Introduction to Law and the Ethiopian Legal System

What is Law

- Defining the term ‘law’ is not an easy task. Why?

➢ The term changes from time to time and Scholars define the term variously.

➢ Different types of purposes sought to be achieved.

➢ The existence of various legal system

Various definitions

- According to Blacks Law Dictionary, the notion of Law refers to a set of normative rules and principles made by a competent organ of the state and having a binding nature/legal force

Various definitions

- **Elements of the definition**

- Law consists of rules.
- These rules are issued by an authority.
- These rules have binding force and are obeyed and followed by people (Subjects).
- Sanction or other legal consequence may help the law to be abided by subjects.

Various definitions

- Duhaime's Law Dictionary
  - All the rules of conduct that have been approved by the government and which are in force over a certain territory and which must be obayed by all persons on that territory

Various definitions

- Glanville Williams
- Law is the cement of society and also an essential medium of change.

Various definitions

- For Cardozo, Law is

➢ A principle or rule of conduct so established as to justify a production with reasonable certainty that it will be enforced by the courts if its authority is challenged.

Various definitions

- According to Holmes Law is

"the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law".

Various definitions

- According to Max Weber

"an order will be called law if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, and is applied by a staff of people holding themselves especially ready for that purpose"

Various definitions

- According to Max Weber Law has the following features

- There must be a pressure that comes from external in the form of actions or threats of action by others regardless of the person wants to boy the law or not;
- These external actions or threats of action always involve coercion or force;
- Individuals whose official role is to enforce the law must enforce the coercive action.

Various definitions

- Blackstone, commentaries
- Law is a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohebiting what is wrong

Various definitions

- Thomas Hobbes
- Law is the formal glue that holds fundamentally disorganized society together

Various definitions

- **According to** Austin
  - **Law is the command of the sovereign body in a society (which may be a person, such as a king or queen, or a body of elected officials, such as members of a Parliament'),** and these commands were backed up by threats of sanctions, to be applied in the event of disobedience.

Basic Features of Law

- **A. Generality:** law is a general rule of human conduct. It doesn't specify the names of specific persons or behaviours.

- The extent of its generality depends on-on whom the law is made to be applicable. Consider the following illustrations.

- Example 1: "Every one has the right to life, liberty and the security of a person." [Art 3, UNDHR; 1948].

- Determine the extent of its generality

Basic Features..

- Every person on this world, hence, it is universal.

➢ Example 2: “Every person has the inviolable and inalienable right to life, the security of person and liberty.” [Article 14 of FDRE constitution].

❖ **Determine the extent of its generality**

- Every person in Ethiopia. So, the extent of its generality is national. This is less general than the first example.

Basic Features..

- Example 3: “Every Ethiopian national, without any discrimination based on colour, race, nation, nationality, sex, status, has the following rights…
- (b) On attainment of 18 years of age, to vote in accordance with the law (Article 38(1)(b) of the FDRE constitution)
- Where is the extent of its generality?

✓ Ethiopian nationals who attain 18 years of age. And hence, it is less general than the second illustration.

Basic Features..

- Example 4: Whoever intentionally spreads or transmits a communicable human disease is punishable with rigorous imprisonment not exceeding ten years." [Article 514 (1) of FDRE Criminal Code].
- Where is the extent of its generality?
- This law is made to be applicable only on a person who commits the crime.

Basic Features..

- Example 4: The term of office of the presidents shall be six years. No person shall be selected president for more than two terms" [Article 70(4) of FDRE constitution].

- Where is the extent of its generality?

✓ This law is applicable only to a person who becomes a president in Ethiopia. Hence, it is even less general than the third example.

Basic Features..

- Under all these illustrations, the subjects of laws are given in general terms. However, the extents of the generalities decrease from universality to an individual person.

1. Human being (More general)
2. Every person living in Ethiopian (Less general)
3. Ethiopians who attain age of majority (18yrs) Less general than
4. A person who commits the crime. (Less general)
5. A person who becomes a president in Ethiopia (less general)

Basic Features..

- Generality of the subject of the law may serve two purposes.
- **Firstly, it promotes uniformity and equality** before the law because any person falling under the group governed by the law will be equally treated under the same law.
- **Secondly, it gives relative permanence to the law.** Since it does not specify the names of the persons governed, the same law governs any person that falls in the subject on whom the law is made to be applicable.

Basic Features..

- **B. Normatively**: Law creates norms by allowing, ordering or prohibiting the social behaviour. Based on this feature, law can be classified as permissive, directive or prohibitive.

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

Basic Features..

- In most cases permissive laws use phrases like;
  - has/ have the right to
  - is/are permitted/allowed to
  - shall have the right
  - shall be entitled to
  - may
  - is/are free to

Basic Features..

- Example; 1**. "Every person is free to think and to express his idea**." [Article 14 of The 1960 Civil Code of Ethiopia].

❖The human conduct to think and to express ideas is permitted by this law. Therefore, it is a permissive law.

Basic Features..

- **Example 2: Accused persons *have the right to* be informed with sufficient particulars of charge brought against them and to be given the charge in writing** (Article 20/2/ of FDRE Constitution)
- The phrase "have the right to" shows that the subject is given the right or permitted to get the charge in writing and to be informed its particulars. Hence, **it is permissive law.**

Basic Features..

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

Basic Features..

- Directive law usually uses phrases like:

- must
- shall
- has/have the obligation
- is/are obliged to
- is/are ordered to
- shall have the obligation/duty

Basic Features..

- Example 1: **“The debtor shall personally carry out his obligations under the contract where this is essential to the creditor or has been expressly agreed.”** [Civ. C. Art. 1740(1)].
- The phrase “Shall carryout” in this law shows that the contracting party, the debtor, is directed, ordered or commanded by the law as it is provided. Therefore, this law is directive law.

Basic Features..

- **Prohibitive Law:** Prohibitive law discourages the subject from doing the act required not to be done.
- Should the subject does the act against the prohibition, an evil follows as the consequence of the violation.
- All criminal code provisions are prohibitive laws.

Basic Features..

- Prohibitive laws usually use phrases like:

- must not;
- shall not;
- should not;
- no one shall/should;
- no person shall/should;
- may not;
- is/are not permitted/allowed;
- is/are prohibited;
- is/are punishable; and
- is a crime.

Basic Features..

- **Example 1:** Any unmarried person who marries another he knows to be tied by the bond of an existing marriage is punishable with simple imprisonment." [Article 650(2) of the 2004 Criminal Code of Ethiopia.

Basic Features..

- Example 2: Whoever intentionally spreads or transmits a communicable human disease is punishable with rigorous imprisonment not exceeding ten years." [Article 514 (1) of FDRE Criminal Code].

Basic Features..

C. Sanction: **IT** is a penalty or coercive measure that results from failure to comply a law.

- Each and every member of a society is required to follow the law.
- Where there is violation the law sanction would follow.

Basic Features..

- Sanction will make the wrong doer to think that s/he made a fault and s/he should correct it.
- ❖Objectives of sanction from criminal law perspective;
- Deterrence, rehabilitation, incapacitation

Theories of Law

- **1. Natural Law Theory**

➢ According to natural law theory, all people have inherent rights, conferred not by act of legislation but by "God, nature, or reason

➢ They are of the view that law can be deduced by man from reason as to what is right or wrong.

Theories… Cnt'd

- According to proponents of this theory; There are two types of laws that govern social relations
- One is positive/conventional law which is made by a state/human beings and is operative only within the political jurisdiction of the concerned state
- And the other one is the natural law which is universal and not made by human beings and such laws do not vary from place to place and from time to time.

Theories… Cnt’d

- Natural law theory presupposes that the legitimacy of conventional, or positive, law derives from natural law; and whenever it conflicts with natural law, conventional law loses its legitimacy and should be changed

Theories… Cnt'd

- **Influence of the theory**
  - The Romans used it to develop their laws as *jus civile*, laws governing roman citizens, and *jus gentium*, laws governing all their colonies and foreigners.
  - Dictatorship of Catholic Pope in Europe during the middle age
  - Rousseau's teachings of individual's right to equality, life, liberty, and security were based on natural law
  - How about the 1931 and 1955 constitution??

Theories… Cnt’d

- **Criticism**
  - Unless natural law is promulgated as a law, it does not carry the force of law and would not be enforceable. At best, it would be considered as a moral rule.

Theories... Cnt'd

- **2. Positivist theory of Law**
- It has the belief that law is the rule made and enforced by the sovereign body of the state and there is no need to use reason, morality, or justice to determine the validity of law.
- Law is a rules made by the sovereign irrespective of any other considerations.
- According to this theory there can be no higher law than a nation's positive law.
- The followers of this theory include Austin, Bentham and H.L.A Hart.

Theories… Cnt’d

- According to proponent of this theory, Law has three elements in it
- These are
- ***Command***: rule given by the sovereign to the subjects or people under the rule of the sovereign.
- ***Sovereign***: refers to a person or a group of persons demanding obedience in the state
- ***Sanction***: Sanction is the evil that follows violations of the rule.

Theories… Cnt’d

- **Criticism**
  - **All laws are not commands:** (Ex. Law of Family, Law of Contract) The law concerning marriage, for example, never commands us to marry, the law does not command us to make contracts,
  - **Law is defined in relation to state.** However, Law predate state and it can exit in the absence of state. For example, primitive laws

Theories... Cnt'd

- **Law is not always obeyed because of sanction.** Sometimes the law is obeyed without sanction
- **It is superficial to regard the command** of the sovereign as the real source of the validity of law.

Theories… Cnt’d

- **3. The Marxist theory of law**
- Private property is considered as the base for the coming into existence of law and state.
- Property as the cause for creation of classes in the society
- Those who have the means of production can exploit those who do not have these means by making laws to protect the private property.

Theories… Cnt'd

- So, according to Marxist theory law is an instrument to protect private property
- The proponents of this theory claim that there was neither law nor state in primitive society for there was no private property.

Theories… Cnt'd

- **4. Realist theory of law**

- Law is what the judge decides in court.
- According to this theory, rules not put to use to solve practical cases are not laws but merely existing as dead words and these dead words of law get life only when applied in reality.
- It is the decision given by the judge but not the legislators that is considered as law
- This theory has its basis in the common law legal system.

Functions of Law

- Modern sense about its function? : Law as a means than an end in itself
- What is that end? = Social Justice
- Most scholars agree on the function of law in securing justice

Functions of Law

- According to Salmond“ law is a body of principles recognized and applied by the State in the administration of justice.”
- Hobbes and Lock“The end of law is to preserve or enlarge freedom and liberty.”.

Functions of Law

- According to Kant, the aim of law is the adjustment of one's freedom to those of other members of the community.
- For Bentham the purpose of law is maximization of the happiness of the greatest number of the members of the community.
- For Holland, the purpose of law is to ensure the well-being of the society

Functions of Law

- According to Roscoe Pound the followings are some of the major functions of law.

- To maintain of law and order in society;
- To ensure maximum freedom of individuals;
- To satisfy the basic needs of the people

Functions of Law

- The main objective of the law? **ensure justice!**
- Distributive Vs Corrective Justice.

- **Distributive justice:** It seeks to ensure fair distribution of social benefits and burden among the members of the community**.**
- **Corrective justice:** It seeks to remedy the wrong. Thus if a person wrongfully takes possession of another's property, the court shall direct the former to restore it to the latter.

Functions of Law

- **A. Social Control:** members of the society may have different social values, various behaviours and interests.
- These social values, various behaviours and interests must be controlled
  - How law control them?
    - It clearly specifies rules and norms that are essential for the society and punishes deviant behaviour

Functions…

- The legal system carries out many rules of social control.
- Police, prosecutor, courts, prison administration

Functions…

- **B. Dispute Settlement:** Disputes are unavoidable in the life of society and it is the role of the law to settle disputes.
- Disagreements that are justiceable will be resolved by law in court or out of court using alternative dispute settlement mechanisms

Functions…

- **C. Social Change:** Law enables us to have purposive, planned, and directed social change.

The Difference between Law and Other Social Norms

- **What is Norm?** " It is a model or standard accepted (voluntarily or involuntarily) by society or other large group, against which society judges someone or something (Black's Law Dictionary)
- Law is a social norm but not the only one. There are also other values of normative significance in a society. These may include ethics, morality, culture, religion, and e.tc...

The Difference between Law and

- The difference between law and other social norms

✓ **Law is backed by a strong sanction of the state and would be institutionally enforced** but other social norms lack such external and effective enforcement mechanism.

✓ **In scope and application, law enjoys uniform and nationwide application**. But other social norms are peculiar to particular groups, and therefore, suffer from extremely localized (restricted) application

The Difference between Law and

- **Law originates from a centrally established and clearly defined institutional framework**. Non-legal norms, on the other hand, do not normally have an easily traceable institutional origin for they are not made in an organized way. They come into existence through a practice by a concerned group over a relatively longer time in a scattered and uncentralized manner.

The Difference between Law and

- **Law would be exhaustively proclaimed (mostly written) and sufficiently clear.** Normative rules of ethics, morality, or religion are, on the other hand, barely exhaustive and known for their manifest lack of clarity.

Relationship between other social Norms and the Law

A. Some social norms stand as the fundamental basis for the ideal set of laws
B. Both are normative
C. Both aim at uplifting moral standards of the people.

Control Questions II

- 1. Define ethics
- 2. Define morality
- 3. Explain the;

- Differences between ethics and morality
- Similarities between ethics and morality
- Differences between law and ethics
- Similarities between law and ethics
- Differences between law and morality
- Similarities between law and morality

Reading Assignment: The relationship between law and state

Major legal systems of the world

- What is legal system?

- System of **legal process**, **legal rules**, **legal institutions**, **legal profession**, **legal principles**
- It exists and is identified with its content and structure with desirable autonomy in any society for its objectives.

Major legal systems

- The legal ‘system’ describes the law and the machinery provided for adjudication and implementation.

Major legal systems of the world

- Anglo-American legal system
- The Civil law legal system
- Socialist legal system

Common Law Legal System (Anglo-American Legal System)

- A system of law that is originated from the judgments of judges.
- The system has its roots in developments in England in the 11th century.
- In common law systems, legal principles are to be found in the decisions of judges adjudicating in individual cases.

- The common law systems operate on the basis of ‘binding precedent’ so that judges in a particular case must follow the decisions of judges in earlier similar cases
- These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and law reports.

- The precedents to be applied in the decision of each new case are determined by the presiding judge

Key features

- No written or codified law
- Judicial decisions are binding and decisions of the highest court can only be overturned by the same court or through legislation

Civil Law
(Continental Legal System)

- It is a system of law whereby the rules and principles intended to govern the behaviours of the society are given by the Parliament (the legislature).
- The origin of ‘Continental Legal System’ can be traced to the old age Roman Empire of the 5th century A.D during whose time many rules and regulations were compiled and were called ‘Code’.

- A key distinguishing feature of civil law is that it is a ‘codified’ system.
- Jurisdictions with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure and the appropriate punishment for each offence.

- In a civil law system, the judge’s role is to establish the facts of the case and to apply the provisions of the applicable code.
- The judge’s decision is less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes.

Key features

- Codified system of law
- Only legislative enactments are considered binding for all
- Little scope for judge-made law, although judges generally follow precedent
- There are constitutional courts that can nullify laws and the decisions of which are binding.

Common Law Vs Civil Law

- **Law Makers**
- Common Law System: The main creators of the common law are the judiciary. While deciding cases, judges lay down the law.
- Civil-law systems: the law is made by the legislative branch through formal law-making process
- **Legislation**
- Common law System: Basic principles are not enacted and rules are found in official fact patterns & decisions of prior cases
- Civil law system: rules are found in codified texts

❑ Precedent

- Civil law system: decisions in individual cases and the opinions handed down by courts in particular lawsuits never have the force of law.
- Common-law system: the judgments rendered by the High Courts and Supreme Court (or the Superior Courts) enjoy authority and powerful position. Those judgments have to be obeyed by the lower Courts and Tribunals in a similar case as the decisions of higher courts enjoy authoritative power in law.

- **Fact**:
  - Common law system: Facts are gathered by the Jury
  - Civil-law systems: The task of fact finding is left to a professional judge.

Structure:

- In common-law countries: The legal system is not organized in a coherent and clear structure. Its development tends to be incremental and pragmatic, and it is not easy for the civil lawyer to approach.
- In Civil Law Countries: Civil lawyers lay great emphasis on system and structure. Furthermore, they tend to follow similar patterns in their organization of legal topics, and once these are understood it is relatively simple to locate the law on any given topic.

Chapter II
Sources of Law

- Source of Law?
- No common definition about the term

❑ Definition of source of law by various scholars

❖ **C.K Allen** *" Agencies through which the rule of conduct acquire the character of law by becoming definite, uniform and compulsory"*

- **Oppenheim** “the name for historical fact out of which the rules of conduct came in to existence and acquire legal force”
- **Keeton** “ The material out of which is eventually fashioned through the activity of judges”
- Generally source of law refers to the origin from which rules of human conduct came in to existence

- **Sources??** from where law or the binding rules of human conduct originate.

❑ **From where (Source)??** See the following claims

- **Austin** considers sovereign as the source of law
- **Savigny and Henry Maine** consider custom as the most important source of law
- **Natural law school** considers nature and human reason as the source of law,
- **Theologians** consider the religious scripts as sources of law

Types of sources

- **Formal Vs Material Sources of Law**

- **Formal Source of Law:** It is a source from which law derives its validity and force
- It is the will of the State which is express through statutes and judicial decisions.
- A source which confers binding authority on a rule and converts the

Material sources of law

- The material sources of law are those which give the matter or content of law.
- Material sources deal with the substance, elements or constituent material of law.
- Material sources of law tell us what is contained in the law.
- Sources where we can get information about the law

- **Material sources can be;**
  - *Legal material sources*
  - *Historical material sources*

What are historical sources?

- Sources that express the history or evolution of law and the circumstances through which it attained the form of law.
- These sources are un-authoritative, and have only persuasive value.
- Historical Sources may become legal if they are recognized by law.

What are legal material sources?

- Those Sources which are the instruments or organs of the State by which legal rules are created.
- They are binding (Have authoritative value)
- Legal material sources can be; Custom, Legislations, International Agreement, Decisions of courts (Precedents)

Custom as a source of Law

What is Custom?

- “A continuing course of conduct which by the acquiescence or express approval of the community observing it, has come to be regarded as fixing the norm of conduct for members as society.”

- “It is rules of human action, established by usage and regarded as legally binding by those to whom the rules are applicable, which are adopted by court and applied as a source of law because they are generally followed by the political society” **Prof. Keeton**

Requirements for custom to be recognized as a law

- **Reasonableness:** It should not be against the principles of justice, equity and good conscience.
- **Consistency:** It should be in harmony with the law of the land (Morality and legality). If not? Null and void
- **Continuity:** Must have been practiced for a very long time
- **Certainty:** The existence and continuity of custom must be proved beyond doubt

The place of custom under Ethiopian Laws

- Any law or customary practice that contravenes the FDRE Constitution shall be of no effect (Art 9(1) of the FDRE Constitution).
- There are a number of customary practice recognized under various Ethiopian laws (Ex on family, dispute resolution.. e.t.c..)

Religion as a source of law

- Religion contributed significant share to the growth of legal system in most part of the world (Ex. Ancient Greece and Roman Laws)
- **Islamic law (Sharia):** A religious law forming part of Islamic tradition
- **Sources of Sheria:** Qura'an and Hadith (Sunnah), Qiyas (Analogy) and Ijma (Consensus)

- **Influence on secular law:** Official rule in most middle east countries (Ex. Saudi Arabia) and some part of far east and Africa
- **Scope of Sheria Law:** Almost all norms that regulate human conducts (Rules on Crime and punishment, Marriage, Succession, Contract... e.t.c)

Christianity

- It served as an important source of many modern laws
- In Ethiopia: Major source of Fithanegest
- It is a literal translation of a well-known Coptic "nomocanon" originally written in Arabic,
- The author of the **nomocanon** is the Coptic Christian scholar, **(*saff abul ibn al Assal*)** who lived during the first half of the 13th century

The place of religious laws in Ethiopia

- **The FDRE Constitution:** It permits the adjudication of family and private disputes according to the rules of religion(Art. 34(5) of the Constitution).
- It is also recognized that marriage concluded pursuant to the rules of religion as one type of marriage under our law (Art. 579 of the Civil Code and Art. 3 and 26 of RFC).

- Some principles of Christianity are incorporated under Ethiopian laws
- ✓ Civil Code: On family: one to one marriage
- ✓ Criminal code: Prohibition of bigamy (See art. 650)
- The Law recognized Sharia courts
- The courts have jurisdiction any question regarding marriage, divorce, maintenance, guardianship of minors and family relations. (Article 4 of Sheria courts establishment proclamation)

Legislations as a source of Law

- Legislation is that source of law, which consists in the declaration of legal rules by competent authority.
- A law passed by the supreme or subordinate legislatures.

Why legislation as a source?

- It involves lying down of legal rules by the legislatures, which the State recognises as law.
- It has the force and authority of the State.

Types of legislations

- **Primary legislations:** laws that are directly enacted by the sovereign
- **Secondary legislations:** laws made by authorities sup ordinate to the maker of primary legislations

Federal Vs Regional Laws

- The FDRE constitution allocate legislative power to the federal and regional governments

❑ Federal laws Art. 55

- Criminal law
- Federal family law

❑ Regional laws Art. 52

- Regional family law

Precedent as a source of Law

- Judicial precedent refers to previously decided judgments of the superior courts, which judges are bound to follow.
- The doctrine of *stare decisis*
- *Stare decisis??* Literally it means “let the decision stand in its rightful place.”
- According to this doctrine, when a decision of higher courts contains a new principle, it is binding on subordinates courts and has persuasive authority for equivalent courts.

Principles of stare decisis

- Each court is absolutely bound by the decisions of the courts above it.
- To a certain extent, higher courts are bound by their own decisions.
- The decision of one High Court is not binding on another High Court and it has only a persuasive value.
- A single Bench Judge is bound by the decision of a Division Bench of the same High Court but a Division Bench is not bound to follow a decision of a Single Bench (judge) of the same High Court.

Decisions of courts as a source of law in Ethiopia

- The Supreme Court Cassation division is empowered to render a decision that is binding on federal as well as regional council at all levels [Proc. No. 454/2005, Art 4].
- A decision to be binding must be

➢ It must be rendered by the cassation division of the Supreme Court;

➢ The members of judges must not be less than five;

- The decision should be with regard to interpretation of laws
- In interpreting laws, the Supreme Court cassation division will create rules (laws).
- Generally, the decision of the cassation division is a source of laws in Ethiopia so long as the requirements are fulfilled.

International agreements as a source of law

- International agreements?? Treaties
- Treaties?? BIT or MT
- The place of international agreement under Ethiopian system
- All agreements ratified by Ethiopia are integral parts of law of the land (FDRE constitution)

Constitution as a source of law

- Constitution is a supreme law of the land and principal legal framework of a country
- Its validity is accredited to the highest possible (supreme) authority of a country
- The making of constitution is not as simple as the making of ordinary legislations.
- It provides umbrella legal framework

Constitution as a source…

- **FDRE constitution as a source of Law**

- **As a source of Human right Laws**: Provisions on Human Rights enshrined under the constitution: Chapter III **(See artcle.13 - 44)**
- **As a source of Family Law**: equality of both sexes with regard to ‘marital, personal and family rights’ **(See article 34)**
- **As a source of criminal Law: Example;** arrested persons have the right to be released on bail (See article 19(6)). Discretion is given to courts based on specific laws

Constitution as a source…

- Detail provisions are provided under relevant criminal procedure laws. For instance, See;

➢ Article 63 – 79 of criminal procedure Code

➢ Articles 4 and 5 of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No 434/2005.

Constitution as a source…

- As per art. 4(4) of the proclamation, the court may not allow a person on bail where the suspect or the accused, if released on bail,
  - is likely to abscond;
  - is likely to tamper with evidence or commit other offences (Art 5 of the proclamation)

Formal Source

- It is the will of state manifested in statutes or decisions of the courts of law.
- It includes law making authority, procedure through which law shall pass before it comes into existence and constitutional validity.

❑ **Elements of formal sources**: Sovereignty, procedural values, and constitutional values of a law that derives its validity

- **1.Sovereignty:** Supremacy of state to make laws,

- **2.Procedural validity**: There are procedures a particular draft of law should pass through in order to get its binding force.
- **Basic law making process:** Initiation-deliberation -approval-publication
- **In the Ethiopian Context?**

- **3.Substantive validity**: Every law shall be in harmony with the rules and principles enshrined under the Constitution. If not?? It has no effect
- See Article 9(1) of the Constitution: A law that contravenes the Constitution shall be of no effect.

Chapter Three
Classification of Laws

Chapter Three
Classifications of Laws

- **Classification?** A shaping and developing of traditional systematic conceptions and traditional systematic categories in order to organize the body of legal precepts.

❑ **Importance of classification**

- Laws can be stated effectively with a minimum of repetition, over lapping and potential conflict;
- Laws can be administered effectively;
- Laws can be taught effectively, and developed effectively for new situations

Classifications…

- **Laws can be classified as**
  - Public and Private
  - International and National
  - Substantive and Procedural
  - Civil and Criminal

Public Vs Private Laws

- **A. Public law:** Body of law directly concerned with public rights and obligations.
- It regulates the acts of persons who act in the general interest; and specifically, it regulate the relations between

➢ Individuals and state

➢ Different institutions within state

➢ Different branches of government

Public Vs Private…

- Main areas of public law: Constitutional law, Administrative Law, Criminal Law
- **Constitutional Law:** Supreme law the land which defines the organization of the state, its fundamental rules, mode of government, and the attributions of its political organs, their limits and their relations.
- Basic feature of constitution?

Public Vs Private…

- **Administrative Law:** A body of law which regulates the operation of the executive power in all its degrees, beginning with cabinet ministers and descending to its most humble representatives
- It deals with the decision making of administrative agencies that are part of executive branches of the government

Public Vs Private…

- **Criminal Law:** It is a body of law which deals with behavior that is or can be construed as an offense against the public, society or the state
- It defines criminal offences, regulate the apprehension, charging, and trial of suspects, and prescribe penalties and modes of treatments applicable to arrested persons

Public Vs Private…

B. Private law: Body of law regulating the rights and duties existing between private persons.

- Examples of private law include: contract law, sales law, property law, agency law, insurance law etc.…

International Vs National Laws

- **A. International Law**: A set of rules and standards generally recognized as binding between nations
- It establishes normative guideline and a common conceptual framework for states across a broad range of domains, including war, diplomacy, trade, and human rights

International Vs National Laws

- “the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other.” (Oppenheim)
- It is a species of conventional law and has its source in international agreements.
- **Scholars such as John Austin consider** international law as positive morality and do not agree that it is law properly so-called. Why?

International Vs National Laws

- It is not enforced by a political sovereign authority, it is not law.

Criticism against international Law

- ✓ It has no effective authority to enforce its rules
- ✓ The sanctions are very weak
- ✓ It has failed to maintain peace and order in the world

International Vs National Laws

- International law is classified into **public international law** and **private international law.**

- **Public international law:** It regulates the relation between states. For example the relations between Ethiopia and Sudan are governed by public international law.
- Examples: UN Charter, UDHR, International Law of Sea, International Law of Aviation.....

International Vs National Laws

- **Private international law**: It governs the relations between individuals of different nationalities.
- Examples: EU contract law, CISG....

International Vs National Laws

- **B. National Law**: is a law that pertains to a particular nation
- Application of national law is territorial
- Examples: All domestic laws of a given jurisdictions fall within this category

Substantive Vs Procedural Laws

- **A. Substantive Law***:* General principles and detailed rules defining legal rights and duties.
- Examples of substantive rules;
- Definition of minor: “a person below the age of legal competence. For most purposes, in most states, minority ends at age 18.”
- One cannot pass a better right than he or she has.

Substantive Vs Procedural Laws

- Civil Code, Criminal Code, and Commercial Codes are examples of substantive laws

Substantive Vs Procedural Laws

- **B. Procedural law:** General principles and detailed rules that define the methods of administering the substantive law
- Examples: Rules of evidence such as the hearsay rule
- Method of filing a lawsuit such as the requirement of a complaint and service of summons

Civil Vs Criminal Laws

- **A. Criminal law**: Body of law dealing with crimes and their punishment.
- It concerns duties which individuals owe to the state. Usually leads to punishment

CHAPTER IV
THE MAKING AND REPEAL OF LAWS

What is law making?

- It is the process of establishing a new rule of law on a particular subject.
- It is a process during which an idea of a law is transformed into a law.
- Usually, it involves steps such as Initiation, Deliberation, Adoption, and Promulgation

1. Initiation of Bill

- It is the stage at which the legislative machinery would be set in motion and the whole legislative processes begin.
- It include submission of draft laws for consideration by the legislator for enactment.
- **Who initiate?:** It depends on the form of a government in particular country (Presidential, Parliamentary)

- **In Parliamentary system:** Both the legislator and the executive may initiate bills
- Separation of power?? Not really
- **In presidential system:** The executive has very slim power to initiate bills
- There is clear separation of power between the law maker and the executive, and hence, Bills are usually initiated by the legislator

- Initiation by bodies other than the executive and legislative organs
- **Initiation by Presidium** in Albania, Hungary and the U.S.S.R,
- **Initiation by the Council of State** in Poland and Rumania
- **Initiation by the Presidential Bureau** in Czechoslovakia

- **Initiation by the national council on the economy and on labour** in Italy
- **Initiation by Church** in United Kingdom, Finland and Sweden

2. Submission of the bill to the legislator

- Screening before distribution of the bill to members of the law maker

❖Experience of some countries

- ***United Arab Republic:*** bills must first be submitted to the committee whose duty is to prepare proposals and decide goes forward.
- ***France:*** bills shall be examined by talented individual members before publication
- ***Yugoslavia:*** before any debate takes place, every bill shall be checked by the Assembly's legislative and judicial committee

- 3. **The parliament referrers the bill to committees**
  - ***Italy:*** Chambers may entrust to committees not merely the examination of bills, but also their final enactment
  - ***Senegal:*** Committees are authorized to make law when this power is expressly delegated to them by the Assembly

- In several countries Parliament may decide to debate a bill in the House without referring it to a committee.
- For instance; if bills are urgently needed.

- **4. Deliberation**
- **5.Promulgation**: The passing of a bill by the legislature.
  - Promulgation authenticates a bill as a law and gives it binding force.

COMPARATIVE STUDY OF LAW MAKING PROCESS IN ETHIOPIA

1. HAILE SELASSIE'S ERA

- There were four major types of law (Orders, Proclamations, Decrees and Legal Notices)
- Orders, Proclamations and Decrees are Primary Legislation
- ***Order:*** A prerogative of the emperor (Article 27 of the Constitution of 1955)
- **Purpose of Order:** to determine the organization, powers and duties of all ministries, executive departments and the administration of the government.

HAILE SELASSIE..

- **Proclamation:** It is passed by Parliament and approved by the Emperor
- **Decree:** Primary legislation promulgated by the emperor
- Condition for Decree? “in cases of emergency that arise when the Chambers are not sitting”.
- **Legal Notice:** It is subordinate legislation issued by various government officials
- Purpose of legal notice: it is used mainly for the publication of Rules and Regulations, and Municipal Law

HAILE SELASSIE..

- **Publication of Laws**

- The Negarit Gazata is the official legislative, executive and administrative Law Reporter of Ethiopia.
- First issued on March 30, 1942 (Written in Amharic & English).
- Occasionally, a law published in the Negarit Gazata contained a specific provision naming a later date at which time the law will become effective.

HAILE SELASSIE..

- Proclamations, Decrees, Orders and Legal Notices used to appear in the Negarit Gazeta under their generic name, number and year they were so cited
- For example:

➢ *Decree No. 42 of 1962*

➢ *Legal Notice No 257 of 1962*

- Laws were published in the Negarit Gazeta in strict chronological order

HAILE SELASSIE..

- **Law making under The 1955 constitution**

- There were two types of laws (Primary and subordinate) made at two different levels.
- **Primary legislations (Proclamation, Decrees and Order),** which were the result of the legislative activities of the supreme organs of state power of the Empire
- The sources of primary legislations were the Emperor and Parliament.

HAILE SELASSIE..

- The Emperor used to be constitutionally empowered to issue **Orders and Decrees**
- The Parliament has the authority to issue **Proclamations**
- **Subordinate legislations,** which were enacted by organs of authority, delegated to them by the supreme organs of state power.

HAILE SELASSIE..

Initiation of order

- By emperor and by specific government body
- **1.By emperor:** The Emperor himself could unilaterally initiate and subsequently issue them whenever he saw it fit to do so.
- **2.By government body:** A governmental body would submit draft bill to the Council of Ministers
- If approved, it would passes to the Emperor for enactment or shelving as the case may be.

HAILE SELASSIE..

- **Initiation of proclamation (By the two chambers of parliament and by government body)**
- **1.By the two chambers of parliament**

o Must be approved by majority approval in the Chamber it was initiated in

o It would be transferred to the other chamber where it was again subjected to discussions and a vote.

o After approval in the second chamber, it shall be submitted to the Emperor for approval

HAILE SELASSIE..

- **2.By government body interested in having a law passed**
  - Draft bill shall be submitted to the council of Ministers
  - From council of Ministers it shall be submitted to the Emperor in the hands of the Prime Minister.
  - If the Emperor agrees with the proposed law, he sends it to any of the two Chambers of the Parliament
  - If approved by majority vote of the Chambers, the draft bill shall be forwarded to the Emperor for final approval and promulgation.

HAILE SELASSIE..

- **Initiation of Decrees**
  - Decrees were legal prerogative of the Emperor
  - Used to be enacted only during the temporary absence of the Parliament (presumably, when it was out of session during the summer).
- Concluding remarks: Considering the whole law-making process it is often said that all laws in pre-revolution Ethiopia were in effect made by the Emperor.

THE DERG'S ERA

- There was only one type of primary legislation (the proclamation that was enacted by the congress)
- The congress of the PMAC is the highest organ of state power and it was also the only source of the sole primary legislation of the time (i.e., the proclamation).

THE DERG'S…

- **Initiation of proclamation**
  - By the congress of the PMAC
  - By governmental organs
    - It shall be submitted to the Council of Ministers.
    - If the draft meets the approval of the Council of Ministers, it passes to the PMAC's Congress for deliberation, voting and enactment.

THE DERG'S…

- **How about Subordinate legislations**
- They went under the general name of Legal Notice
- Drafted and issued at the level of the governmental body authorized to issue them

Law Making under the PDRE (Peoples Democratic Republic of Ethiopia)

- **Two types of laws:** Primary and Subordinate laws
- **Primary Laws:** laws issued by the highest organ of state power of PDRE (the National Shengo, the Council of State and the President of the Republic)
  - These Primary Laws were: *Proclamation, Decree, Special Decree, Presidential Decree, Special Presidential Decree*

Law Making under the PDRE..

- Proclamation: by the National Shengo. (Art 63(1)EDPRE Constitution)
- Decrees: by the council of state (to facilitate the implementation of the powers and duties entrusted to it by the Constitution (Art. 82/3/).
- Special Decree: The power of the council of state (in case when necessary and compelling circumstances arise)

Law Making under the PDRE..

- Presidential Decree: By the President; to facilitate the implementation of the powers and duties entrusted upon him/her by the Constitution (Art. 86(4) of PDRE Const.).
- Special Presidential Decree: By the president (under compelling circumstances when the National Shengo is not in session) subject for approval of the National Shengo

Law Making under the PDRE..

- **Initiation of Proclamations**

- The Council of State
- The President of the Republic
- Commissions of the National Shengo
- Members of the National Shengo
- The Council of Ministers
- The Supreme Court
- The Prosecutor General
- Shengos of higher administrative and autonomous regions
- Mass organizations through their national organs,

Law Making under the PDRE..

- Initiation of Decrees (Council of state)
- Initiation of Special Decrees (Council of state)
- Initiation of Presidential Decrees (The President)
- Initiation of Special Presidential Decrees (By the president)

Law Making under the PDRE..

- **Subordinate Laws:** Laws issued by organs of both state and administrative power (outside supreme organs of state) by virtue of power delegated authority from the National Shengo.
  - These laws were; Directives and Regulations

LAW MAKING IN THE PRESENT DAY ETHIOPIA

- **Preliminary issues;**

- The existence of two layers of Governments; Federal and Regional Governments

- Power of Federal Government (See Art. 51 Of the Constitution)
- Power of Regional Governments (See Art. 52 Of the Constitution)

- **Power to Make Laws:** Federal Vs Regional
  - **Legislative Power of Federal Government (See Art.55 Of the Constitution)**

- The House of Peoples' Representatives has the power to enact laws (Proclamations) in the following sectors

✓ Natural resources of the Federal State;

✓ Inter-region and foreign trade law;

✓ Federal transportation laws;

- ✓ Electoral laws and other laws with regard to the enforcement of political rights;
- ✓ Nationality and other laws;
- ✓ Standard and calendar;
- ✓ Patent and copyright laws.
- ❖ The HPR has the power to enact the following Codes (see Art. 55(3), (4) and (5), (6) of FDRE Constitution)
- ✓ Labour Code
- ✓ Commercial Code
- ✓ Criminal Code

Legislative Power of Regional Governments

- ✓ All powers not given expressly to the Federal government alone, or concurrently to the Federal government and the State are reserved to the State (See Art. 52(1) of the Constitution)
- Laws on State civil service (See Art.52(2(f)) of the constitution)
- Penal Laws on matters that are not specifically covered by the federal government (Art. 55(5) of the constitution)

❑ Power of the Executive to enact Laws

- Council of ministers have the power to enact **regulations** (See Art. 77(3) of the constitution)
  - *The power of the council of ministers is delegated from the HPR*
- The Council of Ministers has also the power to enact **directives** (See Art.74(5) of the Constitution)

Procedures of law making (Current Ethiopia)

- Initiation, Deliberation, Adoption, Publication
- **A. Initiation of Laws; Who Initiate?**
  - **Who Initiate Laws?** The Legislature and Executive
    - **Legislature:** Members of the HPR, Committees of the House, Parliamentary Groups
    - **Executive:** The council of ministers (See Art. 77(11) FDRE Constitution)
    - **Each ministry can also initiate laws**

Procedural Requirements for Initiating Laws

General requirements

- Any draft law be submitted to the HPR should be accompanied by an explanation of its importance, having a document explaining the potential impact of the draft on government budget (Art. 8 of Reg. No 3/2006)
- All draft laws should be submitted to the HPR through the Speaker of the House. Article 50(1) (4), (6) and (7) of the Regulation

Initiation

Specific requirements

- **1. Initiation by Members of the Parliament:**
- When members of the House initiate laws, these drafts should be accompanied by the signature of members.
- **2.Initiation by committees of “Parliament Groups”**
- Draft bill shall be been submitted to the parliament by the chairperson of the committee

Initiation

- **3. Initiation by the executive**

- Each ministry requests with a written letter to the Council of Ministers for the specific legislation that the ministry tends to propose
- The line Ministry prepares the draft policy with stake holders; different governmental bodies and expertise invited to enrich the policy; and all the minutes of the meeting reduced in the report form.
- The line Ministry sends the draft which it feels final to the Council of ministers.

Initiation

- The policy unit at Council of Ministers scrutinizes the draft policy and refers the matter to standing committee of the Council of Ministers for further scrutiny
- If the Standing Committee of the Council of Ministers agrees with the policy it refers the bill to Council of ministers for approval
- If the Council of Ministers is dissatisfied with the bill it returns the same to the line Ministry to incorporate the issues it feels sound. But if it is satisfied, it forwards to the parliament

Deliberation

- After submission of draft Bill to HPRs, the bill need to pass three stages
  - **First Reading**
  - **Second Reading**
  - **Third Reading**

Deliberation

- **First Reading:** The process of reading and general discussion held on fundamental concepts of a draft law submitted to the house before it gets endorsed, or referred to the pertinent standing committee for further inspection (Art.2 (18) of the Regulation)

➢ At this stage, the body that has initiated the law is required to give *"… a brief explanation as to the content and purpose of the draft law"*.

Deliberation

- After the initiator of the law has explained what the purpose and content of the law is, the House will conduct a general debate on the content and the purpose of the law.
- At this stage there will not be a discussion on the specific provisions of the law.
- After the end of the general debate the House can directly proceed to a “second reading”, or it can refer the matter to one or more of Parliamentary Committees

Deliberation

- **The House shall have the following Standing Committees**
- the Capacity Building Affairs;
- the Trade and Industry Affairs;
- the Rural Development Affairs;
- the Natural Resources and Environmental protection Affairs;
- the Infrastructure Development Affairs;
- the Budget and Finance Affairs;
- the Legal and Administrative Affairs;
- the Foreign, Defence and Security Affairs;
- the Women’s Affairs;
- the Information and Cultural Affairs;
- the Social Affairs; and
- the Pastoralists Affairs.

Deliberation

- **Second Reading:** The process of reading in which detailed discussion is conducted on the draft law (Art. 2(19) of the Regulation)
- The reports and recommendations of committees to which a draft has been submitted will be heard as well.
- At this stage the House will have a closer look at the content of the bill.

Deliberation

- Members of the House can propose amendments to the draft law
- If the proposed amendment is approved, the house may refer the draft bill to the committee for reconsideration
- If members of the House feel that sufficient deliberation has been conducted, they should end the “second reading” by voting.

Deliberation

- **Third Reading:** It means **discussions** and the process of **giving decisions** conducted after the submission to the house of reports and recommendations, which are prepared regarding the draft law referred to by the house to a standing Committee(s) for further and extensive re-examination subsequent to the Second reading (Art. 2(20) of the Regulation)

Deliberation

- The committee(s) to which the draft law has been referred back for reconsideration shall submit to the house its final report and recommendation
- After conducting sufficient deliberation on the reports and recommendations, the house shall pass its final decision

Adoption (Approval)

- The House shall approve the draft law by vote

o Two steps of approval

- Approval article by article;
- Approval of the draft law as a whole to pass it as a law
- The draft law shall be passed by a majority vote (See Article 59(1) of the constitution)

- **What's next after approval?**

- The Speaker of the House should pass the adopted law over to the President of the Republic for signature (See Article 57 of the FDRE Constitution and 57 of the Regulation)
- The president shall sign the law submitted to him within 15 days
- If the president does not sign the law within 15 days, it (the adopted law) shall take effect without his signature

Publication

- A law approved by the HPR shall be published in Negarit Gazetta through the speaker
- Before publication the Speaker could make any necessary corrections

➢ What sort of corrections?

Publication

- **Is Publication a mandatory requirement?**
  - See Art. 57 of the Constitution ".. If the president does not sign the law within 15 days, it shall take effect without his signature" **Without publication?**
  - See (Art. 2 () of Proc. No.3/1995): All Laws of the Federal Government shall be published in the Federal Negarit Gazeta
  - Compare Art. 57 of the constitution with the proclamation
- **Effect of Publication:** All Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of Laws published in the Federal Negarit Gazeta (Art. 2 () of Proc. No.3/1995)
- What if the law is not published but approved?

Repeal of Laws