

Law of Traders and Business Organizations



LECTURE 1
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Introduction to Com. C



- **Ethiopian Com. C before 1960**

- Incomplete and difficult to ascertain.
- A single body of customary commercial law did not then developed.
- Ethiopia foreign trade grew after A.A-Djibouti railway was constructed. E.g. Commercial institutions such as:
 - ▮ 1905- Abyssinia Bank, the first bank.
 - ▮ 1908- another bank established by the Emperor and Empress.
 - ▮ 1931- National Bank of Ethiopia created; bought out the old Abyssinia Bank.

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- **Legislations:** prior to 1960 there were few legislation dealing with some commercial matters. For example,
 - 1924- Law of Loans
 - 1928- Decree on the Register of Commerce
 - 1933- Law of Companies, Law of Bankruptcy

Sources of the Com. Code



Domestic sources:

- The Fetha Negest: for instance, see
 - ▮ Chapter XXVII: loan, pledge, guaranty and administration
 - ▮ Chapter XXXIII: sale, purchase and related matters
 - ▮ Chapter XXXIV: Partnership
- Various legislations before the promulgation of the Comm. Code such as the law of loans, the law of companies, law of bankruptcy
- Court decisions, commercial practices and experiences

Sources



Foreign sources:

- Com. Codes of Lebanon(1943), Syria(1949), France, Switzerland, England, Germany, Italy, Spain and others.
- Arts 227-270 (ordinary partnerships)- from Arts 530-551 of Swiss Code of Obligations
- Arts 555-560- from Arts 2505-2510 of Italian C.C
- Arts 381-387 (auditors)- from 1948 Company Law of England
- Arts 606-653 (carriage by air)- from Warsaw Convention of 1929
- Arts 735-886 (comm. Instruments)- from Geneva Conventions of 1930 & 1931

Language problems



- Like Penal Code and Civil Code, the Commercial Code was drafted in French, then in to Amharic, then to English. E.g.
 - Art 84(3) b/n Amharic and English versions.
 - Art 127(2)(d) b/n Amharic and French, with the English version

The Amharic version is prevailing. In case where Amharic version is ambiguous, French and English versions shall be used to interpret it.

Contents of the Com. Code



- Five books.
 - Book I- Traders and Businesses
 - Book II- Business Organizations
 - Book III- Carriage and Insurance
 - Book IV- Negotiable Instruments and Banking Transactions
 - Book V- Bankruptcy and Scheme of Arrangement

General orientation of the Code



- *Subjective or objective?*

- Subjective: regulates community of persons designated as “traders.”
- Objective: regulates acts known as “acts of commerce.”

The Com. Code adopted a ***subjective*** system.

- Arts. 5 and 10 of the code.
- organization of the code itself (Books I and II govern (group) of persons called traders and BO respectively.)

Relation to other Legislations



- **Civil Code:** contains general private law. It also consists public law provisions, e.g., Arts 394-403, 1443-1448, 2126-2128, 2137-2140, 3131-3306.
- Com. Code is also private law. Many of its provisions are special applications of the more general principles found in the C.C.
- For example, in relation to contractual obligations:
 - ▮ Contracts of carriage and insurance
 - ▮ Partnership agreement in every BO (Art 210-211)
 - ▮ Contract of sale of a business (Art 150-170)

Relation ...cont'd



- On the other hand, the relationship between the two codes can't be carried too far. Certain provisions of com. c are self-sufficient. E.g. status and duties of traders, registration and keeping accounts, BO, negotiable instruments,...
- Why does Ethiopia have a separate Com. Code? It is due to:
 - History of European commercial law. How?
 - Procedure of codification of the com. C. (a result of division of codification of C.C and Com. C.)

Relation ...cont'd



Civil Procedure C: applicable for all non-criminal suits including claims arising under Com. C. In cases of bankruptcy, the code adds special rules of procedure.

- Lawsuits in courts take much time and not all judges have the commercial expertise. Three devices exist to meet these problems.
 - Accelerated procedure (Arts. 300-306, 307-314 Civ. P.C)
 - Summary procedure (Arts. 284-292 Civ. P.C)
 - Arbitration (Arts. 314-319, 350-357 Civ. P.C)

Relation ...cont'd



- **Special legislations:** various legislations and regulations. For example,
 - Trade practice and consumer protection Procln No 685/10
 - Commercial registration and business licensing Procln No 686/10
 - Labor Procln 377/03
 - Income Tax Procln 286/02 and its Regulation 78/02
 - Investment Procln 280/02
 - Maritime Code
 - Trademark Registration and Protection Procln 501/06
 - Etc.

Relation ...cont'd



Criminal Code:

- Arts 123, 757, 142-144, 379, 382, 397, 399, **434**, 482, 483, 609, etc.

Tips:

1. One act may constitute violation of both criminal and civil law rule. E.g. commission of unfair competition
2. The criminal shall be liable in civil damages though no civil law rule expressly prohibiting that act. (Art. 100 of PC and Art. 2035 of CC)
3. Some civil law rules expressly provided with criminal sanctions, a violation of w/c results in civil and criminal liability.

Scope



- Territorial application of the Code:
 1. To the federal gov't only or for the federation also?
 - ▮ Art 55(4) of the constitution expressly give enacting com.c to the federal gov't.
 - ▮ Art. 52(1) "All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the states are reserved to the states."
 2. Arts. 2, 3, and 4 of the