequivocally (vividly) or otherwise stated, if the terms of an offer are amended or altered or complemented or supplemented by the *offeree*, it does not amount to an acceptance rather it amounts to a counter-offer or as if the *offeree* has made an entirely new offer to be accepted by the original *offeror* and there will be a contract if and only if the new offer is accepted by the first *offeror*. To stipulate it otherwise, if there is a tiny discrepancy as among the terms of the offer and the acceptance, the contract or the agreement or the offer and the acceptance knock-out each other, this is called the 'Knock-out rule'. (Refer to articles 1690-1695 of the civil code)

3.3.3. Silence when an Offer is made….

- As a matter of principle, according to article 1682 of the civil code of Ethiopia, Silence when an offer is made shall not amount to acceptance. When we say silence, we are referring to the 'lack of response' in all means possible such as words, signs or conduct. So when the *offeror* provides the offer to the *offeree* the *offeree* remained silent. Now the question is does the silence of the *offeree* amount to acceptance?
- **In normal times, the silence of the *offeree* does not, by itself, amounts to an acceptance**
- What practical legal problems would be created if silence when an offer is made amounts (is considered) to acceptance? Or what are the anomalies the law intends to avoid by not considering the silence of the acceptor as an acceptance?

  However, there are three exceptional situations whereby silence when an offer is made amounts to acceptance. **These are:**

I. **When it is duty of the *offeree* to accept the offer, made to it, by law or by concession.**

In such case the reception of the offer, on its own, amounts to acceptance. This principle works to those organizations duty bound to deliver basic necessity services(such as water, electricity) to the public at large under a concession with the government. Hence, once a customer has fulfilled the requirements expected of him to acquire an energy service from the Ethiopian Electric Power Corporation and submitted his offer to that effect to the agency the agency may not refuse the provision of the service by remaining silent for the silence of the agency amounts to acceptance.

II. **In case of general terms of business prescribed by public authorities.**

These are general guiding terms of working of an institution which are prepared, pre-stipulated and approved by it. Hence, they are not as a rule subjected to negotiation with a fellow customer rather the customer is expected to know and adhere to them accordingly as long as they are prescribed by such authorities. Hence, such rules become automatically applicable on a customer who is trying to access the service of such public authority whether the customer remained silent or not.

As an example refer to the rules at the back of a lottery you have purchased or the rules

at the back of the bank-pass-book you have opened in the commercial bank of Ethiopia or the transport tariffs prescribed by the government. It is the duty of the transport user to accept such tariffs prescribed by the government. So it does not make a difference whether the customer remains silent or not.

III. In case of pre-existing business relationship between two parties and an offer is made to continue or vary an existing contract or to enter in to a subsidiary or complementary contract may be accepted by silence. However, such shall be the case where the new offer is made in a special document informing the other party that the offer shall be regarded as accepted (warning clause) if no reply is given within a reasonable period of time. Refer to articles 1682-1689 of the civil code)