Chapter-1

Obligations in general

What is obligations

- There are various definitions to the concept.
- Ancient Roman law defines obligation as a means of an undertaking or legally binding relationships where one party promises the other party to perform some acts or to do something.
- On the other hand, classical legal scholars understood the concept of obligation as unilateral in character and discriminatory in nature since it imposes obligation to do, to give or to render rights only on non-roman citizens not the Romans.
- For example, Year Gay, a Roman jurist, defines obligation as 'a means of personal claim brought against another in order to force him before them to enable them enforce their rights.
- Pavel year also understood obligation as an undertaking not by Roman citizens to perform some acts or to do or to give or to render rights to non-roman citizens regarding to give, to do, or to render some rights to roman citizens
- However, the definition of obligation proposed by ancient well-known Roman lawyers was based on their personal opinion, which as a result has develop the concept of obligation.

Concept of obligation……..

- Unlike, the definition proposed by ancient roman jurists, the institute of Justinian defines obligation as a legally binding relations whereby Roman citizens under take to perform certain acts or to do something in accordance with the Roman law.
- This implies that, Obligation defined in the institute of Justinian, differed from the obligations defined in the classical Roman jurists in that the institute defines obligation in the aspect that Roman citizens to carry out the obligation.
- Black's law dictionary defines obligation as 'a legal duty or moral duty to do or not to do something.'
- Common-law scholars such as Fredrick Pollock defines obligation in its popular sense as merely synonym for 'duty.'
- John Salmond (year) defined obligation in its more general acceptation as 'something the law or morals command a person to do a command that is made effective by the imposition of sanction if a person failed to comply such a command'.
- In general, the concept of obligation can clearly be expressed as;

- Obligation to give or not to give
- Obligation to do or not to do
- Obligation to render rights to others to do something.

Concept of obligation……

What is obligation under the Ethiopian legal context?

- It is not clearly defined
- However, the Ethiopian civil code, in the book IV of the code uses the term obligations with out defining what it means. For example ,look at art.1675 of the civil code.
- Q1:- Which one of the definitions of obligation suggested above do you support? Justify your position by reasoning.

Sources of obligations

- Like its definitions, there is no single source of obligation.
- According to Gay, Roman jurist, the fundamental source of obligation can be categorized into two:

a) Contract

b) Beyond the contract (none contractual obligations)

- Those obligations, which arises beyond the contract, are further divided into

- unjust enrichment (quasi-contract),art.2162 of the civil code
- unlawful acts (delict); for instance look at art.2035 of the civil code
- causing physical injure to the person or causing damage to property of person (quasi-delict).

Sources of obligation…….

- However, in the modern time, the laws of different countries including that of French civil code, clearly expresses the sources of obligations as:-

i) Obligation that arises from contract

ii) Obligations that arise beyond the contract

iii) Obligation that arises from the unlawful acts

iv) Obligations that arises from the causing of physical injure or causing material damage

vi) Obligations arising from law

What is the source of obligations under the Ethiopian legal system?

- Sources of obligations are not clearly stated in Ethiopian legal system.
- Art.1675 of Ethiopian civil code generally expresses obligations as arising from contractual agreements.

Q2: Is contractual agreement the only sources of obligation in Ethiopian context?

- The close readings of the provisions of the civil code show that there are other sources of obligations-like

- Those arising from non-contractual relationships (from Art.2027-2178),
- Those arising from unlawful acts or
- obligation that arises from the causing of physical injure or
- obligation arising from the causing of material damage (fromArt.2027-2161) and
- obligations arising from unjust enrichment (from Art.2162-2178).

Q3:When is an obligation said to be emanate from the law?

- ✓In situations when law imposes obligations on persons to give or not to give, to do or not to do, some acts recognized in almost all-legal systems.
- ✓This kind of obligation is unilateral in nature b/c
- ✓It is imposed on citizens or contracting parties without their consent.
- ✓It includes among other things
- Obligation to pay income taxes
- Obligation to render military services
- Obligation of debtors ex. duty to give maintence for the needy.
- Obligations of families to their children,
- Obligation of spouses to each other.

Types of Obligations

Q4:What is the bases for classifying obligation in to different categories?

- The nature of activities, and
- The number of parties legally bound by the obligation- are determinant factors to classify obligations in to different categories.

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- Based on the nature of activities , obligation can be:-
  - Divisible obligation-It is an obligation that can be performed by dividing in to parts.
  - Indivisible Obligation-It is an obligation that can't be performed by dividing in to parts.
  - ***Positive obligation –It is the kind of obligation that requires an action from the debtor. ex. obligation to do or to give.***
  - ***Negative obligation-It is the one that requires the debtor to be abstain or refrain from doing some thing. Example. obligation not to do***
  - ***Based on the number of parties legally bound obligation can be divided in to:-***
- Unilateral Obligation- Emanates from a contract in which two parties participate but only one of the parties is under obligation to do some thing for the benefit of other contracting party. Example donation.
- Bilateral Obligation- arises from a contract entered into by two parties in which these contracting parties are bound legally to each other on equal terms.
- Multilateral Obligation- This is a case where more than two persons undertake to perform an obligation.
- Multilateral obligation further divided in to:-

- Simple joint obligation- As per this obligation, parties who are bound by such obligation are not jointly liable for the total debts, but each debtor is liable for its own share.
- Joint obligation- It emanates from the contractual obligation in which more than two parties participate and debtors are jointly liable for the debt secured as a result of the obligation entered into with the creditor or creditors.
- As per this obligation, while the number of debtors should not be less than two, the number of creditors could be one or more than one.
- Joint and several obligation- In this kinds of obligations the co-debtors shall be jointly and severally liable.
- unlike joint obligation where the debtors are jointly obliged to under take a given obligation, in the several and joint obligation, the creditor may require all the debtors or one of them to discharge the obligation in whole or in part.
- Q5:- Which kind of multilateral obligation most protects the interest of creditors? Why?

Meanings of contract and contract law

What is a contract?

- It is difficult to give definitive answer to the term.
- Anglo-American legal systems- defines contract as a promises or set of promises for the breach of which the law gives a remedy or the performance of which the law recognizes in some way as a duty.
- However, all agreemnts are not a contract.
- Only those agreements/promises recognized by law as creating enforceable rights and duties are considered as a contract.
- Thus, to answer the question, what kind of agreements does the law recognize as creating enforceable rights and duties, we need to look in the rules of each legal system, which provide their own specific definitions of the term contract and its elements.
- For instance, article 1101 of the French civil code defines contract as an agreement to establish, vary, and extinguish rights and obligations of the parties.

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Definition of Contract in the Civil Code. Art. 1675.

- *"A contract is an agreement whereby two or more persons as between themselves create, vary or extinguish obligations of a proprietary nature". As per this definition:*
- *A contract is an agreement.*

Q9: What differentiates a contract from an ordinary agreement?

- *A contract presupposes the interaction of at least two people-* (Plurality of parties.) It is very unlikely to anticipate a situation whereby one may contract with himself. It is the minds of at least two persons that meet - thereby creating the contract. The persons may be physical (natural); or juridical, grouping incorporated under the law on whom are bestowed the rights of personality.
- *A contract is created as between the parties to it-* The principle of *relativity of contract* (*privity* as the British call it) that no one may be bound by nor claim a right on the basis of a contract to which he is not a party. Present day reality has, however, brought about substantial changes to this general rule.

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- *The subject matter of a contract needs to be proprietary (property related or economic).*
- *Thus*,Social and moral obligations are not as a rule subject to the law of contract.
- Nevertheless, it is important to take note of the fact that there are other contracts that entail obligations:-E.g. Agreements to marry; agreement of adoption or agreements for contracting away paternity.
- *The purpose of a contract may be*:
- to create obligations – a new deal,
- to vary obligations - improvement or modification of an already existing deal, or
- extinguish obligations – agreements to bring an existing deal to an end.

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CLASSIFICATION AND TYPES OF CONTRACTS:

Classification

- Contracts may be classified into different categories depending on their contents, forms or modalities of their preparation.
- The following are some examples.

a) Contracts that entail **bilateral and unilateral obligations-** These kinds of contracts are sometimes referred to as contracts based on onerous title and those based on gratuitous title.

b) Commutative and aleatory contracts-Contracts with simultaneous performance and those that call for performance of some or all of the obligations of one or both parties at some later time.

c) Solemn and consensual contracts- Contracts that are required to be made in a special form and those that is not.

d) Contracts of adhesion and contracts of consultation- These are contracts whose contents are drawn up by one party and subscribed to by the other; and those whose contents are outlined by free and express consultation of both.

e) **General and special contracts-** Contracts that are made on the basis of day-to-day business needs and those that are required to comply with special rules of the law for their making and consequences.

f) Valid, voidable and void contracts-

1. Valid contracts-Contracts that are made in compliance with all legal requirements and hence duly enforceable;
2. Voidable contracts- those that are defective but subject to be remedied by the party concerned; and
3. Void contracts- those that are so defective that neither of the parties can bring about their validity.

Types of contracts under Ethiopian laws

- It is indeed very cumbersome to tell the types of specialized contracts that one comes across in the multitude of Ethiopian laws. In the Civil Code, for example, we have:

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- Contracts relating to the assignment of rights such as contracts of sale, donation or loan.
- Contracts for the performance of services such as contracts of employment, construction contracts, contracts for intellectual work or publishing contracts.
- Contracts for the custody, use and possession of chattels such as contracts of loan for use, those on bailment or contracts of pledge
- Contracts that relate to immovable property including contracts for sale, lease or mortgage of immovable property and those on works and labor on those types of properties.
- Administrative contracts and special requirements of formation and effects of such contracts.
- Contracts on compromise and arbitral submission.

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- **In the Commercial Code, we got:**
- Contracts on sale, hire and mortgage of business.
- Contracts on formation of business organizations.
- Contracts of carriage and insurance.
- Contracts relating to negotiable instruments.
- Contracts on banking transactions.

In other laws too, we have contracts of employment, collective bargaining, intellectual property and cyber contracts.

What is contract law?

- Giving precise definitions of contract law is also difficult.
- It can be said that, contract law is most obviously the law relating to enforceable agreements or promises.
- It is the law that governs such questions as which agreements the law will enforce, what obligations are imposed by the agreement in question and what remedies are available if the obligations are not performed.

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- Thus, it can be said, contract law is the law based on liability for breach of promises.
- However, 'Contract law' is also used to mean the whole collections of rules, which apply to contracts, and these includes many rules, which are not contractual in the sense of being based on a promise to do something.
- In most instances, obligations create a creditor-debtor relationship between the persons bound by them.
- He who has a claim over another is known as the *creditor*, while he who is liable to the claim of the creditor is called the *debtor*.
- But we need to examine the corresponding rights and obligations of the parties before stating this party is a creditor and that a debtor. If one takes, a contract of sales, for example, the seller is a creditor regarding payment of the agreed upon price while he is a debtor when it comes to delivering the item sold to the buyer; and vice versa.
- Q6:-What is the advantage of defining contract and contract law?

Purpose of contract law

- Among many other reasons why we need contract law, the followings can be mentioned:
- Social interactions- No one can live in a solitary world of his own and this state of affairs calls, among others, the need for creating and fostering economic relationship.
- Division of labour-One cannot be self contained in satisfying all his needs and those of his immediate family. This necessitates an act of bargaining to get the goods and services of others in consideration of discharging some kind of obligation on one's part.
- The necessity of social regulation-As in all other walks of life there may ensue disputes in the course of these interactions – hence bringing society's desire to control and regulate human actions and inactions stemming from these economic relationships.

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- Contract law accomplishes its social regulation by addressing such issues as: Defining the basic features of the relationships ; spelling out effects thereon; placing modalities of creating as well as terminating the relationships in place; and devising the means of ensuring the rights and obligations of the parties should be devised

Scope of Contract Law

- The scope of contract law varies from country to country and from legal system to legal systems depending on the types of obligations they govern.
- contract law may have a general or special application depending on the nature and origin of contractual undertakings at a given time.

scope of application of the general provisions of contract law on special contracts and other obligations(the theory of complementarities) arts. 1676 and 1677, civ. c.

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- When it comes to contractual obligations, the general legal principles on the formation, effects and extinction apply not only to general contracts that are fully regulated by Title XII of the Code, but also to all varieties of contracts that we find in Book V of the Code on Special Contracts and those in the Commercial Code and other laws.
- The most important point to take note of in this context is that this principle that is espoused by Art. 1676 of the Code applies to the extent that the matter to be regulated is not covered by specific legal provisions to be found in the province of the special law of which it forms a part.
- This is compatible with the general rule of interpretation of law known as special provisions of the law derogate from the general ones.
- The scope of Title XII goes further than regulating obligations that stem from contracts but also obligations that have extra contractual sources so long as the matters are not specially covered by a different law designed for its regulations. Art. 1677. See. For example, Civ. C. Arts. 756, 867, 991, 2143, 2146(2), and 2155.

- Based on the scope of application of contract law, contract laws may be dissected in to two areas of applicability complementing each other.
- For instance, article 1676(1) of the Ethiopian civil code stipulates the scope of general contract to be applicable to contracts regardless of the nature thereof and the parties thereto.
- Thus, the general rules of contract law apply to all contracts.
- Besides, the law also stipulate that, the relevant provision of the Civil Code, Book IV title XII, shall apply to obligations notwithstanding that they do not arise out of contract.

Historical development of contract law

- The historical development of contract law can be aligned with the conceptual foundations of obligations, which was traced back to ancient and classical Roman law.

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- Nevertheless, the foundation of the present day law of contract were dated back to the 19th century b/c rapid expansion of trade and industry took place in the century that in turn inevitably resulted in the increments in the volume of commercial disputes as a result, people turned to the court of law for solutions.
- As a result, there developed a body of settled rules which reflected the disputes from which they arose the prevailing belief of the time.
- However, this rules and belief are affected by the dominant economic philosophy, the so called the laissez-faire individualism.
- This philosophy was mirrored in the law of contract by two assumptions-freedom of contract and equality of bargaining power.

- According to freedom of contract theory it is assumed that every one is free to choose which contracts they entered into and the terms on which they wish to do so.
- According to equality of bargaining power theory, the parties were deemed to have equal power to bargain on their business and deemed to be of equal bargaining strength.
- These theoretical foundations of contract law produced an acceptable legal framework for the regulation of business transaction that resulted in the crystallization or codifications of contract laws across the world.

The Economic Analysis of Contract Law

- The economic analysis of contract law provides a new paradigm into contract law in terms of both defining the concept and the economic function of contract & contract law

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- One fundamental economic principle is that if voluntary exchanges are permitted-(if a market is allowed to operate)-resources will gravitate towards their most valuable uses.
- The exchange will make not only the parties better off but will also increases the wealth of the society, assuming that the exchange does not reduce the welfare of nonparties more than it increases the welfare of the parties.
- Hence, the basic economic function of contract law is to provide a sanction for breach of promises.

- Q8:-What is the relation ship between contract law and development of economy?

Jurisdictions on contract law in Ethiopia.

What is jurisdiction in general?

- Jurisdiction is the power of courts to entertain cases brought before them.
- Jurisdiction could be either:-
  - Judicial Jurisdiction-Refers to the power of court of a given state to entertain a claim brought before it.
  - Material jurisdiction- refers to the power of courts taking in to the nature and amount of money involved in a given claim
  - Local Jurisdiction-refers to the particular court to which a given claim is brought.

- Thus, jurisdiction of Ethiopian courts on contract issues can be assumed based on:-

  -The place where the contract is concluded.

  -The place where the contract is to be performed

  -Based on specific agreement of the parties.

……End of chapter one……

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Chapter-Two

Formation of contract

- Though the term contract is subject to various definitions, It can be understood as enforceable agreements for the purpose of this course.
- The issue here is what are the essential elements(ingredients) required to conclude a valid contract.
- In order to say, a given contract is valid, the following elements must be fulfilled: See art.1678 of the civil code

1.Capacity-

2. Consent-

3. Legality(object)-

4. Form-

1. What is contractual Capacity?

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- Refers to legal ability to enter into legally binding relation ships. Ex. ability to conclude a contract.
- Capacity is generally presumed and incapacity is an exception.

Example:- Judicial interdicted persons, minors etc. have no capacity to do juridical acts.

Q:What will be the fate of contract concluded by incapables?

2. Consent

- Refers to free expression of ones desireto conclude a contract.
- It is one essential requirement for the conclusion of valid contracts.
- Contracting parties are said to have willed the effects of a contract when it is seen that they have really expressed their desire to that effect.
- Read the provision of Art. 1679 of the Civ. C. in this context.
- A contract shall be completed where the parties have expressed their agreement thereto.
- The consent of the parties to conclude a contract decomposes itself through a process known as offer and acceptance.

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What is an Offer

- Offer -in the law of contracts is a promise or a commitment of one party to do or to refrain from doing some specified thing and creates a power of acceptance on the offeree (the person to whom the offer is made) that would transform the offer into a binding obligation.
- Communication of offer and acceptance takes place b/n the offeror (the one that makes the offer) and the oferee (a person to whom an offer is made

What is an acceptance

- Acceptance- "An acceptance is a voluntary act of the offeree whereby he exercises the power conferred upon him by the offer, and thereby creates the set of legal relations called a contract."
- At the beginning, the offeror has full power to determine the acts that may constitute acceptance.
- Once he makes the offer, however, the power to transform it into a binding contract shifts to the person making the acceptance

Forms of offer and acceptance.

- General rules- See Arts. 1681 and 1682.
- No special form is required to make offer and acceptance.
- Hence, they can be made in writing, orally, by conduct or by signs normally in use.
- As a matter of principle, however, silence of a person to whom an offer is made does not constitute acceptance.
- Exceptions to the rule of express acceptance. See Arts. 1682 to 1686 where there is/are:
- a duty to accept – a typical example in this regard is the responsibility of companies that provide public utilities and those that are engaged in financial services.
- an invoice based transaction- in which particulars other than the sum regarded as payment that are not congruent with the terms and conditions of the main contract are expressed.

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- General terms of business- referring to standard contracts that are not expressly accepted by the offeree or that are not endorsed by the relevant public agency.
- A prior business relationship between the offer or and the offeree – a case in point is an offer made by a lessee to a lessor to elongate the contract of lease for a further period; such is also the case where an insured requests the insurer to extend the insurance cover for another term.

Binding and Non-binding Declaration of intention.

- Mere declaration – advertisements, discounts, call for negotiations, circulation of catalogues and price tariffs that are not expressly directed to a designated person. See Art. 1687.
- Sale by auction – a special kind of offer whose acceptance depends on the results of a bid that designate the winner. Art. 1688.
- Public promise of reward. Art. 1689.

Other issues on offer and acceptance. Arts. 1690-95

- Offer with or without time limits
- Counter-offer
- Withdrawal of offer and acceptance.

Q:What if one of the contracting parties gave defective consent and what are the grounds that give rise to defective consents?

- ***Defects in consent***:-It is also known as vices of consents.
- It simply refers to grounds that give rise to defective consents.
- In order for a contract to produce the desired effect and bind the parties, it must be seen to it that it is free from any and all defects that vitiate the free expression of will of its actors.
- This idea goes deep into the very foundation of the law of contracts – freedom of bargaining.

- It must be established that consent is given truly and consciously.
- A contract that suffers from such defects is susceptible to invalidation, i.e. being deprived of the protection of the law for its enforcement.
- As in almost all other contract law regimes, the Ethiopian Civil Code too lays down the grounds that constitute defects from the vantage point of consent. See Arts. 1696-1710 in general.
- These are mistake, fraud, duress and, under exceptional circumstances, un conscionablity.
- Art.1696 c.c. simply describes the effects of giving defective consents plus those grounds that constitute invalidation.

a. Mistake (1697-1703)

- Mistake in the law of contracts refers to a wrong appreciation of a material fact in the terms and conditions of a contract by one of the parties.
- However, It must be substantial enough to be considered by a reasonable person that the mistaken party wouldn't have entered into the contract had it not been for the mistake.

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- Mistake as to the subject matter.
- Mistake of identity.
- Mistake on the cause that gave rise to the contract are considered to be substantial that may result in invalidating the contract.
  - Mistake on motive and arithmetic error are Non-fundamental mistakes

b. Fraud(Arts. 1704 and 1705)-

- Fraud relates to deceitful acts of one party committed on the other on the basis of which that other party agreed to conclude a contract.
- For a fraud to enable the victim to demand invalidation of the contract, the act of the recalcitrant should relate to a matter substantial to the bargain so much so that he wouldn't have entered into that contractual arrangement were he not deceived.
- The fraud may relate to:

- Material misrepresentation of the subject matter of the contract
- A false statement.
- Commission (act of deceitful practices)and;
- Concealment of a material fact that ought to have been disclosed to the other party (An omission)_

C. Duress (Arts. 1706-09).

- In the ordinary course of events, any wrongful act or threat that overcomes the free will of the parties in consenting to contract formation can be considered as duress.
- However, it is also required to be of such a nature and severity that a reasonable person would not have concluded the contract if it were not for the act of duress.
- The following are additional points to be taken into account in this regard.

- The danger to which the victim is exposed must be clear and imminent.
- The person subject to the duress may be the contracting party himself or those to whom he owes support and protection.
- The coercion may be on the person, property or prestige of the victim or those to whom he owes allegiance/loyalty/.
- *The form of duress may be direct, indirect, physical or psychological*.
- The person exercising the duress may be one of the parties to the contract or some other person who coerces the victim to enter into the contract with or without the blessing of that party.
- A threat to exercise one's right does not amount to duress unless it is so excessive that the party availing himself of such threat has made an undue advantage against the other party.
- Reverential fear does not count unless excessive.

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D. Un conscionability

- From the perspectives of contract law- an unconscionable contract is a contract in which one party takes an excessive advantage over the other by exploiting his dire need, ignorance of the bargaining process, business inexperience or similar other weaknesses.
- This is regarded as a contractual obligation which no reasonable debtor would assume and no humble and honest creditor would claim.(Art. 1710).
- As a matter of general principle of law, the prevalence of gross un proportionality per se in a contract does not bring about its invalidity.
- The elements of want, simplicity of mind and manifest business inexperience that are stated under Sub-Art. 2 of Art. 1710 are required to be met.

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3. Subject matter of contract(Object)

- As per the doctrine of freedom of contract, parties have full measure of autonomy to determine the subject matter of their contract.
- However, this contractual autonomy is not absolute.
- It is subject to limited exceptions imposed by the law in consideration of the general public interest.
- The purpose of the law is to lay down general guidelines that are meant to help parties when they contemplate of concluding contracts.
- The provisions of the law are mostly permissive in nature in the sense that they can be derogated from by the parties.

Determination of Object

- The subject matter of a contract is either to create, vary or extinguish obligations of a proprietary nature.
- Meaning, Parties to a contract normally agree to do something, to refrain from doing something or to handover something.

- For instance in the case of a contract of sale: Buyer's obligation is to pay the price and take delivery of the thing. Seller's obligation, on the other hand, is to deliver the thing.
- The reason for the buyer's payment of the price is the agreement of the seller to sell the thing and vice versa.
- Thus, the nature of the transaction here is to give the money (buyer) and to give the thing (seller).
- Take again the case of a service contract: Client's obligation is to pay the agreed service charge (obligation to give). Service provider's obligation is to perform his duty as agreed (obligation to do).
- It is thus, this obligation to do (commission) or not to do (omission) that, constitutes the object of a contract. See Art. 1712

Features of Object.

- It must be defined- must be good enough to enable others understand the respective rights and obligations of the parties
- We need answer to the question what is the contract all about? from the contract itself. Look at (Art. 1714)

- It must be possible – Must be capable of being performed by the parties with little or no difficulty.
- Impossibility may be that of fact or that of law.
- It may be pre or post contract. (Art. 1715)
- It must be lawful – No contract can stand where its object is infringement of the law.
- One cannot agree to commit or not to commit a crime. In both cases he does not have a right to give his consent. (Art. 1716)
- It must stand the morality test – The law also speaks of immoral contracts but remains short of telling us what it means by morality.
- Not all people would entertain similar views on what constitutes immorality with respect to a certain conduct.
- At times, it is exposed to subjectivity of judgment.
- Factors such as culture and religion also influence our perception of morality.
- Despite that, however, there may be areas of morality that a given society may take for its own. (Arts. 1716 and 1718)

4.FORM OF CONTRACTS

- In principle, Contract laws do not require observance of specific formalities in all cases.
- In fact, the majority of our daily economic dealings that are contractual in nature are done in a consensual manner, there being no need to adhere to any specific formal requirements. See art.1719
- However, the law or parties may stipulate special formality requirement.

- Form stipulated by the parties (Arts. 1719/1 and 1728). In as much as parties are at liberty to determine the object of their contract, so are they at liberty to agree on a particular form their agreement should assume.
- Form Required under the Law (Arts. 1723 – 1725)

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- Taking into consideration the volume of transaction in a contract, the nature of the bargain, the duration in which the contract is supposed to last, the number of parties, issues of public interest that is likely to be involved in the contract and similar other matters, the law may specify a fulfillment of a particular formality for conclusion of a contract.
- To mention but a few, the following are such instances:
- Contracts relating to immovable property;
- Contracts of guarantee;
- Contracts of insurance;

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- Contracts on the formation of business organizations;
- Contracts evidencing collective agreements; and
- Contracts with public administrative agencies.
- Once a contract is made in a specified form, it may further be required to have:-
- The signatures of parties and witnesses;
- To be attested by witnesses;
- To seek authentication by public authorities or by private entities so delegated to undertake such businesses; to have it publicized; or
- To meet governmental duties on licensing and payment of revenue stamps

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Degree of defects in contract and their effects

- Depending on which of the four basic elements of contracts are missed, the degree of defects in contracts can be either relative defect or absolute defects.
- While Contractual defect that either emanates from defect in consent and/incapacity or both are said to be relative defects, those defects relating to object and form are known as absolute defects.

Remedies for affected party by relative defects

- Defect relating to consent and capacity are the two grounds that entitles the affected contracting party to claim invalidation of a contract affected by such defects.
- Invalidation of contract is nothing but denying protection or giving legal effect to such contract
- This is clearly inculcated under art.1808(1) of the civil code.

- Concerning those contracts either affected by defective consent or incapacity, such contracts are said to be born defective.
- However, the defective can be cured or killed depending on the option of a party affected by such defects.
- It is said to be in the process of being killed, if a party affected by such defect opts to claim invalidation of such contract.
- On the contrary, a party may choose not to invalidate the contract.
- In such cases, a party may confirm to be bound by a contract affected by defective consent or incapacity.
- In general, a party who concluded a defective contract that either steam from defective consent or incapacity of one of the parties, can have the following options regarding such contract:-

  - Can claim invalidation of such contract art.1808(1)

  -Can refuse to perform such contracts if requested by the other contracting party. Art.1809

  - Can confirm the defective contract and cure it.

  - Laps of a certain period of time hills such contracts.

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Remedies for affected party by absolute defects

- Absolute defects of contract are those defects that can't be hilled at all.
- They are a kind of inborn defects that never cures the contract.
- A contract that is affected by defective object or form is categorized under absolute defects.
- That means, For instance, if the object of the contract is either illegal, immoral or impossible to perform, such contract is said to be void abinitio (void) i.e. Shall be of no effect .
- A void contract is a contract that shall not be deemed not to be concluded before the law.
- Such a contract neither grants aright nor does it impose obligations on the contracting parties.
- It is regarded as a mere draft.

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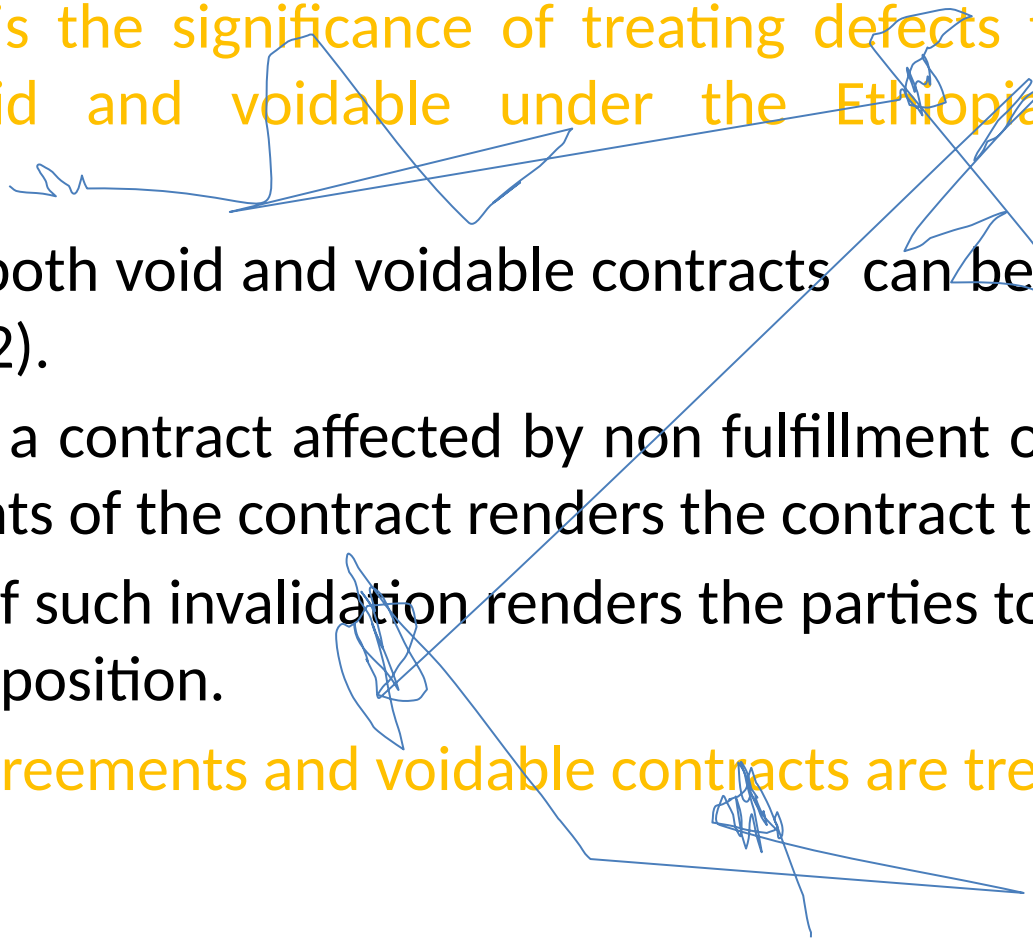
- Likewise, a contract that is not made in a prescribed form shall not be deemed to be made from the very beginning.
- Byway of summary, non fulfillment of Object and formality requirements renders the contract VOID.
- None fulfillment of consent and capacity requirements renders the contract to be VOIDABLE. i.e voidable contracts are valid contracts until they are invalidated.
- In other jurisdictions, there is a clear difference b/n the effects of void agreements and voidable contracts.
- While there is no enforceable agreement in case of void agreements, Voidable contracts can be declared invalid.
- That means, while voidable contracts can be invalidated, void agreements can't be invalidated, rather declaration of voidness can be claimed.

- Does the Ethiopian contract law distinguishes b/n the effects of void agreements and voidable contracts?
- The answer is not.
- If so, what is the significance of treating defects that renders the contract void and voidable under the Ethiopian legal system separately?
- In Ethiopia, both void and voidable contracts can be invalidated. See art.1808(1&2).
- That means, a contract affected by non fulfillment of any of the four basic elements of the contract renders the contract to be invalidated.
- The effects of such invalidation renders the parties to be reinstated to their former position.
- How void agreements and voidable contracts are treated in Ethiopia practically?



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- Because of controversy of article 1808(2) of the civil code, there is no uniformity over the effects of such contracts in Ethiopian courts.
- In this regard, while some of the courts, strictly apply, the languages of art.1808(2) of the code and orders invalidation of contracts affected by defective objects and form there by further ordering the parties to be reinstated contractually, others only orders declaration of voidness and reinstatement of the contracting parties extra-contractually.
- The issue here is how logical to declare invalidation of a contract which is already invalid by operation of the law?
- Then, what will be the solution for the ambiguity?
- Temporary solution-Federal Supreme court cassation division Bench had better give a binding interpretation over article 1808(2) until such time that a legislative action can be taken by the law makers.
- As it is responsibilities of Houses of Peoples Representatives to amend the law or provisions of the law,the HPR had better amend article 1808(2) of the civil code, and replace it by the new provision that conveys the intended meaning.

