Property law

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- RIGHTS PROTECTED UNDER THE CIVIL LAW AND THE CONCEPT OF PATRIMONY
- Rights of a person that are recognized and protected by the civil law may be patrimonial rights, i.e., those that have a pecuniary value such as property rights over things and rights arising out of contractual relations or those arising out of extra-contractual relations. They may also be ***extra patrimonial*** rights, those that cannot be assessed in terms of money such as family, political and civil rights.

- Patrimonial rights that arise out of contractual or extra-contractual relations are generally governed and protected by the law of obligations, i.e., by the law of contracts when they arise out of contractual relations and by the law of torts when they arise out of extra-contractual relations.

- These categories of patrimonial rights are also referred to as rights in-personam / personal rights/ because they can be exercised against a specific person or persons. On the other hand, patrimonial rights over things/ property rights/ are governed by the law of property and they are also called rights in-rem/ real rights/ since they can be exercised against any person who may interfere with the right-holder's enjoyment.

- Extra-patrimonial rights, which are defined above, are governed and protected by family law, penal/ criminal law and other branches of law based up on the particular type of right in question.
- Similarly, the obligations or liabilities of a person which are governed and protected by the civil law may be patrimonial or extra-patrimonial depending up on whether they can be valued in terms of money or not.

- The concept of patrimony is essential to explain the rules of universal succession. For instance, an heir or legatee by universal title shall succeed all patrimonial rights and obligations of the deceased person, in other words, such an heir or legatee cannot succeed the rights only since the elements of patrimony are transferred to him as unit. /See Arts 826, 898 & 942 of the Civil Code./

- characteristics of patrimony are to be sought in the nature of personality. Hence, it follows that:

- Every patrimony presupposes a person who is its holder
- Every person has a patrimony
- A person can have only one patrimony
- Patrimony is inseparable from the person of its holder.

- The term property has a variety of uses. In ordinary English, it refers to ownership or title and you usually hear an owner claim that this or that thing is “his or her property”, Sometimes, it also refers to the res or the thing over which ownership right is exercised such as a house, a car, a table…. Furthermore, in its broad sense, property means everything that has material or moral value for human beings beginning with their own body, reputation, and freedom to think and act.

- However, in its narrower and proper legal sense, property may be defined as an exclusive right to control, use, transfer... an object or a thing of economic importance and its fruits, exclude all other persons from its use and enjoyment and the follow the thing and its fruits in the hands of any person who might have unlawfully taken it.

- It is a name for a concept that refers to the rights and obligations, privileges and restrictions that govern the relations of persons with respect to things having economic or financial value. Hence, accurate legal terminology ought to reserve the use of the word property for designation of rights of persons with respect to things. This is because the use of the concept of property to denote human, civil political and family rights would be stretching the concept beyond limits and would cause confusion.

- Furthermore, it would be inaccurate and narrow to use the concept of property to refer to ownership or title because the legal usage of the term includes other rights such as possession, usufruct, use, and servitude. The things in relation to which such property rights are exercised are objects of property rather than property itself. Hence, the house, or the car, or the table in relation to which an ownership right is exercised is properly called an object of the right of ownership.

- *THEORIES OF PROPERTY*
- “The right of property refers to the despotic dominion/control which is claimed by a person claims and exercises over external things of the world and to exclusion of all other persons in the universe. It is a right that is regarded highly by mankind; however, only few go in to the trouble of asking themselves about its origin and foundation.

- There are two main groups of theories of property; the first group attempts to explain how private property came to existence, i.e. it describes the facts, which purports to show the origin of private property. It attempts to explain how things came to be owned privately. On the other hand, the other group of theories is concerned with passing a judgment on the institution of private property and attempts to justify or condemn the institution.

- In other words, it tries to explain the economic and asocial reasons behind the recognition and protection or condemnation of private property. Sometimes, however, those two aims are combined; for example a writer may argue that property arose to reward private enterprise and that therefore it is ethically justifiable.

- **1.4.1 THEORIES REGARDING ORIGIN OF PROPERTY**
- **A. THE POSITIVIST THEORY**
- According to the positivist theory, law is nothing but the command of the sovereign, that is, the rules promulgated by government officials for reasons of public policy, protection of individual rights, promote the general welfare, increase social wealth or maximize social utility.

- According to Jeremy Bentham, one of the prominent utilitarian political philosophers, property is the basis of expectation of deriving certain advantages from a thing which we are said to possess, in consequence of the relation in which we stand to wards it.

I cannot count upon the enjoyment of that which I regarded as mine, except through the promise of the law that guarantees it to me. It is law alone that permits me to forget my natural weaknesses

- Property and law are born together and die together. Before laws were made, there was no! property; take a way laws, and property ceases. Similarly, E. Jenks argues that private property is a creation of the state and achieved only after a long struggle with the clan. If we consider as the essential characteristics of private property, the right to exclude others, the right to charge the thing for a debt, to alienate or leave by will, it is true that the state has provided the machinery by which these rights are enjoyed.

- However, this theory is criticized on the ground that the state and private property are the results of the same social and economic forces and we can hardly say one is the creation of the other. John Locke argues that the state is the result of a social contract in which the society transferred some of their rights to the state for the purpose of protection their rights including the right to property.

- **B. THE HEGELIAN THEORY**
- According to George Wilhelm Friedrich Hegel, a human person is merely an abstract unit of free will or autonomy that does not have a concrete existence until that will acts on the external word. The person must give its freedom an external sphere in order to live as an idea. This external sphere, capable of embodying the person's freedom, consists of the rest of the word, every thing that is distinct from the person.

- From the need to embody the person's free will from the abstract realm to the actual, Hegel concludes that the ***person becomes a real self only by engaging in a property relationship with something external. Such a relationship is the goal of the person.***

- Hence, private property originated in the person's attempt to actualize his/her free will, i.e., when someone extends his will to external things he makes that thing a part of himself.
- Hegel clearly makes the claim that a human being can only become properly developed- actualize her freedom- in the context of a community of others.

- Similarly, Professor Margaret Jane Radin has argued that to be a person, an individual needs some control over resources in the external world. She explores the relationship between property and personhood, a relationship that has commonly been both ignored and taken for granted in legal thought.

- Locke says that “every man has a property in his own person,” from which it immediately follows that “the labor of his body, and the work of his hands… are properly his.” Though Locke elsewhere considers the person as reflective consciousness and memory, he may well mean here that one literally owns one’s limbs and hence must won their product.

- If it makes sense to say that one owns one's body, then, on the embodiment theory of personhood, the body is quintessentially personal property because it is literally constitutive of one's personhood. If the body is property, then objectively it is property for personhood.

- This line of thinking leads to a property theory for the tort of assault and battery. Interference with my body is interference with my personal property. Certain external things, for example, the shirt off my back may also be considered personal property if they are closely enough connected with the body.

- The idea of property in one's body presents some interesting paradoxes. In some cases, bodily parts can become fungible commodities, just as other personal property can become fungible with a change in its relationship with the owner: Blood can be withdrawn and used in a transfusion, hair can be cut off and used by a wigmaker; organs can be transplanted, on the other hand, bodily parts may be too" personal" to be property at all.

- **C. THE OCCUPATION/ FIRST POSSESSION/ THEORY**
- In the beginning of the world The Creator gave to man dominion /ownership/ over all the earth and over the fish of the sea and over the fowl of the air and over every living thing that moves up on the earth. This is the only solid foundation of man’s dominion over external things.

- However, this communion of goods had never been applicable, even in the earliest stage, to the substance of the thing nor could it be extended to east the use of it. This is because by the law of natural and reason acquired there in a kind of transient property that lasted so long as he was using it and no longer, i.e., the right of possession continued only for the time only the act of possession lasted.

- Thus the land was in common, and no part of it was the permanent property of any man in particular, yet whoever was in occupation of a determined spot, for rest, shade or the like acquired for the time being a sort of ownership, from which no one can derive him by force, for this would have been unjust an contrary to the law of nature. But the instant he has quitted the use or occupation of it, another reason might seize it with out injustice.

- However, when mankind increased in number, craft and ambition, it became necessary to entertain conceptions of more permanent dominions and to appropriate to individuals not the immediate use of the thing only but the very substance of the thing to be used.

- Hunting, and animal rearing (for milk, meat and their skins and hides) the latter is more secure than hunting and digging water wells even where the land and hedges still belonged to all in common represent the most common way of creating property right.
- As the world grew more populated it became more difficult to find new spots to inhabit without encroaching upon former occupants.

- **D. LABOR OR ENTITLEMENT THEORY**
- John Locke argues that natural reason tells us that men, being once born, have a right to their preservation, and consequently to food, drink, and such other things nature affords for their subsistence. Revelation, when giving an account of those grants God made of the world to Adam, and Noah and his sons, states that God has given the earth to humankind in common.

- So where a person appropriates a land or any one of its fruits, he has mixed his labor with, and joined to it, such thing is his own and there by makes it his property. This is because he has removed it from the common state of nature and has placed it in to some thing which is exclusively his own.

- It is this labor that puts a distinction between those that are appropriated and those which are common. In other words, the difference between things owned privately and those, which are commonly owned by all human kind, lies in the fact that ones labor has been added to on.

- However, this theory has certain problems, first, in the absence of prior theory of ownership, it is not self evident that one owns even his/her own labor that is mixed with something, second, the labor theory does not provide guidance in determining the scope o f the right that one establishes by mixing one's labor with something else. Robert Nozick described this problem as follows, "suppose I pour a can of tomato juice in to the ocean: do I now own the sea?"

2. THEORIES REGARDING THE JUSTIFICATION OF PRIVATE PROPERTY

- The theories discussed above in connection with the origin of private property are also used to justify or condemn the existence of the institution.
- A) Occupation theory tries to justify the existence of private property on the ground that the first occupier should be rewarded and property acquired in such a manner is ethically justifiable He who first reduces in to possession of a piece of property has the best of justifications for remaining in control, and hence the institution.

- B) Labor theory -private property is the result of individual labor because industry (hard work) should be encouraged by granting to a worker the ownership of the res, which is created by his labor so that even greater productivity is achieved.

- Society needs labor and the occupations are still few where the intrinsic interest is so great that men will labor for the love of it. It enables the acquisition of means of production by those who can use them efficiently and achieve maximum productivity; it encourages independent and specialized risk taking. It encourages saving and reinvestment. The whole effect of these ensures economic growth.

- C) The Utilitarian theory the function of the legislator/ state is to maximize the sum of human felicity (Utility) or happiness, and private property, which is the expectation of protection provided by the state, is justifiable because it increases human felicity/ happiness.

- D) Hegelian Theory- Property is a part of the personality of the owner and the protections provided for property of the person are protections for the person. This, thus, the existence of the person and hence his/her property is just. Furthermore, some control of property is essential for the proper development of personality.

- The community has slowly evolved from status to contract, from group holding to individual property freedom liberty has grown in the process and it is the control of property that makes men free. However, the theory does not justify the present system, which allows the concentration of property in a minority of the community.

- E) Marxist Theory- According to the communists, the history of all societies in the world is the history of class struggles between the slaves and freemen, feudal lords and serfs or vassals, the bourgeoisie and the proletariat.

- These struggles are always between those who control the means of production and those who do not and hence that have to depend on the former for their livelihoods by selling their labor. These relations were not always based on equal or even fair exchange of labor and wages or other form of payments

- The slave’s labor was freely exploited, the serf /vassal was forced to toil for a meager reward and the products of his labor taken away by the feudal lord and the proletariat receives a wage that does not cover the bare minimum of his needs.

- In effect private property served and is serving as a means of exploitation of the slave by the slave owner, of the serf/vassal by the landowner of the proletariat by the bourgeoisie. *Hence, private property is the evil that has to be abolished.*

- **Subjects and Objects of Property (in rem rights)**

a. Subjects of Property (in rem rights)

- WHO can be the holder of in rem rights (property)?

Persons, as understood in law (i.e., physical persons & legally incorporated entities).

- **Exception**, foreigners cannot own immovable's in Ethiopia (exception, foreign nationals of Ethiopian origin & foreigners engaged in investment business in Ethiopia, when the immovable is necessary for their investment). (*Article 390-393 of the Civil Code*)

- The old law which puts restriction on foreigners regarding ownership of immovable property has been recently relaxed by a recent law. The new investment proclamation allows foreign investor or a foreign national treated as domestic investor to have the right to own a dwelling house and other immovable property requisite for their investment.

b. Objects of Property (in rem rights)

WHAT can be the object of in rem rights (property)? Things – again, as understood in law: physical things & legal things. But every 'thing' under the sky? Certainly not! There are things over which in rem right (property) can be established and things over which property right cannot be established. Based on this 'things' are classified into:

- Common things/things out of commerce/ ***inappropriable*** things Vs. ***Appropriable*** things/things in commerce/private things.
- ***Objects*** of Property (in rem rights). WHAT can be the object of in rem rights (property)? Then, which things are appropriable (or can be the object of property)? What determines this? What are the general attributes of things over which property right can be created?

- The general attribute of things considered as objects of property are: ***Value***: economic, aesthetic, cultural, scientific, religious or sentimental, ... Mastery by man (control and/or use) Not excluded by law from serving as object. Not everything that has value and can be mastered can be object of property.

CLASSIFICATION OF THINGS

before considering the classification under the Civil Code, it is better to make distinction between the terms ‘things’ and ‘goods’.

The term ‘***thing***’ refers to every thing that has economic value to human beings. All things which are useful to human beings can be encompassed by the term ‘thing’ .

- In ***other*** words, it doesn't matter whether a thing can be appropriated (controlled and put under individual ownership) or not, if it gives economic utility, then it can be considered as a thing. But the term '***goods***' seems to have a bit narrower scope of application. It refers only to those things which are under actual control of individuals, group of individuals or institutions etc.

- things can be classified as appropriable and non- appropriable. Appropriable things are those, which can be controlled by individuals. Non- appropriable things refer to just the opposite, i.e. things like sun, moon, air etc that cannot be put under individual control at all. Thus, things become goods and subject of property right only if they are actually appropriated to the benefit of private persons, government units, or collectively etc.

- As the subject matter of property rights is goods, our Civil Code deals with classification of goods. The major class of goods that is directly addressed under the Civil Code is corporeal goods (goods which have physical or material existence). However, goods can be also incorporeal; for example, copy rights, trade marks, patent rights, in short all intellectual properties are incorporeal goods which can be a definite subject of property right.

- Classification of things as **movables** and immovables.
- The major classification which is recognized under the Civil Code is movables and immovable. From the cumulative reading of Articles 1126, 1127 and 1130 of the Civil Code, the basis for such classification is the physical nature of goods. The physical nature which is used in our law is the fact of mobility. If in any way a thing can move from one place to another, then this fact of mobility will make it movable.

- moreover, the opposite of mobility, i.e. fixity is also another basis for classification. Things which have fixed situation and can’t be displaced or which are not expected to be displaced are considered as immovable.

- The exclusive classifications of goods adopted by Civil Code are movables and immovables. When we read Article **1126**, it *seems* that, if a given goods is not movable, then it will automatically be immovable (because Article 1126 provides: All goods are ***movable*** or ***immovable***).

- These elements of move ability are cumulative and if one is missing then the thing is not movable. For example, if a thing cannot be moved at all or if it cannot be moved without losing its individual character, then it doesn’t full fill the elements of Article 1127 and hence it is not movable. But, does this mean that such a thing is automatically immovable?

- It does not seem to be so since the only immovable under our law are land and buildings (because article 1130 provides that: Lands and buildings shall be deemed to be immovables). In other words, although the definition of movables under Article 1127 and simulative definition of immovable under 1130 depend on the physical nature of things, still there are certain things, which are neither movable by definition (Art. **1127**) nor immovable by provision of Article **1130**.

- Consider various rights that exercised on intellectual properties, like copyright, all industrial rights, trade marks, patent rights etc. The subject matter of all these rights are incorporeal things. These incorporeal things are neither movables, for they don’t fulfill the element of Article 1127, nor immovables, for the provision of Art. 1130 is very much clear.

- Moreover, to appreciate areas left unregulated by provisions of Articles 1127 and 1130, consider, for example iron sheets fixed to a roof of a house, doors fixed to a house, bricks used to build a house, ditches for sewerage, water wells and dams, bridges etc. All of these things are not movable. Can we say these things are immovable with due regard to the provisions of Article 1130?

- This shows that there are other classes of things than movables or immovable by nature although the classification under article **1126** seems to be exclusive. So what is the status of the above things under the classification adopted of the Civil Code? To get solution for the above problem, one may resort to Articles 1128 & 1129 and the wide interpretation of 1130 of the Civil Code.

- These articles provide for movables by presumption as opposed to movables by nature or by definition under Art 1127. Things which is considered as movable by presumption under Art.1128 are claims. Claims are rights which are embodied in securities to bearer like check, bills of exchange and others. Hence the objects of claims are incorporeal things, however, this presumption also doesn’t provide for incorporeal things stated above.

- Hence, the only solutions seems to be wide interpretation of Article 1128 to include different types of incorporeal things. The content of article 1129 is pretty clear and it provides for second presumption of movables. The elements of Art. 1129 are fulfilled (***natural forces***, that is things which do not have material existence; controlled by human beings; put in to economic use), it is possible to presume various such types of natural forces as movables.

- The other solution for the above problem is wide interpretation of article 1130. In the first place, the second major class of things recognized under the Civil Code is immovable. In this regard Article 1130 clearly provides that land and buildings are deemed to be immovable.

- This classification depends on the physical fact of fixity or immovability. This things are expected to remain at one place without possibility of movement. This nature is inevitable even to serve the purpose for which they are destined or for their economic utility. However, there are certain things which fulfills the element of fixity but not expressly included under Article 1130. Consider, for example, bridges, ditches, dams, wells etc.

- Are these things immovable in light of Article **1130**? For one thing, Article 1130 itself uses the term 'deemed' which indicates that the listing of land and buildings as immovable is not an exhaustive list rather an exemplary presumption. This is true because the word 'deemed' connotes presumption. For another thing, although the term 'building' under article 1130, in strict sense of the term, refers to house, it is possible to understand the term as it refers to different kinds of constructions.

- Therefore, if we say that the word 'deemed' indicates exemplary presumptions, it is possible to add other things of similar nature and economic utility. Moreover we can say that since the word ‘building’ is not limited to dwelling houses, stores etc, it is possible to extend it to every kind of artistic constructions like bridges, dams, wells, ditches etc,

- Read the above explanation and Articles 1126, 1127, 1128 and 1130 of the Civil Code together with Art. 106 of new commercial code to identify what kind of good a business.
- Ato Seid built, in his farm place, a temporary container-like house for the storage of cotton product from his farm. While building the store, he put a number of big stones. orderly on the surface of land. Making use of these stones as the basis, he built the store.

- There is no direct connection between the store and the land. It seems that it is possible to move the store to another place, if need arises. How do you classify this good? If dispute arises over this store, do you solve it in accordance with rules for movable things or immovable things? Why?

- Clue:- If you say it is movable, in effect you are saying that various contracts relating to such a house can be made orally without complying with the requirement of Art. 1723, 1727 and others; you are saying that if such a house is given as a security, such contract of security is pledge etc. But is that our purpose to classify things?

- Intrinsic Elements: - whether a given thing is regarded as movable or immovable by its nature or presumption, it may have intrinsic elements. A thing may be considered as intrinsic element in accordance with one of the following two basic principles. The two principles are: ***Custom or usage***, and ***Material unity***

1. **Custom or Usage**

Under this principle, the determining element is the attitude of the individuals or the society which makes a thing an intrinsic element. it is not the physical relation between the two things which makes one thing an intrinsic element of the other. It is just a mutual understanding of the society where the things concerned are put in to use.

- Although one thing may be detached from the other without any damage to both of them, a thing may be considered as an intrinsic elements of the other if there is an established custom to that effect. However, under this criterion because of the nature of the criterion, i.e. custom, problem may arise as two how to identify what is intrinsic element and what is not.

- This is because, custom may vary from one area to another; or even in the same area the understanding of the members of that society may not be sufficiently uniform. (Read Article 1132 (1) of the 1960 Ethiopian Civil Code).

2. Material unity.

Here, the main thing is the nature of the relation between the things to be considered as intrinsic element and the principal thing. The material unity between the two things is very important. The two things should be united in such a way that they cannot be separated or detached from each other without any material damage to any of them. These types of intrinsic elements are things without which any principal thing can’t be complete.

- Example: A house is unthinkable without building materials like bricks, iron- sheets, cements, woods, etc. At the same time, once these things are used as building materials, they are no ore detachable and cease to exists as an independent thing; rather they will be considered as part parcel of the house, which is made out of these things. Read article 1132 (2) and think of completeness or incompleteness of the house without doors , windows etc.

- (b) Accessories: First read Arts. 1135-Art.1139 as enumerated above. Still there are other classes of things referred to as accessories. These are things which can't be considered as intrinsic elements. In order to determine whether a thing is an accessory or not, we have to consider a number of elements (points) together.

- the first element which makes basic distinction between accessories and intrinsic elements is that accessories are detachable by their nature; i.e. there is no material unity between the accessory and the principal thing. If a thing is an accessory, it can be subjected to a separate dealing; it can be, temporarily or permanently, detached and taken away from the principal thing without causing physical damage to the principal thing.

- Another important point about accessory is that if a thing is accessory, most probably, it is a service giving thing and it is destined or dedicated to the service of the principal thing. In other words it can't be considered as a major thing; but the principal thing, although complete, can not give its full service without assistance of a thing considered as an accessory.

- The third point to be considered is that accessory thing is subordinate to the principal thing but it is ***not*** a material element (the building block) of the principal thing. The subordination is, most of the time, in terms of **purpose** and **value** of the two things, that is, the principal things will serve greater purpose and have greater value **than** accessories.

- The last important point to be considered is an attitude of the individuals having an interest on the thing. That is, if the involved individuals have **mutual** understanding that a thing is an accessory to another thing, then it can be considered as an accessory, although such thing may not be subordinate and service giving to the principal thing in terms of purpose and value the **intention** of the **parties** is one of important determining factors.

- Generally, Permanent destination; dedication to the service of another thing; or subordination to another thing; intention of the parties as well as detachability of the thing, are the major factors to be considered in order to say that a thing is an accessory

- The above classification of things as movables and immovable depends on the nature of the things. However, there are certain things which are considered as movable although they are immovable intrinsic elements by nature or things which are considered as immovable (accessories) although they are movable by nature. These are things which are referred to as movables by **anticipation/expectation** intrinsic elements or immovable by destination (accessories).

- Movable by anticipation are those things which are immovable by their nature or which are intrinsic elements of immovable but they are considered as movables when they are subjected to a ***dealing*** providing for their separation in the near future.

- On the other hand, immovable by destination (accessories) are not immovable by their nature, but because of their permanent destination to assist the purpose of an immovable thing, they are considered as immovable.

- The legal consequences of classification of things
- The last important point about classification of things is the legal consequences of such classification. The logic for classification is that if a thing is immovable, there will be a definite legal consequence which is different from when the thing is movables.

- The same principle applies to intrinsic elements and accessories. Leaving aside a clear legal consequence of classifying things as movables and immovable, let us consider what legal consequence is there in classifying things as intrinsic elements and accessories.

- The first case is when a thing is considered as intrinsic element. In this case, when a thing is considered as intrinsic element in accordance with our discussion above, then the legal consequence is that what ever relationship is created between individuals as regards the principal thing; the same relation applies to the intrinsic elements of that principal thing.

- In other words, unless the parties to the dealing expressly excludes some of intrinsic elements, if they reach at a general agreement about the principal thing, that general agreement shall apply to the specific intrinsic elements of the principal thing. Example:- A person who enters in to contract of sale, lease, etc of a house cannot exclude the application of the contract to certain intrinsic elements of the house, unless this is expressly stipulated in the contract. (Read Art. 1131 of the 1960 Ethiopian Civil Code.)

- This legal consequence is very strong that even if some of the intrinsic elements belong not to the owner of the principal thing but to the third parties, the third party shall lose his original rights on such intrinsic element save for the entitlement to compensation for the value of the thing.

- Example Mr. A is about to finish the construction of his house. Because of the recent shortage of building material (bricks), he takes some bricks from his neighbor in the absence of the later. The neighbor returned home after Mr. A has completed the house.

- Can the neighbor claim his bricks? Why or Why not? :- Read Art 1134 of the Civil Code.
- Why the right of the neighbor in the above case should be addressed through compensation? The reason is: because, we have to attach much importance or give priority to the protection of the principal thing rather than its intrinsic elements. In other words, we have to give much value to the finished house than the right of the owner of the bricks.

- because the right of the neighbor in the above case can be settled by compensation more easily and perfectly than destroying the house and entitling him to take back his bricks. Read Article 1134 of the Civil Code together with Article 1181 of the Civil Code and explain the relation between the two articles.

- The second case is where a thing is considered as an accessory. The first consequence of classifying a thing as an accessory is similar to the legal consequence of considering a thing as intrinsic element. That is, if a thing is considered as an accessory to another principal thing, whatever form of relation is created with regard to the principal thing, it applies to the accessories of that principal thing.

- In other words, unless they are expressly excluded, any type of dealing on the principal thing shall extend to its accessories; It doesn’t matter whether the owner of the accessory is the owner of the principal or not, a person who claims a right on the principal thing can claim the same right on the accessories of that principal thing.

- Example:- Mr. A, an owner of a car, rents a jack from Mr. B to use in the car. After using the jack with the car for six months, Mr. A sales his car to Mr. C. In this case, Mr. C has a right to claim the jack together with the car since the contract of sale of the car (principal thing) applies to the jack (accessory) also. Read Art. 1135 of the Ethiopian Civil Code. read Arts 1137 and 1138 of the Civil Code.

- Mr. B can make use of his contractual relation with Mr. A and proceed against Mr. A, at least for the payment of the value of the jack. But, he can’t proceed against Mr. C, a third party in good faith. However, the owner of the accessory thing can claim back his thing in three circumstances:

- The ***first*** is, as far as the accessory is in the hands of the owner of the principal thing and not subject to any dealing with third party. Here, he can claim his accessory because accessories are detachable by nature and the owner of accessory can take it back without causing any physical damage to the principal thing unlike the case of intrinsic elements.

- The ***second*** is, where third party at the time of dealing with the owner of the principal thing had a full knowledge or expected to have acknowledged about the fact that the accessory thing belongs to another person than the owner of the principal thing. Here, the owner of accessory can claim it back from the third party because the third party is not in good faith.

- The third is where the owner of the accessory has put his right in a document written before the date of permanent destination of thing.

- **THE PURPOSE OF CLASSIFICATION OF OBJECTS OF PROPERTY**
- The main ***reasons*** for classification of objects of property /things or goods/ into various categories are the following;
- ***Firstly***, the economic and social values attached to things are not the same, i.e., certain things are more important than others are.

- For instance, buildings or houses and land / immovable things/ have a much higher economic and social importance or value than most movable things such as furniture, shoe or an ox. As a result, the rules governing the acquisition, transfer, proof and extinction of property rights over the various categories of objects are different.

- For instance, contracts relating to immovable things have to be made in writing and must be registered with the appropriate public organ, while contracts relating to most movable things are not subject these requirements. Furthermore, the existence of property rights in relation to immovable things must be proven by producing special written document, while the possessor of most movable things is presumed by law to be the lawful owner. / See Articles **1723**, **1195** and **1193** of the Civil Code/.

- Secondly, the systematic classification of things in to various categories helps the legislator to enact special rules governing the particular category of things which will in turn enable students, judges and other legal professionals to easily understand the law and apply relevant rules to resolve various disputes involving the particular object of property.

- *CORPOREAL AND INCORPOREAL THINGS*

. According to Art ***1127*** of the Civic Code, corporeal things are things that have material or physical existence and that can be seen and touched. This provision, however, is not limited to the definition of corporeal things

- However, Property Law does not govern most of these things. Copyrights and patents fall within the scope of Intellectual Property Law, the rights contained in checks, promissory notes, bills of exchange, shares, bonds, warehouse good's deposit certificates and bills of lading are governed by the law of Negotiable Instruments, and other laws governing companies, contracts of carriage, contracts of ware housing and other specific laws which you will study under other courses such as Commercial Code.

- Now let us see why Art. 1128 singled out claims and rights incorporated in securities to bearer and considered them as objects of property governed by property law.
- Let us start by defining securities.

- Securities are one type of negotiable instruments particularly, documents containing rights for payment a certain amount of money. Shares or stocks and bonds or debentures issued by companies or treasury bills issued by the government through the national or central bank are the typical examples of securities.

- A person who is a holder of a share, for example, is entitled to receive a share of the companies annual profit/ if any/ and to share in the assets of the company at time when the company is dissolved. Securities to bearer, on the other hand, are securities that do not specify the name of the beneficiary of the rights, i.e., the person to whom the money is to be paid is not specified in the document

- Rights contained in securities to bearer may be transferred by simple delivery of the document, and any person who holds the document is presumed as a lawful holder and payment shall be made to such person.

- Now the question is whether the law has intentionally excluded other claims and rights incorporated in other types of securities, i.e., securities registered in the name of a specified person and securities to order and also rights and claims contained in other types of negotiable instruments. Should Art 1128 include bearer commercial instruments and bearer documents of title to goods?

- Though Art. 1128 considers theses rights and claims as corporeal movable things governed by property law, specific provisions of the law of property provide other wise. For instance, Art.

- 1165 provides that stolen corporeal movable things may be reclaimed by the owner even from a person who has acquired them in good faith, while this is not possible in respect of currencies and securities to bearer. This is also the rule in cases of stolen negotiable instruments in general and securities in particular. See Art 1167 of the Civil Code.

- **SPECIAL MOVABLE THINGS**
- These are movable things by nature but to which the law attaches characteristics of immovable things. The law does so mainly because of the importance attached to these types of things. The rules governing the acquisition, transfer and proof of rights over ordinary movable things/ also called chattels/ shall not apply to special movable things, because they are governed by the rules applicable to immovable.

- For instance, a right of ownership over a table is transferred by a simple delivery of the table, while owner ship of a special movable thing, such as a motor vehicle, is transferred in the same manner as a transfer of a building by registration of the act transferring the right, registration of transferee in the register kept by the relevant government organ and issuance of a title deed in the name of the transferee. /See Art 1185 and 1186 of the Civil Code. /

- This classification includes things such as motor vehicles, ships, airplanes, televisions and businesses. See Art 2267 (2) 3047 (2) of the Civil Code.

- **MOVABLES BY ANTICIPATION**
- These are immovable things by nature but which the law considers as movable things.
- According to Art 1133(2), trees and crops which are considered as intrinsic elements of land will be considered as distinct movable things or chattels where they are the subject to contracts for their separation.

- For instance, where a contract for the sale of standing trees is concluded, the tress that are not yet cut are considered as movable objects starting from the date of conclusion of such contract.

- They are called movables by anticipation of their future removal from the land. The same is also true of component parts a building which is going to be demolished and its intrinsic elements such as the doors, windows, corrugated iron sheets, pipes and electrical appliances are considered as separate movable objects even before the house is demolished. Similarly, a contract for extraction and sale of products of quarry such as stone and sand shall have the same effect in relation to such things. Refer to Art 1133/2/ and 2268 of the Civil Code.

- **B.IMMOVABLES BY DESTINATION**
- Immovables by destination are movable things that are placed permanently with an immovable thing for the latter's economic exploitation. In other words, these are movable things by their nature but which the law considers as immovable things because they are placed or attached to a land for its economic exploitation.

- For example, horses, cattle, tractors and other movable things, which are intended to facilitate the use and exploitation of a land, are considered as immovable things by their destination.

- **REAL AND PERSONAL PROPERTY**
- Real rights/ rights in-rem/ refer to either a power to recover a specific thing, or more often a right that may be exercised against any person, while personal rights or /rights in-personam/ are rights that may be exercised against a particular person.

- The Romans asked what the nature of the right asserted is. Hence, if it is a claim of ***title*** to a specific thing/ res/, the action is in-rem, for example, a claim of ownership of land or a sheep. However, if the claim is framed as an obligation, for instance, a claim for performance of a contract of sale of land or a ship, such right is personal. There was no difference between movables and immovable.

- In the English law, on the other hand, a real action is one in which a thing /a res/ may be specifically recovered. However, land was the only res that could be recovered, because in case of movable things, the defendant might choose between returning the chattel or paying damages. Hence, land came to be described as real property and movable things as personal property.

- in Ethiopia immovable property is real property, and as immovable is land and buildings, it follows that land and buildings are real property. In short, in Ethiopia, real property is both land and buildings, and not only land.

- **MISCELLANEOUS CLASSIFICATIONS**
- **A. CHOSE IN ACTION AND CHOSE IN POSSESSION**
- English law divides all personal property into chose /things/ in possession and chose /things/ in action. A chose in action includes all personal right of property, which can only be enforced by action and not by taking physical possession.

- If A owes B ten pounds, B has a chose in action. An owner of a car has a chose in possession, because, even where another person is unlawfully using it, the owner has a right of retaking it. See Art 1148 of the Civil Code. However, a creditor is confined to sue the debtor in court to recover his money. Patent rights, copyrights, probably right of action for breach of contract and right of action for damages are also chose in action.

- The growing importance of negotiable instruments and company stocks, the increase in the value copyrights and patents have increased the role chose in action plays in the economic life of the present day states.

- **FUNGIBLE AND NON-FUNGIBLE THINGS**
- Fungible things consist of movable things that, in ordinary dealings, are usually determined by number, measurement or weight and hence any unit is, from its nature or by mercantile usage, treated as the equivalent of any other unit. A contract for the delivery of fungible things is performed by delivering any thing of the same nature.

- For example, a contract of sale of a kilo of butter is performed by delivering one kilo of butter of the quantity and quality that he desires and not by delivering a specific piece of butter. However, the person may require a specific piece of butter and in such cases; the debtor may perform the contract by delivering that specific butter, not another thing of same nature. See Art 1745 and 1748 of the Civil Code. The creditor may not refuse delivery of fungible things on the ground that the quality or quantity offered to him does not exactly conform to the one agreed up on.

- Non-fungible things, on the other hand, are movable or immovable things, which in ordinary dealings, are determined by their specific identity. A land or a vehicle is a non-fungible thing and contracts involving such a thing shall be performed by delivering that specific thing and not by delivering any vehicle or land.

- Things may also be classified in to things that are used or enjoyed by consuming or alienating. For instance, food staffs are used or enjoyed by consumption. These types of things cease to exist after the use. Similarly, money is used by alienation or transferring it to other persons in exchange for goods and services.

- The other class of things includes permanent things such as a car, house, land or other movable or immovable things intended to be used or enjoyed by continual use. Compare Arts 1327, 2471 and 2478 of the Civil Code.

- Chapter II: Classification of Rights:
- Possession
- Definition and theories of possession
- Acquisition of possession
- Defects and effects of possession
- Protection of possession
- Transfer and loss of possession

- Definition

As a general understanding, although the concept, possession, refers to control over a thing, the type/nature of control may take different forms. Possession in fact is the factual situation. It refers to an actual and immediate physical control of a thing.

- Possession in law is of a type which is recognized and protected by law. It is a type of possession which is exercised by persons who have legal interest in the thing; like the possession exercised by an owner. The basic component of both types of possession is the possibility to exclude every person other than the person from use or control of the thing.

- Elements of Possession
- Whatever, the type and nature of possession may be, different legal systems give protection to possession only if the following two elements are fulfilled: Corpus possessionis (Physical control) Animus posseidendi (Intention to control) The following is a short explanation of the above two elements.

- (a). Corpus possessionis- it refers to a close contact between the thing and the person. In other words, it refers to a reasonable physical power that a person exercise on the thing possessed. This physical control should create in others that the person is a rightful person to administer or manage the thing and give appropriate order as regards the usage of the thing.

- Physical control can be expressed in two different relations. The first is the relation between the person and the thing. Here the point it that, the possessor should have a reasonable power/ control over the thing. It is not about immediate and uninterrupted possession of the thing or immediate and actual control like the pen in your pocket.

- If the person has a reasonable power to exercise, like lessee of a house, he who closes the door and is thousands of kilometers away from the house can be considered as a possessor. The second is the relation between the possessor and third parties. Here, the idea is that, the way the person exercise his power over thing should create a reasonable belief in the mind of third party that he is a possessor.

- (b).Animus possidendi – This is an intention to possess; not mere physical control. You need to have a lawful interest in controlling the thing. Otherwise, a simple physical control will give a person only a status of mere holder. Hence, the physical control should be justified by protection of either direct or indirect interest.

- In conclusion, the two above elements should be combined together to constitute possession. The possessor, who fulfills the two elements together, can exercise his right either directly by himself or through other intermediary. In other words, it is possible to exercise right of possession personally or through representative. It is not as such necessary to be physically present and exercise right of possession personally.

- Pls read Arts. 1140 an 1141 to understand

the essential element(s) of possession and the modes of exercise of possession recognized under our law.

- Modes of Acquisition, Transfer or Loss of Possession.
- Possession, as any other property right, is transferable from one person to another. ‘Transfer; ‘acquisition’, and ‘loss’ of possession can be used interchangeably.

- This is because, if a possessor transfers his possession to a new possessor, the act is referred to as transfer of possession; for the new possessor it is acquisition of possession; for the previous possessor it is loss of possession. However, in some **exceptional** cases the previous possessor may lose his possession even if his possession is not acquired by anyone. Like when Mr. A loses his cell phone on a road and it is found by no one.

- Transfer or acquisition of possession. Possession can be transferred or acquired through one of the following mechanisms:(a) Taking :- this is not as such prevalent in recent days . A person may take the possession of a thing belonging to another person ***without*** consent of the possessor.

- This act may be justified to some extent by the exercise of lawful right against the possessor. However, since the law doesn’t encourage forceful taking of another’s possession, even if justified by exercise of rights, taking is not directly recognized as a means of transfer acquisition of possession. This, of course, encourages individuals to take laws in to their

- (b) Delivery:- This is the prominent means to transfer of possession. One of the essential nature of delivery is that it is based on consent. It is a consensual way of transferring/ acquiring possession. Delivery may be of two types-actual delivery, and constructive delivery.

- Actual delivery is a delivery where by the possessor directly hands over the thing to the new possessor. In such cases both the elements of possession (corpus and animus) will be transferred together.

- Constructive delivery is where the possession is transferred without physically handing over the thing to the new possessor. This may be of two forms; the first is the case where the thing is already with the new possessor and the previous possessor simply transfers the animus (intention to control).

- Example, you lend your book to one of your friends for a week time and at the end of the week you sell the book to him while the book is in his land. In this case there is not actually handing of over the book to the buyer because the book is already with the buyer. Such kind of constructive delivery is referred to as ‘delivery brevimanu’.

- The second is the case where the new possessor simply acquires an intention (interest) to control and the thing remains with the previous possessor. Example You buy something from a neighboring shop, you pay the price and tell to the seller that you will take the delivery afterwards; or you think of an owner who sells his house to a buyer but the previous owner remains in the house as a lessee. Such type of constructive delivery is referred as ‘constitum possessorium’.

- An important point about constructive possession is that there is a transfer of intention only. In other words, in both cases of constructive delivery the thing remains to be where it was previously.

- (c) By operation of law: - this is the case where there is or there is no direct consent of the previous possessor. In this case, there may/may not be actual delivery of the thing to the new possessor. However, certain provisions of the law may provide for transfer of property rights from one person to another.

- A good example may be the previous in the law of successions which provides for transfer of right from the deceased to heirs. In such case the deceased may or may not be willing (which may be expressed through the document of will)

- read the following pairs of articles of the Civil Code, cumulatively. Articles 1143 and 2274, Articles 1144 and 2831, Articles 1145 and 2325 (2) Articles 826 and 1186 (1).

- After reading these articles try to identify the type of transfer/acquisition of possession adopted (envisaged) under our law.
- The first group of articles deals with the case of actual delivery where the thing and its accessories are actually/physically handed over to a new possessor based on the agreement of the parties.

- The second group of articles also deals with actual delivery but in this case the actual delivery is not of the thing itself but documents without which the thing cannot be disposed. If the content of a document is the representative of the thing itself then delivery of such document is not very much different from physical delivery of the thing itself.

- The third group of articles seems to deal with constrictive delivery where there is no actual handing over of the thing to a new possessor. If the elements of Art. 1145 are fulfilled then there will be transfer of possession although the thing designated to the new possessor remains under physical detention of the previous possessor.

- In such case, because of the transfer of possession, which indicates transfer of ownership, there is a presumed transfer of risk in coordinate with Art. 2325(2).
- The last group of articles indicates the possibility for transfer of possession by operation of the law. That is, even in case a person dies without making a will, the rights (specifically of ownership) of the deceased shall transfer to the heir through transfer of possession in accordance with Art. 1186 of the Civil Code.

- Loss of Possession
- Loss of possession results from the disappearance of both or any one of the elements important for existence of possession. If a person losses both animus and corpus or any one of these elements of possession, it results in loss of possession. The first is loss of both elements of possession at a time which takes place most of the time voluntarily and referred to as absolute loss of possession. This may take one of the following two principal forms.

- Alienation - Where the old possessor of the thing transfers it to a new possessor who starts to possess the thing in place of the old possessor.
- Abandonment - where the possessor throws away the thing with an intention to give it up and the thing becomes ‘res derelicta’ (abandoned things). Art. 1143

- The second manner of losing possession consists in losing the corpus while preserving the animus. A person may lose physical control over the thing while retaining an intention to control. This is the case where a person becomes unable to perform physical act which constitute possession. Read ART. 1152(1), 1153(1), and 1154.This also may take place in one of the following forms:

- Where a third party takes the possession in fact of the thing most of the time with out the consent of the old possessor, Where the thing physically gets away from a person without any intent on the part of the person, like when a person misplaces or loses his object etc.

- The third is the case where a person loses an intention to control for himself. Although it is some how imaginary, in certain circus stances a person may lose the animus part of possession while retaining the corpus (physical control).Read Art. 1154

- This may happen, for example, if the old possessor sells the thing to a third party and agrees to preserve it in the interest and to the account of the third party purchaser. In such case, the status of the old possessor will change to a detainer. This is what writers refers to as ‘constitutum possessorium’ i.e. constructive possession, where the true possession belongs to the purchaser.

Defects in possession

In principle, a person starts to have possession over a thing as soon as the two elements of possession are fulfilled. However, the mere fact of fulfillment of the two elements does not mean the possession will immediately have legal effects.

- In other words, even if the two elements are fulfilled and even if possession exists, for this possession to have legal effects, it should be free from certain defects. Hence, defects in possession affect its legal effect. Defects in possession are vices or states of affairs which makes possession judicially valueless.

- Defects that may affect possession varies from one legal system to another.
- the following is short explanation of the major defects that may vitiate possession.
- 1. Discontinuity: - The main idea here is that, for a person to be considered as a possessor, there should be a reasonable and inform continuity between the successive acts of possession.

- In other words, if there is un reasonably long interval between two or more successive acts of possession, the we say the possession is affected by vice of discontinuity.

- A possessor has to enjoy his possession without unreasonable disruption. There should be a series of acts of possession performed at sufficiently short interval. Here, we are not talking about constant or absolute carrying of the thing with one self.

- It is all about avoiding unreasonably prolonged sap between successive exercises of acts of possession, which may make the possession discontinuous. The reasonability of the interval between the successive acts of possession may be determined based on the nature of the thing possessed.

- Violence: - If a person acquires possession making use of force, his possession will be defective. Such a person who acquires possession forcefully may have actual control over the thing for certain period. However, such an actual control does not amount to possession since the actual control is acquired by force and using force is a wrongful act from which a person cannot derive legally protected right of possession.

- One important point here is that, the force referred above does not include the type of force that a person may lawfully use in order to protect his possession. The type of force which is considered as violence and which vitiates possession is the force used for the first time acquisition of possession; not for the protection or immediately retaking of possession.

- Clandestine/ Secrecy.
- This vice refers to concealment of possession as status. A possessor should be able to exercise his right, as a possessor, publicly. His possession will be useless if he hide himself from those who are interested in knowing whether he is a possessor or not. He should exercise his possession freely and with a reasonable publicity.

- An important point is that clandestine is not about absolutely unknown type of possession or the possession which is known to every body. It is about sufficiently unreasonable concealment for unreasonably long period of time. Another important point is that secrecy is not only about the manner of exercise of possession, but also about the nature of it acquisition. If a person acquires possession through secret means (e.g. stealing), he is not entitled to any right available to a possessor.

- **Equivocality** /Uncertainty
- This is all about clarity of possession as a status. A possessor is entitled to legal protection only if his possession is free from doubt. If, from circumstances of a case, it is ambiguous to understand the possessor of a thing, such possession remains ineffective in every aspect. Think of two or more individuals who have equal rights (either ownership, usufructor other forms of property rights).

- If a thing is jointly owned by two individuals, one can’t exercise acts of possession against the other. Because it is difficult or ambiguous to ascertain who is the possessor from the two . What do you think is the position of our law as regards defects in possession?
- Read articles 1146 and 1148 to identify what kinds of vices of or defects in possession are recognize under our law and the legal consequence of the defects.

- Rights Available to a possessor.
- The last, but not the least, point to be discussed is concerning the rights that a possessor can enjoy under framework provided by law. The basic rights to which a possessor is entitled are: - ***The right to use force*** in protecting possession, the right to bring legal action (possessor action) and the right to benefit from prescription.

- On top of this purposes the basic justification to allow use of force is to provide the possessor with an opportunity to take part in protection of the right (possession) recognized by law. More importantly, it does not seem reasonable to require the possessor to take all the cases to court of law while he can restore his possession by applying a force proportionate and sufficient to recover (protect) his possession.

- This is important both for the possessor (saving his time) and the court (reduction of burden) which expected to deal with more complicated cases. Read the following articles Art 1148.

- Legal Proceeding (possessory action) Because of various reasons a possessor may not be in a position to apply legal force or may not succeed in protecting his possession through use of force, in fact the possessor is not entitled to apply force where it appears that the application of force will not be effective.

- In such circumstances, the possessor is provided with alternative right, i.e. the right to bring legal action to protect or restore his possession. By bringing a possessory action, a person may claim either cessation of interference in possession or restoration of a usurped possession or even in certain cases, claim compensation. Since bringing legal action is a right, it is subject to period of limitation.

- Period of limitation in case of possession is relatively, shorter probably because of one or both of the following reasons:- the less importance of the content of possession and the manner of its acquisition and loss when compared to other property rights (specially the rights of ownership or rights in immovables).
- the need to encourage the possessor to exercise, claim, enforce or generally protect his rights actively and in due time

- Is it the Amharic or English version of Art.1149 (2) which is in accordance with the above statements about purposes of period of limitation in case of possession?

- Benefit from prescription
- This is a right that a possessor enjoys because of the passage of time. In fact this is the right to change status from possessor to an owner. This right to avail oneself of period of prescription is available for a possessor who actually controls a thing which belongs to another person.

- Because of the failure, for any reason, of the owner to exercise or claim and enforce his right for a limited period fixed by law, the possessor is entitled to acquire full right of ownership. Such a possessor is referred to as adverse possessor and the situation is referred to as adverse possession, i.e. possession which adversely affects the right of the owner

- Most of the time adverse possession is acquired & exercised on things without permission of the owner (like the possession that you exercise on the things lost by others and you find on the roads). However, the most important point here is that the possession should be exercised in adequate continuity and publicity without being tainted by violence and uncertainty.

- In fact these are important not only to benefit from period of limitation but also to exercise or claim any other rights available to a possessor. Do you think that Art. 1150 entitles a possessor to benefit from period of limitation in clear terms? Why or why not? Can you make the basic distention between Arts 1150 and 1192 in light of the right of possessor to benefit from prescription. Clue: - Art. 1150 seems to provide for acquisitive prescription while Art. 1192 provides for extinctive prescription.

- One last, but not least, important point is about the distinction between possessor and mere holder. The issue is resolved differently in different legal systems. In a legal system where the law recognizes both direct and indirect possession, there is no concept of mere holder. In such legal systems, the one who has actual/ physical control (power) over thing is direct possessor and there may be number of indirect possessors behind the direct possessor.

- For example, if Mr. O leases out his house for Mr. Ip and Mr. Ip is allowed to sub- lease the house to Mr. Dp, then Mr. O and Ip are indirect possessors and Mr. Dp is direct possessor. The recognition of direct and indirect possessor is justified by the priority given to immediate protection of things.

- The idea here is that since things have more of social value than value for individual they should be protected in whose ever hand they may be and this is best achieved by giving the status of possession for both the person who physically controls the thing and all others whose interests are protected by direct possessor.

- What do you think is the position of our law? Do you think that our law exclusively provides for one of the above to position? Clue: - Read Articles 1141, 1145, 1147, 2842 of the Civil Code.

CHAPTER III: Classification of Rights: Ownership

1. definition: Article 1204, gives meaning to the term by describing it as the ***widest right*** that may be had over corporeal things. This shows that there are other narrower real rights. A real right is defined by the **Black's Law Dictionary as** – a right that is connected with the thing rather than a person. As an example the dictionary lists out ownership, use, habitation, usufruct, pledge and real mortgages.

- Article 1205 of the Civil Code shows that ownership right constitutes three kinds of claims.

➢ the right to use the thing(usus)

➢ the right to enjoy the fruits of the thing(fructus)

➢ the right to dispose of/abuse the thing (abuses.

Therefore, ownership can be referred as a bundle/collection/package of rights.

- Real rights, with the exception of ownership right, are in destitute of disposition or abusing of the thing. For instance, a usufructory in case of usufruct relation only has the right to possess, enjoy the thing and its fruits. The usufructory does ***not*** have the right to dispose the thing.
- Disposition is left to the bare owner.

- Read Art. 1205(1) with much focus on the phrase ***'as he thinks fit'***. The opening phrase of Art.1205 i.e. '***with out prejudice to such restrictions as are prescribed by law***' is an implication that an owner may exploit his/her thing to the extent of what is allowed by the law.

- For instance, an owner of a house shall not disturb his/her neighbors while exercising his/her ownership right over the house. You can refer to the provisions of the Civil Code that deal with rights and duties of owners i.e. Art.1204-1227.

2. Acquisition Of Ownership Right

- There are two general ways through which people could become owners of things or have ownership right over things i.e. by acquiring(’ (Art.1151-1183) the thing or by transferring((Art.1184-1187) of the thing to them.
- If we examine the ownership **acquiring mode,** there are four different ways i.e. occupation, possession in good faith, usucaption and accession.

A. Occupation

- According to Black's Law Dictionary, occupancy means the act of taking possession of some thing that has no owner (such as abandoned property) so as to acquire legal ownership.
- And the person who acquires title by occupancy is called as occupant.

- From this concept, the necessary elements of occupation are:

➢ Possession of a thing.

➢ The thing should have no owner.

➢ There must exist the intention of acquiring legal ownership.

➢ Coming to the Civil Code of Ethiopia, the concept of occupation is dealt under Art.1151.

- The above-mentioned parameters for determining the existence of occupation seemed to be fulfilled by the Article.

- There is another factor that the thing possessed by the person is limited to be only corporeal chattel i.e. movable things only are susceptible to occupation according to the Civil Code of Ethiopia.
- The other different idea, if not totally, reflected in the Art. is that the thing has to be ‘with out a master’ rather than ‘with out an owner’ as mentioned by the definition given by the Dictionary.

- ownership right of two or more persons over a thing cannot co-exist unless it is in a joint ownership form. Therefore, it will be meaningful and logical to interpret the phrase ‘with out master’ to mean ‘with out owner’.
- There are different instances for things to be claimed to be’ with out an owner’.

- The things may exist as such in nature (***res nullius***, like in the case of wild animals), or the thing may be abandoned voluntarily by its owner (res derelict), or it may be separated from its owner in different ways and a period of limitation which the law provides for retaking back of the thing by the owner may expire (e.g. escaping of animals from their owners, or losing of things.

- Articles 1154-1158 of the Civil Code govern this issue and list down the rights and duties of a finder of a thing. Pursuant to these Articles, there are certain procedures which a finder of a movable thing should comply with before being declared as owner.

- These ***procedures*** include:

- informing about his find to an appropriate organ,
- retaining the thing in his possession,
- taking all the reasonable cares to preserve the thing and,
- to sell the thing in auction and keep the proceed of the sell when the thing is ***perishable*** or when he/she feels that preserving the thing is ***difficult***.

- Some of the things mentioned as duties of the finder could also be understood to be the rights of the finder. For instance, it is provided under Art.1155 (1) that the finder shall retain the thing in his possession. This could also mean that nobody, but the owner in accordance with the law, can dispossess the thing from the finder.

- Again what is provided under Art.1156 (1) could also be interpreted to relieve the finder from his/her duty of preserving the thing for the Article allows the finder to sell the thing where preserving is onerous. **For instance**, if the thing found is a cow, then it will be difficult for the finder to keep the cow for he/she is required to feed the cow or to take the cow out to a field. So since this will be difficult for the finder then the law allows him/her to sell the thing.

- According to Art. 1157, the owner can recover the object from the finder '...so long as he/she has not lost the ownership...'
- Read art 1192, 1152, 1153,1157,1158,1151,1159, 1160.

- Unlike Art. 1159, which gives meaning to the term treasure, Art.1160 does not give meaning to the term antique. The provision only states that provisions that are governed by special laws regarding archaeological excavations and antiques shall not be affected by the provisions that deal with occupation.

- If we resort to a special law that deals with antique, we found Proc.229/1966. According to this proclamation antique is defined under Art. 2(a) as '... any construction or any product of or archaeological interest, having its origin prior to 1850 E.C'.

- Article 3(a) of the proclamation implies that antique could be movable or immovable and they are declared to be owned by state. Antiques have historical and archaeological significance. Therefore, antique is excluded from the set of things that could be appropriated through occupation. A finder of a treasure will pass it to the state

B. Possession in Good Faith

- This also is another mode of acquisition of ownership over corporeal chattels. As far as movable things are concerned, the possessor of the thing is presumed to be the owner according to Art. 1193. If it is so, then it follows that whenever you enter into a contract of sale regarding a movable thing with a possessor of the thing, you are presumed to enter the contract with the owner.

- The fact, however, is that the possessor may not always be the owner and after you buy the thing the owner may claim the thing and may told you that the person from whom you buy the thing has no legal right to transfer it.

- In the old times there was a maxim, which says “***one can take no better title than his transferor*** (seller) which was common to both the Roman (Civil) Law and the Common Law. In the modern Civil Law, this rule has been completely outdated so far as movable things are concerned.

- The Ethiopian Civil Code being adapted from the French law, which is the prominent instance of Civil Law, is designed in such a way to protect persons who enter into a contract for consideration to acquire the ownership of a corporeal chattel and takes possession of such chattel as far as they are in good faith.

- In case of a possession in good faith, which is one mode of acquiring ownership, the purchaser’s right exists irrespective of the owner’s right and the ownership right of the purchaser is original rather than derivative.
- Articles 1161-1167 are devoted to deal with such matters.

- In cases of currency and securities to bearer (shelling, birr, dollar, check, bill of exchange...), the acquirer can never be dispossessed of them even if they are stolen ones according to Art. 1167. This is because since money does not have identity and currency is a universal means of exchange, the law is trying to protect the free circulation of the same. Moreover, it will be unreasonable to inquire the sources of securities to bearer since they are transferable by mere delivery.

C. **Usucaption**

- Usucaption, which also is referred as acquisitive prescription, as a third mode of acquiring ownership is discussed under Art.1168 and Art.1169 of the Civil Code. The Black' Law Dictionary gives meaning to the term as the acquisition of ownership by prescription. According to Art.1168, it comes into scene where a person possesses an immovable and pays for 15 consecutive years the taxes relating to the ownership of an immovable.

- The period of limitation provided for the purpose of acquiring ownership through usucaption is 15 years. It has to be remembered that a person will acquire the immovable irrespective of the right of the owner of the immovable and his ownership is original.

- Unlike in the case of occupation and possession in good faith, the subject matters of usucaption are immovable things only. With the current legal system of Ethiopia, land being owned only by the state is not subject to the issue of usucaption and buildings only will be the subject matters of usucaption.

- In modern systems of law a man's legal position may be affected by lapse of time in two main ways, which are sometimes distinguished in English legal language as limitation and prescription, though the terminology is not fixed. ***Limitation applies to actions, prescription to rights.***

- Under the system of limitation, if an action is available to me and I fail to bring it with in a certain time, I am debarred from bringing it thereafter. But it is only the action, which is barred; but the right on which the action is based still survives. It is unenforceable or ‘imperfect’, but not void.

- ***Prescription*** signifies the acquisition or the extinction of a right by the lapse of time. Prescription is either ‘acquisitive’ or ‘extinctive’. Acquisitive prescription, also called ‘usucaption’, is the institution whereby a person is permitted to acquire an indefeasible title to a real right, ad versus emnes, by prolonged possession.

- *Extinctive prescription* bars, by the lapse of time, the action of a creditor, that is to say, of a plaintiff whose right is derived not from a right in rem but from an obligation –be it contract, quasi contract, or tort.

- According to Art. 1169 of the Civil Code, it is mandatory to resort to the provisions of the Civil Code that deal with the application of period of limitation, interruption, enforcement and waiving of period of limitation i.e. Art.1851-Art.1856, in order to deal with the period of limitation for usucaption.

- For instance, if the owner of a house reminds the possessor to pay the land taxes relating to the land every three year and the latter accepts the same and pays, then at the 15 year of paying the taxes the possessor cannot claim ownership right over the house by usucaption since a new period of limitation starts every time the owner reminds the possessor and the latter accepts the same.

- This is because according to the mutatis mutandis application of Art.1851 and Art.1852 to usucaption, if the possessor of the house admits that he has to pay the taxes on behalf of the owner and he has been doing the same for many years, then it means that the period of limitation has been interrupted every three years (Art.1851 (1)).

- In addition, according to Art. 1852 the consequence of interruption of period of limitation is beginning of a new period of limitation. Or the case may be that you are the owner of a house and it is your relative who possesses it. In such cases because of the obedience you owed to, you may not even think about reminding or bringing actions against your relative regarding the land taxes.

- Having things run like this the time may come to be 15 years and your relative may claim an ownership right over the house by saying that your ownership right is extinguished for he has possessed the house and has been paying the land taxes for the past 15 years with out any interruption.

- Read Art. 1853. An owner of an immovable and a possessor of the same may enter into an agreement in advance to waive the 15 years period provided by the law.

- Such, however, contrary to the law and it is only after the coming into effect of the 15th year period that the possessor may waive it. Refer Art. 1855 and 1856

D. Accession

In principle accession is a means of acquiring of ownership of a thing which becomes united with a thing the acquirer already owns. According to the code, accession is an increase that can be resulted either from the union of one object with another or from separation of a thing from another.

- In short, a person can acquire ownership of a thing either through the union of a thing with the thing he/she already owns or through separation of a thing from the thing he /she already owns.

- Acquisition of ownership through accession by union can be manifested when –

➢ a movable thing is attached to another movable thing (example whereby a wheel is attached to a car or where a radio is installed in a car)

- a movable thing is attached to an immovable(where a seed is sawn on land) or an immovable thing is attached to another immovable(The deposition of soil by a river on the bank)

- On the other hand acquisition of ownership by accession through separation can be manifested in the case of natural fruits. For instance collecting of orange from an orange tree or getting an offspring during breading where by the offspring is separated from another thing-its mother.

- When accession takes place you may face with one or more owners of the things acceded based on whether the thing is acceded by union or separation.

➢ If the accession is an increase due to the union of two or more things, then you may face with two or more persons who claim the ownership of each of the things which are subject to accession.

- Yet, if the accession is an increase due to separation like in the case of breading, there is only one person i.e. the owner of the thing from which another is separated. In the former case i.e. when two things owned by different persons are united the problem arises in determining as to who should be the owner or benefit from the result of the union of the things.

- In general the owner of the ‘principal’ thing acquires by accession the ownership of the ‘accessory’ thing – that is, the owner of the thing of a greater permanence acquires ownership of the thing of lesser permanence and not vice versa. In here another problem may arise in determining which one of the things is considered as principal and which one as accessory

- What is believed by many writers in this area is that immovable things are considered as principal when compared to movable things. Hence when a movable thing is attached to or separated from an immovable it will belong to the owner of the immovable for the immovable has a greater permanence.

- You may extend this principle to special movables like aircrafts, ships and vehicles. By the same talken, a car is considered as principal and with more permanency when compared to a tire. Read art. 1170 and end at Art. 1183.

- a dilemma may arise in identifying the owner of a thing that is resulted from the union of two or more things. There are certain other methods that are used by the Civil Code to determine as to who is the owner of a thing over which another thing is acceded to, besides the method of identifying the principal thing. Art. 1181 and Art.1183 (2) are left to cover the criteria of identifying the principal thing.

- Another method implemented by the Code depends on the mind state of the persons who are the owners of the things that are acceded. For instance according to Art.1172 and Art.1173.

- Another technique that is used under Art.1182 for the case of specification (transformation) is to compare the value of the labor supplied to transform the thing with the value of the thing transformed. Specification (transformation) is ‘the act of making a new thing with material belonging to someone else’.

- Accordingly, where a person has worked with or transformed a substance which did not belong to him, the new article shall become the property of the worker where the labor supplied for such work or transformation is of greater value than that of the substance.

- However, where the worker did not act in good faith, the court may allot the new thing to the owner of the substance even though the value of the labor supplied is greater. In here the mind state of the worker is also a determining factor.

- Fruits are generally classified as natural and artificial. The ***artificial*** fruits are further classified as civil and industrial fruits. The natural ones are those which are the periodical increments of animals or plants. E.g. an offspring of a dog i.e. a puppy or the orange fruit of an orange tree are natural fruits.

Civil fruits are fruits which are entitlements either by virtue of law or agreements. Such is the case with interests of sums of money or profits or rents. Fruits that may be obtained by cultivation or workings on the soil are industrial fruits (fruits of labor), but they have some element of natural fruits.

- What is left un discussed still under the accession part is that of merger, adjunction and embodiment which is dealt under Art. 1183. Adjunction is ‘the union of two things belonging to different owners, so these things form a single whole, though each of them is a distinct and cognizable part of this whole’.

- Merger or fusion or commingling is ‘the mixing together of dry or liquid matters belonging to different owners’. According to the provision, where things belonging to several owners are mixed together or embodied in such a manner that they cannot be separated without appreciable deterioration or only at the cost of excessive labor or expenses, the parties concerned shall become joint owners of the new thing pro rata to the value of its component parts prior to the mixture or embodiment.

UNIT FOUR- JOINT OWNERSHIP

- ***4.1 DEFINITION AND SCOPE***
- Joint ownership or Co-ownership is the right of ownership exercised by two or more persons in relation the same object. In other words, it refers to the right of use and enjoyment, right of possession and exclusion of others and the right to transfer a thing or to charge it with pledge or mortgage exercised jointly by several persons. See Art 1257 (1) of the Civil Code.

- For instance, if A, B and C purchase a tractor for the purpose of tilling the land they hold, they are considered as joint owners of the tractor.
- The following are the main characteristics or natures of joint ownership;

- The thing, which is jointly owned, is undivided and,
- Each joint owner is considered as owner of each and every part of the thing.

- Hence, if for example, four individuals A, B, C and D jointly own a building having four rooms and each joint owner occupies one room, the building shall remain undivided and each room belongs to all the joint owners and not to the particular person who occupies and uses it.

- Note that the share joint owners have in the thing is determined by the agreement entered in between them. However, where there is no agreement as to the share of joint owners, the law presumes that they have equal share.

- **THE SCOPE OF RULES GOVERNING JOINT OWNERSHIP**

➢ they do not apply to things held jointly as a result of a partnership agreement.

➢ Though such cases represent special cases of joint ownership, they are governed by the law governing businesses and business organizations rather than by the rules of joint ownership under Property Law.

- Not govern common property of spouses
- the rights and duties of the joint owners, the use and administration of the thing are regulated by the agreements entered in to by the joint owners provided that the agreements are not defective/ invalid/ and are not contrary to mandatory provisions of the Civil Code mentioned above. See Arts 1264, 1265, 1266, 1267, 1268/2/, 1271 and 1274 of the Civil Code.

- The permissive provisions of the Civil Code shall apply where there is no agreement or a provision governing the various aspects of joint ownership or where such agreement or provision is defective or invalid. See Arts 1263, 1275, 1260 1268/3/ of the Civil Code.

- ***4.2 ADVANTAGES AND DISADVANTAGES OF JOINT OWNERSHIP***

A. ADVANTAGES

- Increase financial capacity of members See Arts 1281-1308
- efficient utilization of scarce resources

b. DISADVANTAGES

- difficulty administration and decision making
- See Art 1265 and 1266
- hinder the free transfer of goods

4.3 SOURCES OF JOINT OWNERSHIP

- ***Contract (***See Arts 1676/1/, 1768 and 1679-1730 of the Civil Code)

- **Joint Ownership Arising from the Law**
- Art 1060 of the Civil Code provides that a succession shall remain in common between the heirs until it is partitioned
- Arts 1257-1308 shall govern the rights and duties of co-heirs. Similarly, Art 1393 of the Civil Code, which deals with a right of recovery exercised by two more persons of the same standing, provides that they will be considered as joint owners of the thing recovered.

- Arts 1176/1/ cum 1177/3/ and 1183/1/ of the Civil Code other instances of joint ownership arising from the provisions of the law.
- ***4.4 RIGHTS AND DUTIES OF JOINT OWNERS***
- Joint owners have the following rights and duties;
- Right to Use and Enjoy the Undivided Thing/Property, and its Fruits: See Arts 1263 and 1264 of the Civil Code.

- Right to Administer the Thing: See Art 1265 and 1266 and 1259
- According to Art 1267 each co-owner shall bear, in proportion to his/her share, the costs of administration, taxes... and necessary costs (costs incurred to avoid lose or damage to the thing). See 1268(3) and 1282(2).

- Each joint owner has the right to dispose of his share of rights in the undivided interest in the thing jointly owned. See Art 1260 of the Civil Code. See Art 1261 of the Civil Code.
- Each joint owner has the right to request termination of joint ownership. See 1271, (see Art 1272 and 1273, 1274).

- EXERCISE: Art 1261 of the code provides that the other joint owners shall have the right of preemption where a joint owner sells his share in the thing. Comment on the provision by comparing Arts 1386 and 1410 of the code.

- ***4.5 SPECIAL CASES OF JOINT OWNERSHIP***

A. PERPETUAL JOINT OWNERSHIP

Perpetual joint ownership represents a joint ownership in which joint owners do not have the right to demand termination. This kind of joint ownership exists where continued joint ownership is in accordance with the nature or purpose of the thing or where sale or partition is impossible or unreasonable. See Art 1276 of the Civil Code.

- For instance, it would be impractical and crazy to divide or sale the foundation or staircases of an apartment building.

B. PARTY WALLS See Arts 1201 and 1278-80 of the Civil Code.

See 1202 of the Civil Code.

Our law does not define as to what a party wall is and does not cover other kinds of enclosures. See Art 1201, 1202, 1278, 1279 and 1280 of the Civil Code.

- **C. CO-OWNERSHIP IN BUILDINGS IN WHICH FLOORS OR APARTMENTS ARE SEPARATELY OWNED**
- Arts 121281 and 1289 of the Civil Code.

- **UNIT FIVE – USUFRUCT**
- usufruct is the "right to enjoy the property of others with the obligation to preserve its form and substance, unless the title of its constitution or the law authorizes otherwise".
- a right of usufruct may be created in relation to

  - Incorporeal things
  - Corporeal things
  - Movable things
  - Immovable things

- Usufruct may be defined as a real right, temporary or for life, which entities a person called, the usufructuary, to possess, use and enjoy a thing, which belongs to another person called the bare owner, and its natural fruits, with the duty of preserving its substances and restitution to the bare owner up its termination. Art 1309(1), 1328, 1347, 1348, and 1311

- By its nature usufructs presupposes the possibility to use and enjoy a thing, which is its object, while preserving its substance. Hence, things that are consumed by their first use are not susceptible of usufruct in the proper sense of the term.

- **SOURCES OF USUFRUCT-**
- *1310 ,* The law, Contract (2410) & Will (912, 929) Usufruct may be created by agreement or contract for consideration or without consideration. According to Art 2410 of the Civil Code, an owner may transfer the usufruct of a thing by contract for consideration. In such cases, the rules governing contracts of sale shall apply.

- The rules as to the form and publicity requirements for contracts shall also apply to contracts creating usufruct. Hence, contracts creating usufruct right on immovable things and special movable things shall be made in writing and registered with the organ registering immovable things or special movable things. See also Art 1723 of the Civil Code.

- Usufruct created in favor of bodies corporate or properties with specific destination shall terminate after 30 years or such shorter period provided by the contract or will creating it. Refer to Art 1322(2) of the Civil Code.

- **RIGHTS AND OBLIGATIONS OF THE USUFRUCTUARY**
- The Conservation of the Substance of the Thing, Arts 1309(1) and 1330(2) – Arts 1341, 1148 and 1149, 1319(2)
- the right to use and enjoy the thing, and its fruits. Arts 1312, 1330/2/ and 1328

- The obligation to up-keep the thing 1313 * obligation to pay all the charges 1314
- * obligation to inform the bare owner about any act of interference by a third person in the rights of the bare owner 1342
- * an obligation, at the time of extinction of the usufruct, to restore or restitute the thing to the bare

- **RIGHTS AND OBLIGATIONS OF THE BARE OWNER**
- the duty to refrain from any kind of interference with the right of the usufructuary to possess, use and enjoy the thing and collect and use its fruits.
- must undertake major repairs as defined under Arts 1337 and 1338, which are not result of the usufructuary's fault.
- an obligation to cover extra ordinary charges. Art 1315

- **EXTINCTION OF USUFRUCT**
- Art -1319-24
- **RIGHT OF USE AND HABITATION**
- Right of use is a temporary real right (for agreed period of time or for life the beneficiary) which entitles the beneficiary, called the user, to use a thing of another person and to receive its fruits such as profits or rents... but only with in the limits of his own and his family's needs. The right of use is not recognized under the Ethiopian Civil Code

- **RIGHT OF HABITATION /OCCUPATION OF PREMISES/**
- Right of habitation (occupation of premises) is merely a particular type of right of use, i.e., a right of use exercised over residential houses or premises.
- Art 1353 of the Civil Code defines the right of habitation or right of occupation of premises as a right to live in a house or part of a house belonging to another person.

- **UNIT SIX- SERVITUDE**
- **DEFINITION**
- It is a right in rem / real right/ over a definite plot of land (servient tenement) and annexed to another plot of land (dominant tenement.). it is a property right vested in the owner/holder of one plot of land to use a land belonging to another for certain purposes Art 1359

- **PURPOSE OF SERVITUDE**
- to enable the owner of the dominant tenement to derive the best possible use and benefit from his land by giving him certain rights on the land belonging to another person, called servient owner.
- Servitude should be used exclusively for the purpose of using or exploiting the dominant land and it must be used exclusively for that purpose.

- **SOURCES OF SERVITUDE** – 1362, may arise from a contract, a will, acquisitive prescription or the provisions of the law.
- **RIGHTS AND DUTIES OF THE PARTIES**
- where the instrument creating the servitude does not contain provisions dealing with the rights and duties of the parties, or where such provisions are not valid or where the manner of its creation and enjoyment is not clear, Art 1370 shall apply.

- 1)The owner/holder of the servient tenement shall have
- the obligation to allow the owner/holder of the dominant tenement to use his land 1359
- - Art 1373/2/
- 2) The owner/holder of the dominant tenement, 1375, 77, 78
- **TYPES OF SERVITUDE**
- **URBAN SERVITUDES AND RUSTIC/ RURAL SERVITUDES** Art 1371

- Urban servitude include right of view, right of way and the various other servitudes arising out of the law such as the right to install water, gas or electrical lines.
- ***rural or rustic servitudes*** are those types of servitudes created and enjoyed in rural areas such as right of way or right to cross a parcel of land on foot, with animals, during the dead season, across fields, rights of grazing land, watering animals, wood-cutting, irrigation.

- **CONTINUOUS AND DISCONTINUOUS SERVITUDES -** a continuous servitude is a servitude that continues without continuous human intervention.
- A discontinuous servitude is that cannot exist without a continuous human intervention. Eg Art 1382

- **APPARENT AND NON-APPARENT SERVITUDES -** App s. are manifested by external works such as ditches, pipelines or channel, roads 1366
- Non-apparent are whose existences r not manifested by external works necessary for their enjoyment by z owner of z dominant tenement. Servitudes of pasturing animals, cutting wood & extracting quarry.

- **EXTINCTION OF SERVITUDE –**

  Waiver /release by the owner of dominant tenement 1381
- Art 1381(3) and (1) and Art 1366
- Redemption of the servitude by the owner of the servient tenement, Art 1383
- - Surrender of the servient tenement to the owner of the dominant tenement 1374

- **CHAPTER SEVEN**

  - RIGHT OF RECOVERY AND RESTRICTIONS ON THE RIGHT TO TRANSFER CERTAIN THINGS

- ***7.1 RIGHT OF RECOVERY***
- ***7.1.1 DEFINITION***
- Right of recovery is a right of a person to recover a thing sold by an owner from the buyer by paying the price and costs the latter has incurred. See Art 1386 of the Civil Code. In other words, right of recovery is a right where by its beneficiary can force the buyer of a thing to sell it to him.

- The right of recovery is intended to keep things within a certain group of persons, such as a family or joint owners. It is intended to keep the thing among persons having a blood relationship because of the economic or social value immovable things have among the society. It is also intended to keep a property among persons who have close relationship, in cases of joint owners, and keep strangers out there by securing peace and co-operation.

- Allowing strangers to acquire a share in a jointly owned thing may create problems in the administration of the thing, as almost all decisions have to be made by majority or unanimous vote of joint owners, which may become very difficult if a person who does not get along with the joint owners allowed to acquire a share in such things.

- This right is always the result of legal provisions. Therefore, this right may not arise from contract, will or any other source. Furthermore, it is a right personal to the beneficiary and hence cannot be transferred to another person, nor can creditors of the beneficiary exercise it on his behalf. See Arts 1387 and 1397 of the Civil Code.

- ***7.1.2 PERSONS HAVING A RIGHT OF RECOVERY***
- There are two classes of persons to whom a right of recovery is granted by law.
- Relatives by consanguinity; According to Arts 1389 and 1394/2/ of the Civil Code relatives by consanguinity of the seller of an immovable thing have the right to force the purchaser of such immovable, against payment of the price he has paid, to sell it to them.

- In other words, the beneficiary of right of recovery may, against payment of the price and other costs, recover an immovable from a person who has bought it from a seller who is their blood relative. See also Arts 1124 and 1125 of the code.

- Such right shall be exercised according to the degree of relation they have with the seller. Hence, persons who have a first-degree relationship with the seller have a priority right over those having a second-degree relation ship. See Art 1391 and 842-851 of the Civil Code. Where the beneficiaries have the same degree of relationship, they shall exercise the right of recovery together and shall become joint owners of the immovable recovered. See Art 1393 of the Civil Code.

- However, among persons who are in the same degree of relationship, those who live on the land or participate by their personal work in its exploitation are given priority over others. See Art 1392 of the Civil Code. Furthermore, Art 1396 excludes right of recovery of relatives where the immovable transferred is situated in urban area/ town planning area/ or where it mainly consists of a dwelling house or some other building.

- These provisions also imply that the right of recovery relatives under is limited to cases where rural farmland communally held by a family/ rest land/ is transferred.
- Furthermore, only relatives from the paternal line have a right of recovery on an immovable which descended from the paternal line and only those from the maternal line can exercise a right of recovery on an immovable descending from the maternal line. See Arts 1390 and 849 of the Civil Code.

- Joint Owners shall have a right of recovery where one of the joint owners sells his share of right in thing jointly owned. See Art 1260, 1261, 1388 and 1394 of the Civil Code. Joint owners exercise their right of recovery jointly and acquire equal rights in the share recovered.

- However, where one or more of the joint owners are not willing to exercise a right of recovery, such right shall accrue to the other joint owners. See Arts 1393 and 1262 of the Civil Code.
- ***7.1.3. CONDITIONS FOR THE EXERCISE OF RIGHT OF RECOVERY***
- The beneficiary of a right of recovery must declare his intention to buy the thing or usufruct with in two months from the date he is informed of the transfer of ownership or usufruct to a new owner or usufructary, (if he is notified). See Art 1400.

- However, if he is not notified, then he may exercise his right with in a period of one month from the date the joint owners knew of the transfer. On the other hand, where the right is exercised by relatives, the beneficiary must declare his intention to exercise his rights with in six months from the date of transfer of possession.

- Such declaration of intention to buy/ exercise a right of recovery/ must be accompanied by securities, which may be in the form of pledge, mortgage or personal guarantee to secure the payment of the price and other expenses. See Art 1403. According to Art 1398 of the Civil Code, a right of recovery may be exercised where the owner sells the thing or where creditors of the owner attach the thing. In other words, the right of recovery may not be exercised where the owner transfers the thing gratuitously, for instance, where the owner donates the thing.

- However, Art 1407/1/ indicates that right of recovery may be exercised even where the thing is transferred without consideration. Furthermore, excluding right of recovery in cases where the thing is transferred gratuitously will also be against the purpose of granting right of recovery discussed above. Hence, it does not seem that the legislator intended to exclude right of recovery in such cases.

- However, a right of recovery, whoever the beneficiary may be, cannot be exercised in the following circumstance;
- 1. Where the buyer is himself a beneficiary of right of recovery, i.e., where the property is sold to a blood relative of the seller or a joint owner. See Art 1395 and Arts 842-851 of the Civil Code.

- 2. Where the immovable sold is situated in a town planning area or it consists mainly of a dwelling house or building. This prohibition particularly applies in cases of the right of recovery of relatives. See Arts 1535, 1536 and 1396 of the Civil Code.

- 3. Where the thing is expropriated. According to Art 1399 of the Civil Code, a beneficiary of a right of recovery cannot force a public authority or any other organ that has a power to expropriate private property for public purposes. See Also Arts 1460-1488.

- ***7.1.4 EFFECT OF RIGHT OF RECOVERY***

The new owner or usufructuary shall transfer the thing or usufruct to the beneficiary of right of recovery up on of receipt of the price where he acquired the thing for consideration or the value of the thing where he acquired the thing on donation. See Arts 1406, 1407, 1408 and 1409 of the Civil Code.

- The person who is forced to transfer a thing to the beneficiary of right of recovery shall also have the right to be reimbursed with;
- Expenses of purchase and legal interest. /Art 1408/1/
- Legal interest on the price or value of thing from the date of payment of the price and or incurring of expense. /Art 1408/2/

- ***7.1.5 LOSS OF RIGHT OF RECOVERY***
- The right of recovery shall be extinguished where the beneficiary fails declare his intention to exercise his right, to recover the thing, with in two months from the date when he is informed of the transfer of ownership or usufruct, if he was informed, or within one month form the date he knew of the transfer, where the beneficiary is a joint owner. See Art 1401/1/ of the code.

- Relatives who have a right of recovery shall lose their right where they fail to declare their intention to exercise the right within a period of six months form the date they knew of the transfer. See Art 1401 (2) of the code.

- ***7.2 Promise Of Sale And Right Of Pre-emption***
- ***7.2.1 Definition And Requirements For Validity***
- These restrictions are contractual, and they may be broadly classified in to three sections, i.e., promise of sale, right of pre-emption and prohibition of assignment or attachment of certain things.

1. A Promise of Sale- is a contract where by the owner of a thing undertakes to sell it to the promisee or another person specified if and when the promisee or such other person decides to buy it. (See Arts 1410 (1), 1416 and1417). A promise of sale, constitutes a restriction on the right of the promisor / the owner/ to dispose of the thing because he is obliged to sell the thing, at the price fixed in the agreement creating the promise, only to the beneficiary of such right and when the latter whishes to buy it.

- In other words, the owner cannot sell the thing to another person who might have offered a better price, nor can he refuse to sell the thing to the beneficiary of the promise, which, an owner under normal circumstances is entitled to do, provided that the beneficiary has made his decision to buy the thing with in the time agreed up on the contract

2. Right of Pre-emption, on the other hand, is a right arising out of a contract where by the owner of a thing is obliged to sell it to a specified person if and when he/the owner/ decides to sell it. (See Arts 1410(2) and 1418). Though the owner has the right not to sell the thing, his right to sell thing to any person who comes up with the best deal ceases to exist with the conclusion of the contract creating right of pre-emption in favor of the beneficiary..

- In other words, if the owner decides to sell the thing with in the period agreed up on in the contract, he can sell it only to the beneficiary and at the price determined in the contract and his right to chose among potential buyers is restricted.

- Promise of sale and Right of pre-emption represent a restriction on the right of ownership of a person and a property right of the beneficiary of the rights only if they are made in relation to immovable things or special movable things in respect of which there is a requirement of registration.

- In other words, contracts creating these restrictions in relation to chattels or ordinary movable things shall not constitute a restriction on a right of ownership of a person nor a property right /real right or right in-rem/ in favor of the beneficiary. Hence, the rights and duties arising from these contracts are governed by the law of contracts or obligations and not by property law. See Art 1411, 1426, 1427, 1428 and 1430 of the Civil Code.

- contracts creating promise of sale or right of pre-emption shall not be valid unless they are made in writing, and unless they specify the time with in which the right is to be exercised, the price for which the beneficiary of the right may purchase the thing and they are registered in the register of the property concerned. See Arts 1412, 1422 and 1423 of the Civil Code

- Further more, the period with in which such right may be exercised cannot exceed a period of ten years. Where the period fixed in the contract exceeds ten years, it shall be reduced to the maximum period provided by the law, i.e., ten years. See Art 1413 of the Civil Code.
- The rights arising from such agreements cannot be transferred by contract or inheritance and the creditors of the beneficiary cannot exercise them. See Art 1415 of the code.

- ***7.2.2 RIGHTS AND DUTIES OF THE PARTIES***
- **A. PROMISE OF SALE**
- 1. The maker of the promise/ the owner of the thing/ may not alienate or sell the thing or charge it with real rights /rights in-rem/ such as usufruct in the period for which the promise is effective. However, he may pledge or mortgage it for an amount not exceeding the price fixed in the contract creating the promise. See Art 1416

- 2. Where the thing is attached by court order, the owner must notify the promisee of such proceedings. (See Art 1417)
- 3. Where the owner of sells the thing to a person other than the beneficiary, the latter shall have the right to force the buyer of the thing to sell it back to him at the price agreed up on in the contract creating the promise

- **B. RIGHT OF PRE-EMPTION**
- 1. The owner has the right to create any kind of right in-rem on the thing, but he may not sell or transfer it to another person. Where he decides to sell the thing, he has the obligation to inform the beneficiary of his intention to sell the thing and the chargers/ such as mortgage, usufruct, and servitude etc/ on the thing. See Art 1418 /1/ and/2/.

- In case of attachment, the owner of the thing must notify the situation to the beneficiary. See Art 1418 (3)
- The beneficiary must exercise his right with in two months from the date he received the notice. However, this period of notice may be extended to a period not exceeding one year. Where the period is extended for more than a year, it shall be reduced to one year. See Art 1419.

- The beneficiary must exercise his rights before the thing is sold by auction in case of attachment. See Art 1421.
- In case the thing is sold to a third party in violation of the contract creating the right of pre-emption, the beneficiary may recover it from such third party against payment of the price determined in the contract creating right of pre-emption. See Art 1422.

- ***7.2.3 Extinction Of Rights Of The Beneficiary***
- Rights arising out of contracts creating a promise of sale and right of pre-emption shall be extinguished because of one of the following grounds,
- 1. Failure of the beneficiary to exercise the right with in the period fixed by the contract or 10 years where no period is agreed upon in the contract.

- See Art 1413 of the Civil Code. The rights arising from a contract creating a right of pre-emption shall be extinguished if the beneficiary fails to exercise his right with in a period of two months form date of notice given by the owner or with in the period agreed up on in the contract. See Art 1419 and 1420.

- Failure to buy the thing before it is sold by auction in case of attachment. See Arts 1417 (2), (3) 1419 (3), and 1421.
- 3. In cases where the thing is sold to a third party in violation of the contract, the right of the beneficiary will be lost if he fails to require such party to surrender the thing to him with in six months of the date when the third party has taken possession of the thing. See Art 1425 (2)

- ***7.3 Prohibition Of Assignment Or Attachment***
- ***7.3.1 Definition***
- Prohibition of assignment or attachment arises from a contract or will where by certain things are transferred and where by the transferor prohibits the transferee from assigning or transferring the thing to another person. The producer, maker, seller or owner of such thing may impose these prohibitions. See Art 1426 of the Civil Code.

- Such provisions may freely be made with respect to ordinary movable things (chattels). However, such restrictions will bind only the person who accepts them and hence, it does not create a real right that can be raised against third parties. See Art 1426/2/ of the Civil Code.
- Prohibition of the right of attachment or assignment with respect to immovable things is possible only in cases allowed by the law.

- According to Art 1427, 1428 and 929-936 of the Civil Code, the transferor or assignor of an immovable thing or the testator may prohibit the transferor or the holder in tail from assigning an immovable to another person. He may also stipulate that the thing shall not be attached in the hands of the transferee or the holder in tail. See also Art 2460 of the Civil Code

- In German law, one cannot impose restraints upon alienation, permanent or temporary, with real effects. Hence, the transferee will not be affected by such provision even if he has notice of it. In French law, on the other hand, one cannot impose permanent restraints with either real or personal obligatory effects. If such provisions are made, they shall not bind the transferee. However, one may impose temporary restraints that will bind the transferee whether he has notice of it or not.

- The rationale behind, Roman and German law, not allowing such restrict ions is that the interests of commerce are best served by granting the owner the fullest freedom to dispose of his property and free circulation of goods. French law also accepts this principle, but makes an exception for a limited period where a serious interest is involved

- Ethiopian law also follows the same approach in adopting the restriction and provides under, Art 1416 (1), that such restriction with regard to chattels will have no real effect on third parties, unless they knew of the restriction. It also tries to minimize the negative consequences of the restrictions by limiting the period for which it can be made

- In other words, a provision prohibiting assignment or attachment cannot be made for indefinite period, following the approach taken by French Law.
- On the other hand, such restrictions can be made on immovable things with real effects in cases expressly allowed by the law for the purpose of protection of a serious interests, for instance, keeping an immovable with in a family.

- ***7.3.2 Formal Requirements***
- A provision prohibiting assignment or attachment shall be of no effect unless it is made in writing and it specifies the duration of the prohibition, which may not exceed 20 years or the life of the transferee. See Arts 1430, and 1431.
- It must also be registered in the register of immovable things where such provision is made in relation to immovable things. See Art 1432.

- **7.3.3 Rights And Duties Of The Parties**
- 1. A property that is subjected to a provision prohibiting assignment or attachment cannot be sold or transferred. If it is sold in violation of the provision, the person stipulating it may recover it form the buyer. See Art 1440 (2), 1442 and 1438.
- 2. The person making the provision may prohibit the acquirer from assigning or selling it for a period not exceeding 20 years. See Art 1431.

- The person who made the provision prohibiting assignment has the right of recovery against the buyer. Such right has to be exercised with in two years from date of the assignment or from the expiry of the period fixed in the contract. See Arts 1442 (1) and 1441.

- 4. In cases of attachment, the person making the provision must exercise his right prior to the attached immovable thing being sold by auction where he has been informed of the attachment. However, where he is not informed of the attachment, he must exercise his right with in a period of two years from the sale of the immovable by action. See Art 1437

- **Unit Eight-**
- **collective Exploitation Of Property**

1. Definition And Nature Of Public Domain

. Not all property of the state, and its various administrative units and the municipalities are subject to the same rules. Some of them form part of the public domain while others form the private domain of the state. Things or property forming part of the private domain of the state are treated in the same manner as the private property of individuals and are governed by the rules governing privately owned property.

- On the other hand, property forming part of the public domain of the state are governed by the rules dealing with collective exploitation of property rather than the rules governing privately owned property. For instance, properties owned by the public enterprises such as the Commercial Bank of Ethiopia, Muger Cement Factory, Harar Brewery...etc are considered as the private domain of Ethiopia, while the buses owned by the Anbesa City Bus Services, Black Lion Hospital, Atse Yohannes School...etc are considered as the public domain of Ethiopia.

- Having said this much, by way of introduction, let us see the definitions provided by the Ethiopian Civil Code. Art 1445 of the Civil Code, defines public domain as a property belonging to the state or its various administrative units or organs and which is directly placed at the disposal of the public or which is destined to public service. Furthermore, Arts 1446, 1147 and 1148 enumerate things that are considered as public domain where they are owned by the state

- One of the basic characteristics of properties forming part of the public domain is that they are inalienable. In other words, they cannot be transferred by sale or inheritance or donation or any other mode of transfer unless they are declared that they no longer form part of the public domain. See Art 1454 of the Civil Code.

- In addition to this, properties forming part of the public domain may not be acquired by possession in good faith or usucaption or acquisitive or extinctive prescription. See Art 1455 of the Civil Code.
- Finally, properties forming part of the public domain may not be occupied by a private person with out the authorization of a competent public authority. See Art 1456 of the Civil Code

- ***8.2 Expropriation_***