

Course: Construction Law

(CoTM452)

Chapter 1(introduction)

This part of the Course deals with general;

➔introduction to law,

➔legal systems & legal framework.

(CoTM452)

Chapter 2(Construction Law)

1. the legal Regulation of Construction Business;
2. the legal Regulation of Construction Project;

- ➔ The legal regulation of Construction Business deals with the general concepts about commercial law, forms of business organizations, how to form & operate a construction business, the requirements for licensing & registration, grounds for the liquidation of the construction business and so forth & the attached legal effects.
- ➔ The legal regulation of Construction Project deals with how to regulate the study, design, tendering, contracting, execution & financing, safety and other related aspects of same. The role of law will be treated in terms of regulation of input (like budget, land, human resources,& other inputs to the project) regulatory requirement (like environmental, permit, safety & other requirements) & relationship regulation (in terms of contractual & extra-contractual relationship) and other aspects of regulations.

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Chapter 3(Construction Contract)

1. It is introduction about the Law of Contract. The law of contract is a fundamental requirement to understand the nature, structure & effects of the construction contract.
2. The second sub-part deals with the importance of differentiating & understanding about the very concepts of project delivery systems, type of contracting, forms of contract & method of procurement, specially that of public procurement.
3. The third sub-part deals with international construction contract based on FIDIC conditions of contract and construction contract within the Ethiopian context based on the Public Procurement Agency (PPA) conditions of contract.

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Chapter 4(Construction Claims & Disputes resolution frame work)

- This part of the Course deals with the steps to be followed or the requirements to be fulfilled in submitting, processing & finalizing construction claims & the different methods & approaches in relation to construction dispute prevention & settlement.
- The Construction Project is expected to be completed within the agreed time (schedule), cost (budget), (technical) quality and environmental safety parameters. However, deviations, due to various reasons, may occur during the execution and completion phase of the Construction Project with respect to the agreed parameters. Claims, if not resolved, will, definitely arise, paving the way for disputes. Disputes, if not prevented, should be settled or resolved, amicably or by judgmental process, by consensual and/or coercive mechanisms.

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Chapter 5(Introduction to service Contract)

- Under this part the Course shall deal with some introductory concepts about the contractual arrangement & the legal effects in selecting & engaging an architect & consulting engineer based on a given professional service contract. The treatment of this part of the Course is very essential & desirable in terms of the role of the architect & the consulting engineer in terms of studying, designing & supervising or administering a construction project & contract.

Chapter 1

Introduction

Introduction to law and legal system

1. Introduction to Law

What is a law?

- **Law** is a system of rules and guidelines, usually enforced through a set of institutions. It shapes politics, economics and society in numerous ways and serves as a social mediator of relations between people.
- The Law is, a set of general statements aimed at **regulating choices** in possible **human behavior** that is defined or recognized, publicized and sanctioned or rewarded **by the State**.
- The Law generally performs its regulatory function by demanding its **subjects/citizen** to do something (**permissive**) or by ordering not to do something (**prohibitive**)
- **Legal sanctions** may come into picture where **deviations** from the Law in terms of the permissive or prohibitive provisions are committed by the **subject** or person against whom the Law is prescribed;

Nature of law:

- Law is Obligatory
 - Should be abide by the subjects
- Law is Established by Public Authority (eg. As opposed to company policies)
- Law is Sanctioned by Public Force (eg as opposed to moral rules)
 - Sanctions may be preventive or repressive (in criminal cases) or compensatory (in civil cases)
- Law is Established in Permanence for an indeterminate number of Acts or Situations
 - Permanently obligatory for the time and situation

Function of Law

- ✓ Law is a System of Social Control
- ✓ It controls the relationship between the State and its Subjects (by means of Public Law) and the relationship between the Subjects themselves (by means of Private Law)
- ✓ Law is a Method of Dispute Settlement → this is done through the Court System.
- ✓ The Law serves as a means of Social Engineering → the Law here serves as a change catalyst i.e. as a means of introducing and sustaining social transformation.

Source of law

- Custom
 - Popular (ordinary) customary law
 - Judicial custom (especially common law)
 - Contractual custom (not obligatory by itself but used in interpreting contracts)
- Legislation
 - **Constitutional;**
 - **Statutory; or**
 - **Subordinate (Non-Statutory)**

Classification of law

- **Public law** governs the relations involving the State in what concerns the **general public interest**
 - International
 - National
 - Law of procurement
 - Law of finance, etc
- **Private law** deals with
 - Relations “**of equalities**” **between persons** “private” i.e. not representing the State or its agencies (the “public” persons)
 - Certain ordinary relations with the “**public**” **legal persons** themselves (ex. In Administrative Contracts)
 - International
 - National
 - Family law;
 - Property law, etc

Forms of legal systems

- Code system

- Duties, rights, responsibilities etc are clearly articulated in the system
- 'Wrong' acts are only those specified to be so at the time of 'wrong' doing
- Punishments are only to the limit that the law specifies at the time of wrong doing

- Non-code system

- The system is open ended
- Cases are decided by juries
- Reference is made to previous similar cases in jurisdiction process
- The law is what the higher court in the country decided to be a law

Types of law

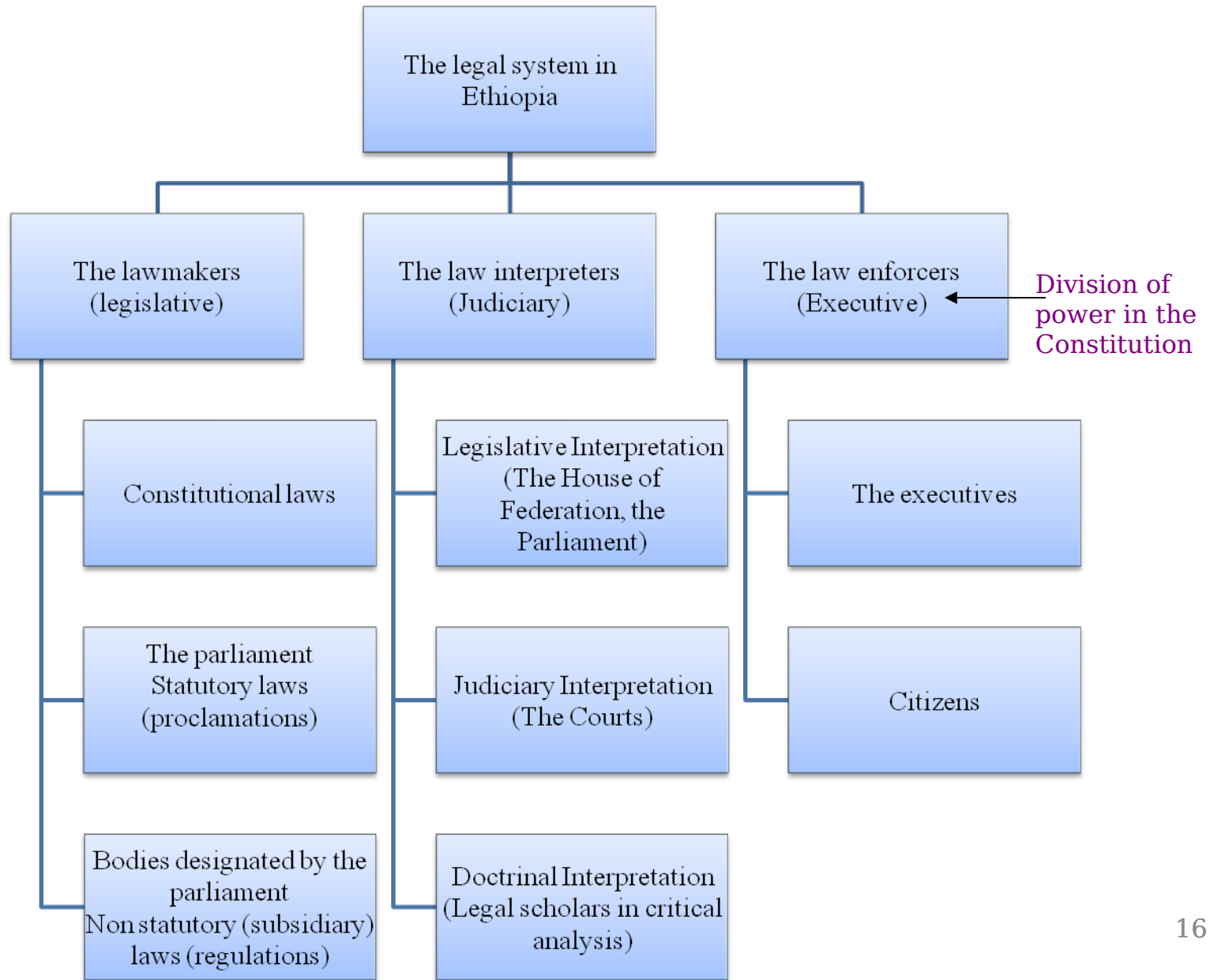
- **Substantive laws**
 - Stipulate the rights and not rights of a citizen
 - Are concerned in articulating the 'dos' and the 'don't dos'
 - ✓ Civil codes
 - ✓ Criminal codes
- **Procedural laws**
 - Concerned with mechanism that is used to enforce the substantive laws
 - Stipulate what needs to be satisfied and how not compliance with the substantive laws is to be punished
 - ✓ Civil procedural codes
 - ✓ Criminal procedural codes
- **Evidentiary laws**
 - Concerned with how and by what means the to determine existence or non-existence of a disputed fact is going to be proved.
 - Ethiopia doesn't have a separate code for it

The legal system in Ethiopia

- The constitution

- Is the supreme law of the country
- Establishes that the parliament would act on other laws (proclamations) but not on the constitution itself
- It is not interpreted by the judiciary organ; it is rather interpreted by the House of Federation.

The legal system



The principles of interpretation of laws (Contracts) (See Articles 1732-1739 of the Civil Code) :

- Where is the Law Clear;
 - No need to interpret
- Where is the Law Ambiguous;
 - Word meaning (Context)
 - Legislative (legislator's/ Contract writer's) intent
- Where is the Law Silent;
 - Interpretation may depend on extension
- Where is the Law Contradictory;
 - In such cases, hierarchy of laws may be applied
- Where is the Law Unreasonable;
 - Is there a room for a reasonable interpretation

Hierarchy of laws

- Constitutional Laws (The Constitution)
 - Is the supreme law of the land from which other laws emanate
- Statutory Laws (Proclamations, Decrees & Orders)
 - Example proclamation /2005
- Non-statutory Laws (Regulations & Legal notice)
 - Meant to further elaborate and enact up on the statutory laws;

Directives; Guidelines; By-laws; Technical Standards, etc don't enjoy the status of law but can be used as supportive legal frameworks.

Key notes in legal system

- Ignorance of the law is not an excuse
- Legal supremacy (the rule of the law must be respected by all the scope applies to)
- Scope of application of law may vary based on:
 - (Natural or legal) Persons, time, subject matter, territory
- Order of precedence:
 - Posterior Law prevails over prior Law;
 - Special Law prevails over general Law;
 - A lower Law may not contradict one of higher rank;

2.Introduction to Legal System

The two major legal systems of the world are:-

1. The Civil Law Legal System; and
2. The Common Law Legal System.

2.Introduction to Legal System

The Civil Law Legal System

- In the Civil Law Legal System:
 - The Law is enacted & repealed by the Law Maker or the Legislator or by the Parliament;
 - There is a classification of Laws in to Public Law & Private Law;
 - There is a codification of Laws;
- The sources of Law under this system, according to their importance or priority are:
 - ✓ Legislation or Statute;
 - ✓ Custom;
 - ✓ International Conventions and Treaties;
 - ✓ Legal authoritative writing;
 - ✓ Creative role of the judge (in interpreting and applying Laws);
 - ✓ Judicial decisions;

2.Introduction to Legal System

The Civil Law Legal System

- According to the Civil Law Legal System, Laws that are relevant to the Construction are:-
 - Under Public Law
 - Finance Law;
 - Procurement Law;
 - Law of Taxation;
 - Construction related Laws;
 - Environmental Law;
 - Other relevant Public Laws;
 - Under Private Law
 - ✓ Civil Law (Contract & Extra-Contractual Liability Law)
 - ✓ Commercial Law;
 - ✓ Relevant Regulations;
 - ✓ Other Relevant Laws;

Key Laws relevant to Construction

- **The Civil Code;**
 - **Especially Contract and Obligation related**
- **The Commercial Code**
 - **Law of Traders and Businesses**
 - **Law of Business Organizations;**
 - **Law of Bankruptcy & Scheme of Arrangement;**
 - **Law of Carriage & Insurance**
- **Civil Procedural Code**
- **Criminal Code**
- **Law of Finance**
- **Law of Taxation**
- **Environmental Impact Assessment Proclamation.**
- **Labor Law**
- **Procurement Laws; etc**

The Common Law Legal System

- The Common Law legal system is defined as the body of legal principles and rules of action that derive their authority solely from a society's usages and customs or from the judgments and decrees of the courts.

The main distinguishing features of the Common Law Legal System are:-

- ✓ The main Law maker is the court judge and not the legislator;
- ✓ There is no classification of Laws in to Public and Private Law;
- ✓ There is no codification of Laws;
- ✓ There is a jury trial system;

The Common Law Legal System

- Sources of Law under the Common Law Legal System, according to their importance and priority, are:-
 - ✓ Judicial decisions;
 - ✓ Equity;
 - ✓ Legislation or Statute Law;
 - ✓ Regulations & delegated or subordinate legislations;
 - ✓ International Treaties;
 - ✓ Custom;

Laws that are relevant for Construction are:-

- ✓ Common Law(Contract & Tort);
- ✓ Equity;
- ✓ Legislations (Statutes & Regulations);

- The Ethiopian Legal System & Framework

- Ethiopia follows the Civil Law Legal System;
- The main source of Law is Legislation enacted by the Legislative Body and not the Judge or Judicial Decision.
- There is a clear classification of Laws in to Public Law & Private Law;
- There is a Codification of Laws as it is evident from the Civil Code, the Commercial Code, the Criminal Code, the Maritime Code, the Civil Procedure Code & the Criminal Procedure Code.

- The following depicts the legal framework of Ethiopia.
 - The constitutional framework;
 - The statutory legal framework;
 - The non-statutory legal framework;
 - Other supportive (administrative or technical) instruments to the legal framework both to the statutory & non-statutory framework) by way of:
 - Directives;
 - Guidelines;
 - By-laws;
 - Technical Standards, if any;
 - Other instruments, if any;

Lecture 2

- Chapter 2 Construction Law
 - Construction Business
 - Construction Projects
- Chapter 3 Construction Contract

Chapter 2

Construction law

1.construction Business- Reading Assignment

2.construction projects

construction Business

Points of Focus

- The Constitutional Framework
- Definition of Trader
- *Exclusion s*
- Restrictions
- Prohibitions
- Definition of Business Organization
- Classification of Business Organizations
- Definition & Elements of Business
- Formation, Operation & Dissolution of Business

construction Projects

Points of Focus

- ❖ The Legal & Institutional Framework
 - The Constitutional Framework
 - The Public Finance Law
 - The Public Revenue
 - The Public Expenditure
 - The Public Budget
 - The Public Procurement
 - The Public Oversight
- Other Public Laws
 - Land Administration,
 - Environmental Law
 - Employment Law
 - Urban Planning Law
 - Building Law
 - Protection of Public Utility Networks
- ❖ The Contractual Relationship Framework
- ❖ The Extra-Contractual Liability Framework
 - ✓ Sources of Liability
 - ✓ Legal Pre-requisite for Liability
 - ✓ Extent of Compensation

construction Business

Constitutional Framework

- According to Article 41(1) & (2) of the Constitution :
(Economic, Social & Cultural Right):
 - ✓ Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory.
 - ✓ Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.
- Article 22 of the Commercial Code Freedom to Carry on Trade
 - ✓ Subjected to such prohibition and lawful restrictions regarding unfair competition as may be prescribed, any person or business organization has the right to carry on any trade in accordance with the provisions regulating such trade.

Definition of Trader

- According to Article 5 of the Commercial Code (Persons to be regarded as Traders)
 - Persons who professionally and for gain carry on any of the following activities shall be deemed to be traders.
- Three cumulative requirements have to be fulfilled:
 - The operation has to be professionally; (i.e. operating a given activity as a means of livelihood (Source of Revenue) in normal working time continuously)
 - It should be for gain(for profit though loss is a risk attached to the business);
 - The activity should be one which is enumerated or falls under Article 5; (is the enumeration **illustrative** or exhaustive?)
- Is the Construction Business mentioned under Article 5 of the Code? If not, how can a given person engage in Construction Business? Is it possible to freely engage in a Construction Business because the Law does not regulate it?

Exclusions

- According to certain provisions of the Commercial Code certain activities are specifically excluded from being a trading activity & the persons from being a trader.
 - Agricultural or Forestry Undertakings (Article 6);
 - Fishing (Article 8);
 - Handicraftsmen (Article 9);
- The Commercial Code does not apply on such activities, and persons as traders but any special Law may, if any.

Restrictions

- Incapable persons are restricted not to operate a trade activity by Law. Who are they?
- Persons incapable under the Civil Code:
 - Minors (under age);

According to Article 198 of the Civil Code: A minor is a person of either sex who has not attained the full age of eighteen years.

- Legally interdicted persons;

According to Article 380 of the Civil Code: A person interdicted by Law is one from whom the Law Withdraws the administration of his property, as a Consequence of a criminal sentence passed on him.

Restrictions

- Judicially interdicted persons; (Article 351 of the Civil Code, these are insane persons)
- Associations (see Article 404- 549 of the Civil Code);
According to Article 404 of the Civil Code: An Association is a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profit.

Prohibitions

- In operating a business, if a trader or business organization is legally allowed to do so, has to refrain from certain legal prohibitions.
- The prohibitions are generally in relation to unfair competition.
- These prohibitions are provided under Article 133 of the Com. Code and under **Proc. No. 329/2003 of the Trade Practice Proclamation**.
- According to Article 6 of the said Proc. The following shall be deemed to have been anti-competition;
 - Agreements of jointly fixing a price;
 - Agreements for collusive tendering as to determine market price;
 - Agreements as to allocation by quota of products and sales;
 - Concerted refusal to deal , sell and render services;
- **If committed, they do result serious administrative and legal consequences.**

Definition of Business Organizations

- According to Article 210 of the Com. Code: A business Organization is any association arising out of a partnership agreement.
- According to Article 211 of the Com. Code: A partnership agreement is a contract whereby two or more persons who intend to join together and to cooperate undertake to bring together contributions for the purpose of carrying out activities of an economic nature and of participating in the profits and losses arising out thereof, if any.
- Elements of a Partnership Agreement:
 - Two or more persons;
 - Intent to join together & cooperate; (i.e. to form a business organization)
 - Contributions(in cash or in kind);
 - Economic activity;(allowed by Law and not unlawful & immoral)
 - Profit & losses;

Definition of Business Organizations

- The partnership Agreement should also fulfill the general requirements for the valid Contract. These elements are, (according to Article 1678 of the Civil Code)
 - Parties & Capacity;
 - Consent;
 - Object;
 - Form ;(the formation of business organization should always be in writing; otherwise it is null and void. It will have no legal effect.)

Classification of Business Organizations

- According to the Commercial Code the following business organizations are recognized.
 - Ordinary Partnership;
 - Joint Venture;
 - General partnership;
 - Limited Partnership;
 - Share Company; and
 - Private Limited Company;

- Ordinary Partnership

- It is regulated under Article 227-270;
- It is an organization of a relatively small number of persons;
- It may not be a commercial business organization;
- The members do not have limited liability;
- Membership interests are not freely transferable;

- Joint Venture

- It is regulated under Article 271-279;
- It is usually formed with relatively small number of persons;
- It is formed for a limited purpose or short period of time;
- It has no legal personality;
- It is sometimes called a silent partnership;
- Its existence may not be disclosed to third parties;
- Membership is not freely transferable;
- The liability of the members depends on the memorandum of association;

- General Partnership
 - It is regulated under 280-295;
 - It is usually formed with relatively small number of persons;
 - Membership is not freely transferable;
 - Its members do not have limited liability;
 - It is the most common form of business organization without limited liability;
 - It is governed by a substantial number of provisions concerning ordinary partnership as well;
- Limited Partnership
 - It is governed under Article 296-303;
 - It is basically the same as the general partnership, with one exception: one or more (but not all) of its members have limited liability;
 - Membership is not freely transferable;
 - It is governed by a substantial number of the provisions on general & ordinary partnership;
 - The provisions of Article 296-303 add to those provisions concerning general & ordinary partnership modifications, which are required by the presence of members with limited liability;

- Share Company

- It is governed under Article 304-509;
- Share Company is fundamentally different from other business organizations;
- All of its members enjoy limited liability;
- Membership is freely transferable;
- It may, although not necessarily, consist of many members (the minimum number of members is five);
- Share Company is the form usually chosen to operate enterprises, which require vast sums of money (like Banks, Insurance...);
- Limited liability means the contributor or the share holder is no more liable beyond its capital (in cash or in kind) contribution in the company;
- If the liability is unlimited, as in the case of partnerships, the liability of the business partner may go even to his personal property outside of the contribution (in cash & in kind) that such partner made to the business;

- Private Limited Company
 - It is governed under Article 510-543;
 - This business organization is a mixture of share company & the partnership;
 - It is like the Share Company in that all its members enjoy limited liability;
 - It is like the Partnership in that
 - It usually has a small number of members (but not exceed 50 members); and
 - Its membership interests are not freely transferable;

- Common & Distinguishing Features

- All partnership are association of persons in that the participation & identity of a particular member are typically more important to the other members;
- Other forms of business organizations are association of capital; in that the particular identity and participation of members is not that much important except its capital contribution; the easily transferability of the share emanates from this perspective;
- Except the Joint Venture all business organizations have legal personality; they will have legal capacity & they are subject to rights , obligations and liabilities(civil (contractual & extra-contractual) & penal liabilities);
- Except the Joint Venture, they are represented by their agents; these agents are, in most times, natural persons; See also Article 216 of the Com. Code.
- Except the Joint Venture, the business organization(a legal person) has a Name;
- A business organization(except the Joint Venture) has Head Office;

- Common & Distinguishing Features (Cont'd)

- A business organization, especially that of Share Company, may have Nationality (foreign or Ethiopian); it has its own legal consequences.
- All business organizations should have Capital; except in case of Joint Venture, the capital is different from the members who contributed it. It belongs to the business organization. The Capital must be distinguished from the assets of the business organization. See also Article 80(1) of the Com. Code. Capital could be
 - In Cash;
 - In Kind;
- In form of Some defined Services(for ex, management services) (but not allowed for all forms of business organizations)

Exclusions

- The following are excluded from being a business organization.
 - Associations; (Please, see the definition of Association above)
 - Cooperatives;
- According to Article 2(2) of Proc. No. 147/1998, the Proclamation to Provide for the Establishment of Cooperative Societies:
- “Cooperative Society” means a Society established by individuals on voluntary basis to collectively solve their economic and social problems and to democratically manage same.”
 - The following are illustrative of Cooperative Societies:
 - Housing Cooperative Society;
 - Savings and Credit Cooperative Society;
 - Consumers Cooperative Society;
 - Body corporate under public Law
- These can be administrative or religious institutions. Please, see also
- Article 4 of the Com. Code.

Definition & Elements of Business

- Definition of Business
- ✓ According to Article 124 of the Commercial Code: A business is an incorporeal movable consisting of all movable property brought together and organized for the purpose of carrying out any of the commercial activities specified in Article 5 of the Commercial Code.
- Elements of Business
- Elements of business divided in to two major categories:-
 - Corporeal elements; and
 - Incorporeal elements
- Corporeal Elements
 - Equipments;
 - Goods;
 - Other tangible things;
 - ➔ The said equipments and Goods should be used to operate the activity of trade or the business. Immovable properties are not part of the business. Like the building in which the business is conducted.

- Incorporeal Elements
- According to Article 127 of the Commercial Code, the incorporeal elements of a business are consisted of;
 - Mainly of a Goodwill; and
 - Other incorporeal elements ;(such as: NB: Illustrative!)
 - The Trade Name;
 - The Special designation under which the trade is carried on; the right to Lease the premises in which the trade is carried on ;
 - Patents or Copyrights;
 - Such special right as attached to the business itself and not to the trader;
- Goodwill
- According to Article 130 of the Commercial Code;
- The goodwill results from the creation and operation of a business and is o a value which may vary according to the probable or possible relations between a trader and third parties who may require from him goods or services.
 - According to some; “The goodwill...is nothing more than the probability that the old customer will resort to old place.”

Formation, Operation & Dissolution of a Construction Business

- The Legal & Institutional Framework
 - To do any business including a Construction Business one has to register and secure a business license.
 - The institutional arrangement, in terms of the relevant institutions, which are legally empowered to register and issue the business license, is organized at the Federal, Regional and Municipal level....
 - At the Federal level the Ministry of Trade and Industry, as per Article 15(5) of Proc. No. 471/2005 and Proc. No. 67/1997, Regulations No. 13/1997 including the amendments thereof, is empowered to undertake a commercial registration and to issue a business license. The following institutions are relevant for the Construction Business to be formalized and operative.

These are:

- The Federal Investment Agency;
 - (To secure investments permit, to be entitled any incentives)
 - The Ministry of Transport & Communication;
 - (To secure registration & plate number for heavy trucks)
 - Ministry of Works & Urban Development;
 - (To secure professional competence certificate,....)
 - Federal Revenues & Customs Authority;
 - (To be registered as tax payer)
 - (To secure investment incentives, if any)
 - Public Procurement Agency;
 - (To get registered in the supplier's list)
 - Ministry of Water Resources
 - (To secure professional competence certificate in case of water works)
- ➔ At the Regional level the appropriate authority, certainly the Finance & Economic Development Bureau or its equivalent, as per Proc. No. 67/1997 & on the basis of the respective Regulations issued or to be issued to that effect by the Regions.

- Registration of Business

- No person shall engage in any commercial activity unless registered in a commercial register (According to Article 5(1) of Proc. No. 67/1997)
- There are two types of registration: Principal & Summary Registration.

- Principal Registration

- The following two provisions (Article 5(2) & (3)) of Proc. No. 67/1997, respectively, may give a fair understanding about Principal Registration.
- Any person other than those principally registered by the Ministry (of Trade & Industry), shall principally registered in the place where his head office is situate.
- Any person shall principally register only once even though he carries on different commercial activities in different Regions.

- Summary Registration

- Article 5(4) may give us the notion of Summary Registration.
- Any person, who establishes branches in several Regions outside the place where he is principally registered, shall be summarily registered in those Regions by making a reference to the principal registration.

- Differences
- Principal Registration is always one, whereas Summary Registration may be one or many.
- Principal Registration is connected with the head office of the business, whereas Summary Registration with branch of same.
- Contents & Formalities
 - ✓ The type, content & nature of information to be supplied by the business person during the said registrations, is provided under Article 105 & Article 106 of the Com. Code, respectively.
 - ✓ Authentication & Registration of documentation (for example, with respect to Articles of Association for business organizations) is also required. In that case the relevant and applicable legal (Authentication Registration of Documents Proc. No. 334/2003) and institutional framework i.e. "The Notary Office for Authentication & Registration" (at the federal, regional & municipal level) come in to play.
 - ✓ Affixing Stamp is another requirement, especially with respect to the registration and authentication of Business Organizations, as related to Articles and Memorandum of Association as per the Stamp Duty Proc. No. 110/1998.

- Types
- There are three types of commercial registers, namely,
 - Central Commercial Register;(administered by the Ministry of Trade & Industry);
 - A Commercial Register; (administered by the Ministry of Trade & Industry);
 - A Commercial Register; (administered by the Regions, the City of Addis Ababa & the City of Dire Dawa);
- The business person then should apply to get principally registered depending on the legal empowerment given to the registering institution either at the federal, regional or municipal level.
- The application for registration then scrutinized, if the scrutiny goes successfully the business person or the business organization shall be registered and a Certificate of Registration will be issued

- The effects of the Registration are:
 - It declares the formation of the business; (no publicity is required); and
 - The conferring of a legal personality, if the applicant were a business organization;
- If the scrutiny of the application found not to be acceptable, it is rejected and the reason thereof communicated to the applicant.
- Business License
- According to Article 21(1) of Proc. No.67/1997
- No person may carry on commercial activity without obtaining a valid business license.■

- The legal framework to issue a valid business license by the said institutions are clearly distinguished and provided. However, in case of the Regions, they issue the business license as per the respective Regulations and administrative Directives to be issued by the Regions themselves.
- There are certain conditions to be fulfilled by the applicant to secure the business license.
- The very important & critical condition is to secure a professional qualification or certificate of competence from the competent public body.
- There are legally designated public bodies to grant or deny this certificate. These are:
 - The Ministry of Works and Urban Development(on the basis of Article 18(1)(d) of Proc. No. 471/2005) with respect to engineers and architects, for the contractors and consultants to those operating in more than one Regional State.
 - The Ministry of Water Resources (on the basis of Article 8(1)(a) of Proc. No. 197/2000) to those contractors and consultants to engage in Water Works design and construction.

- The business license, if issued, is valid for one year and has to be renewed within six months of the given fiscal year. If the business license not renewed within the given time framework there is a financial penalty attached to it.
- Suspension
- Where the business license holder fails to rectify certain shortcomings as prescribed by Law, the business license shall be suspended.
- Measures
- The following measures shall be taken against the business during suspension.
 - Temporal closure of the business, if the business found to be dangerous to public health, to the national economy.

Cancellation

- The following are grounds for the cancellation of the license.
 - If the business license was issued or renewed on the basis of false information;
 - If the license holder uses the license for the purpose other than for which it was issued;
 - The use of the license for improper commercial activities;
 - If the license holder has become bankrupt ;
- (The Bankruptcy Proceeding is separately Provided under Article 974-1170 of the Com. Code.)
- if the license holder ceased to operate his business;
 - If the license holder has failed to renew his license for the reason other than force majeure;
 - On other grounds;

- Sanctions

- The following are the legal sanctions.
 - Carrying on business without having a business license: fine equal to double the revenue estimated to have been obtained by the business person & imprisonment 3-4 years;
 - Securing or renewing a registration certificate or a business license by supplying false information: fine equal to double the revenue estimated to have been obtained by the business person & imprisonment 5-7 years;
 - In case of other violations provided under the Proclamation, Regulations and Public Notice: fine Birr3,000-Birr 5,000 & 6months-1 year imprisonment;

- Trade Name Registration
- A business person shall also require registering his Trade Name under which he carried on his business. It is compulsory.
- He has to register where he was principally registered.
- The attachments are:
 - The Commercial Registration Certificate;
 - A valid Business License;
- The types of Trade Name Registration;
 - Central Trade Name Register;
 - Trade Name Register by Ministry of Trade & Industry; (licensed by the Ministry and foreign business);
 - Trade Name Register by Bureaus; (including the City of AA & Dire Dawa);
- The effects of Trade Name registration is entitlement to legal protection.

- Other Obligations of Traders or Business Organizations
- In addition to having a Registration Certificate and Business license, traders and Bus. Org. have also other obligations.
- The obligation to keep books and accounts; (this is an important obligation especially for the assessment of tax obligation) see Article 63 and Article 66-70 of the Com. Code.
- To register and renew in the Suppliers' List;
- To refrain from unfair competition;
- To register as a tax payer;
- To declare & pay the applicable tax;

2. The legal regulation of Construction projects

- **The Legal & constitutional Framework;**
- **The Contractual Relationship & Liability Framework; and**
- **The Extra-Contractual Liability Framework;**

Introduction

- The planning, study, design, procurement, execution, management & financing of a public Construction Project brings different types of Laws in to picture.
- The legal Framework regulates the necessary inputs to the Construction Project, compulsory requirements that are necessarily to be taken in to account in the Construction Project and the liability dimension that may arise during the execution of the Construction Project.
- The possible inputs to the Construction Project are, for example, financial resources, human resources, land, equipment, constructional plant, constructional material and other physical inputs and the like.

- **Introduction**
- **In terms of compulsory requirements the Construction Project should take in to account, environmental requirements, planning and zoning requirements, safety, oversight, ethical and other requirements.**
- **In terms of liability we will consider the contractual and the extra-contractual liability of the involving stakeholders and parties in the Construction Project.**

The Constitutional Framework

- According to Article 89(Economic Objectives)
 - Government shall have the duty to formulate policies which ensure all Ethiopians can benefit from the country's legacy of intellectual and material resources.
 - Government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them.
- According to Article 90(Social Objectives)
- To the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.
- ➔ Therefore, the Construction Project, based on the country's social and economic development objectives, programmes and long term and short term plan, is a concrete tool to achieve these broad social & economic development goals.

Applicable laws for construction projects

Other Public Laws

The Public Finance Law

- The Public Revenue
- The Public Expenditure
- The Public Budget
- **The Public Procurement**
- The Public Oversight

- Land Administration, Expropriation & Compensation
- Environmental Law
- Employment Law
- Urban Planning Law
- Building Law
- Protection of Public Utility

Networks

The Public Finance Law

- The term Public Finance may be defined as a subject that deals with the provision, custody and disbursement of the resources needed for the conduct of public or governmental functions.
 - Public expenditure, which represent the needs of the state;
 - Public revenues, which are the sources of the funds that are expended in the conduct of public business;
 - Financial administration, which deals with the determination of expenditures & incomes as well as the collecting, handling and disbursement of public funds.
 - ➔expenditure, is regulated both by the Law of Financial Administration including Public Procurement Law;
 - ➔revenue, is regulated by Tax Laws;
 - ➔determination of expenditure and revenues, is regulated by the Budget Law;

Public Procurement

- Procurement is an important administrative and financial function and process that allows a project to obtain optimal value for financial resources expended on works, goods and services.
- The effective and efficient use of financial resources in a competitive and transparent manner through a sound procurement process contributes to the achievement of the operational and strategic goals of a project.

Public Procurement

- Construction Industry involves procurement and contract management systems in order to ensure fair competition and distributions of obligations and rights among stakeholders.
- Competition helps:
 - the Project Owners' to acquire the five rights (Counterpart, Cost, Time, Quality and Quantity) s/he is entitled to
 - the Project Financiers' and Regulators' to value market principles and effective utilization of finance such that lowest qualified bids takes the project , and
 - the Project Providers' to get impartial and neutral Opportunity for business.
- Obligations and Rights help to allocate appropriate risks among contractual parties and their remedial rights. That is, their entitlements and provisions are clearly stated and agreed upon.

The Public Procurement

- Public Procurement refers to the acquisition by public bodies, such as government departments and municipalities, of the various works, goods and services that they need for their activities.
- The procurement is effected by using public funds or money.
- Procurement Planning
 - Any procurement begins with the planning decision to make the purchase.
 - This will involve, in the first place, deciding whether there is a need for the particular goods and services.
 - It will also involve ensuring that the purchaser has the legal power to undertake the (procurement) transaction, obtaining any relevant approvals within the government hierarchy and arranging the necessary funding.

- The Tendering, Selection & Contract Phase
 - The second phase is then to choose which firm is to be the provider of the goods or services, and to conclude a contract with the selected party.
- Contract Administration
 - This includes supervising performance to ensure that the promised works, goods and services are properly delivered, accepting performance, arranging for payment of the contractor, dealing with disputes, and various other contractual matters.

➔The Public Procurement, thus, focuses on the second phase i.e. the tendering, selection & the conclusion of a contract.

Types of procurements

- Procurement types can be classified based on the things to be procured and the way how they are procured. There are six bases for classifying procurement methods. These are;
 - Things procured (Goods, services and work)
 - Bidders' Coverage (Competitive Vs Negotiated)
 - Geographical Coverage (LCB /NCB/RCB Vs ICB)
 - Procurement Steps (Single Vs Two staged / pre or post qualification)

The Statutory Framework

- The Federal Government issued a specific legislation to regulate the Public Procurement process.
- The legislation called: Determining Procedures of Public Procurement & Establishing its Supervisory Agency Proc. No. 649/2009
- **Key Terms**
 - The following are important concepts to understand, as provided under Article 2 of the Proclamation
 - Goods
 - Means raw material, products and equipment and commodities in solid or liquid or gaseous form, and electric city, as well as installation , transport, machinery or similar obligations related to the supply of the goods if their value does not exceed that of the goods themselves.
 - Services
 - Means any object of procurement other than works, goods and consultancy services.

- **Key Terms**

- Works

- Means all work associated with the construction, reconstruction, demolition, repair or renovation of a building road, or structure, such as site preparation, excavation, installation of equipment and materials, decoration, as well as services incidental to works, if the value of those services does not exceed that of the works themselves and includes build, own, operate and build, own, operate and transfer contracts.

- Consultancy Services

- Means a service of an intellectual and advisory nature provided by consultants using their professional skills to study, design and organize specific projects, advice clients, conduct training and transfer knowledge.

- Procurement

- Means the purchasing, hiring or obtaining by any other contractual means of goods, works and services.

- **Key Terms**
- Public Fund
- Means any monetary resources appropriated to procuring entities from the Federal Government treasury or aid grants and credits put at the disposal of procuring entities by foreign donors through the Federal Government internal revenue of procuring entities.
- Public Procurement
- Means procurement by procuring entities using public funds.
- Procuring Entity
- Means public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature.
- Bid Documents
- Means the documents prepared by the procuring entity to bidders as a basis for preparation of their bids.

Methods of Procurement

- The Proc. identifies the following methods of procurement for local & international procurement, namely,
- **For Local**
 - **Open Tendering;**
 - **Restricted Tendering;**
 - **Direct Procurement;**
 - **Request for Proposals;**
 - **Request for Quotation;**
 - **Two-stage Bidding;**
- **For International**
 - ➔ **Open International Tendering;**
 - ➔ **Other International Procedure;**
(Such as restricted bidding or request for proposal)

• Open Tendering

- It is regulated under Article 35- Article 48 of the Proc.
- It involves, generally,
 - Making advertisement for all interested bidders through Invitation for Bids;
 - The issuance of Instruction to Bidders which contains:
 - The preparation & submission of Bids by the Bidders;
 - Receiving, opening, examination, evaluation and comparison of Bids by the Procuring Entity;
 - Notification of Award & signing of Contract with the winning Bidder;
- The provision of Bid Documents;
- Other important guidelines such as the provision of Bid Security to bid, Contract Security, if the bidder is successful & conditions.
- Please, carefully read the provisions of Article 35-Article 48 for full information.

- **Other Procurement Methods**
- **Restricted Tendering** (Article 49&50)
 - Restricted Tendering may be allowed if the following conditions are met:
 - The goods, works or services, by reason of the highly complex or specialized nature, are available only from a limited number of suppliers; or
 - The time and cost required to examine and evaluate a large number of bids would be disproportionate to the value of goods, works or services to be provided;

Restricted Tendering

- It is the same as Open Tendering except with the following exception.
- The Invitations for Bids is addressed to a limited number of qualified candidates which have declared an interest in submitting bids.
- The number of candidates invited should be made, if possible, sufficient to ensure competition;
- Procuring Entities shall select candidates to be invited to bid from among those registered in the suppliers list;
- Bid Security may or may not be asked;

- **Direct Procurement Procedure**
(Article 51 & Article 52)

- **The conditions to be there for single source procurement are the following:**

- The goods, works or services can be supplied or provided only by one candidate;
 - For additional deliveries of goods by the original supplier;
 - When additional works which were not included in the initial contract have through unforeseeable circumstances become necessary;
 - For new works consisting of the repetition of similar works which conform to a basic project of which an initial contract was awarded on the basis of open or restricted bidding;

- **Direct Procurement Procedure**
 - **The conditions to be there for single source procurement are the following:**
 - For continuation of consultancy services, where the original contract has been satisfactorily performed and the continuation is likely to lead to gains in economy & efficiency;
 - For purchase of goods made under exceptionally advantageous conditions which only arise in the very short term;
 - The need is one of pressing emergency;
 - When the contract price does not exceed an amount stated in the procurement directives;

- **Direct Procurement Procedure**

- The Procuring Entity shall prepare a description of its need and any special requirements as to quality ,quantity ,terms and time of delivery, and shall be free to negotiate with the sole candidate;

- **Request for Proposals (Article 53 & Article 54)**

- This is the case where the Procuring Entity seeks to obtain consultancy services or contracts for which the component of consultancy services represents more than 50% of the amount of contract.
- Requests for Proposals shall be addressed to not less than three and not greater than seven candidates selected by the Procuring Entity.
- The Request for Proposals shall contain all the required information as provided under Article 54(3) of the Proc.

- **Request for Quotations (Article 55 & Article 56)**

- Request for Quotations may be used for the purchase of readily available goods, or for procurement of works or services for which there is an established market.
- Please see also Article 56 for detail regulations of the subject.

- **Two-Stage Bidding Conditions & Procedure (Article 57& Article 58)**

- When it is not feasible for the Procuring Entity to formulate detailed specification for the goods or works or in the case of services to identify their characteristics and, in order to obtain the most satisfactory solution to its procurement need,
- It seeks bids, proposals or offers as to various possible means of meeting its needs; or
- Because of the technical character of the goods or works, or because of the nature of its services it is necessary for the public body to negotiate with the suppliers;

• **Two-Stage Bidding Conditions & Procedure**

- When bid proceeding have been engaged in but no bids were submitted or all bids were rejected, and engaging in new bid proceedings would unlikely to result in a procurement contract;
- In the first stage of the two-stage bidding proceedings, initial tenders containing their proposals without a tender price shall be submitted;
- In the second stage of the two-stage tendering proceeding, the procuring entity shall invite suppliers whose bids have not been rejected to submit final tenders with prices with respect to a single set of specification;

International Procurement

• Methods Bidding **(Article 59)**

- It shall be used whenever in open bidding an effective competition can not be obtained unless foreign firms are invited to bid and for procurement above a threshold to be determine by a directive to be issued by the Minister of Finance & Economic Development.
- Open international bidding shall observe the provisions in relation to Open Tendering (Article 35-Article 48) of the Proc.

International Procurement

• Other International Procedures (Article 60+61)

- Under other procedures, other than open tendering may be used such as restricted tendering or Request for quotation. Please read carefully the provisions of Article indicated above.

• **Administrative Review of Complaints**

- Granting a right to complain to the bidders is enforcing the principles of transparency and accountability.
- The right to complain is clearly provided in the Proc.
- This right to complain may be exercised at the administrative or at the judicial level.
- At the administrative level, the bidder has two level of appeal i.e. at the Procuring Entity level (Article --) & at the Public Procurement Agency (Article --) level.
- The following acts or decisions shall not be subjected to administrative review.
 - Choice of procurement procedure or method;
 - Rejection of all bids, proposals or quotations;
 - If the procurement contract has been concluded;
- The submission of a complaint to the head of the Procuring Entity or to the Agency shall suspend the procurement proceeding.

- **Legal Sanctions**

- The violation of the Proc. shall result a penal sanction against the violator.
 - The sanctions may be imprisonment or fine or both.

- **Other Public Laws**

- Land Administration, Expropriation & Compensation
- Environmental Law
- Employment Law
- Urban Planning Law
- Building Law
- Protection of Public Utility Networks

- **The Contractual Relationship Framework**

- The contractual dimension of the Construction Project shall be covered in the next chapter.

- **The Extra-Contractual Liability Framework**

- Obligations may arise from a Law or from Contract.
 - Extra-contractual liability emanates from the Law.
 - Contractual liability concerns about the specific individual with whom we have a contractual relationship, whereas, the extra-contractual liability concerns about the general public or to any third party.

- With respect to the Construction Project or the Construction Business there may be a practical possibility to become extra-contractually or legally liable towards third parties, with whom we do not have any contractual relationship.
- The Law of Extra-Contractual liability is provided under the Civil Code from Article 2027-Article 2161 (Title XIII Chapter I).
- The Law of Extra-Contractual Liability is also sometimes known as the Law of Tort.

- **Sources of Extra-contractual**
 - **According to Article 2027 of the Civil Code, there are three sources of extra-contractual liability.**
 - **These are:**
 - **Liability based on fault (Article 2027(1));**
 - **Liability without fault (strict liability) (Article 2027 (2)); and**
 - **Liability for others (vicarious liability) (Article 2027(3);**

- **Liability Based on Fault**

- **According to Article 2027 (1):**
 - **Irrespective of any undertaking on his part, a person shall be liable for the damage he causes to another by an offence.**

- Liability based on fault is further regulated by law as follows.
 - General Rules with respect to liability based on fault has been provided under Article 2028- Article 2037.
 - Special Rules with respect to liability based on fault has been provided under Article 2038-Article 2065.
 - The following are some of relevant liability based on fault.

- **Liability Based on Fault**

- The following are some of relevant liability based on fault.
 - Committing an offence of trespass :Article 2053
 - Taking possession of property with out due legal authority and against the clearly expressed will of the lawful owner or possessor of the property;
 - Committing an offence during the pre-contractual stage: Article 2055
 - » Where having stated your intention of entering in to a contract and having induced others to incur expenses with a view to concluding a contract with you, you arbitrarily abandon your intention to conclude a contract.
 - Committing Unfair Competition: Article 2057
 - » Where you, through false publication or by other means contrary to good faith, compromise the reputation of a product or the credit of a commercial establishment or company.

- **Strict Liability**

- According to Article 2027 (2):

- A person shall be liable, where the law provides, for the damage he causes to another by an activity in which he engages or by an object he possesses.
 - Liability without fault is further regulated by law.
 - These legal regulations are provided under Article 2066-Article 2089.
 - The following are some of the relevant illustrations.
 - By Doing Dangerous Activities: Article 2069
 - If you expose another person to abnormal risk,
 - by using or storing explosive or poisonous substance; or
 - by erecting high-tension electric transmission lines; or
 - by modifying the lie of the land; or
 - by engaging in an exceptionally dangerous industrial activity;

→ You are liable where the danger you have created materializes, thereby causing damage to another.

- **With respect to Buildings: Article 2077**

- The owner of the building shall be liable for any damage due to the building even where the damage was unforeseeable.
- The owner (of the building) may claim compensation
 - from the person who build the building; or
 - from the occupier of the building; or
 - from the person by whose fault the damage was caused;

- **With Respect to Objects falling from a Building:**

Article 2080

- The occupier of a building shall be liable for any damage caused by objects falling form the building he occupied it.
- **With Respect to Collision of Vehicles: Article 2084**
 - Where two motor vehicles are in collision, each of the vehicles shall be deemed to have contributed equally to the accident.
 - The owner of each vehicle, or the person responsible for it, shall bear half the total amount of the damage resulting from the accident.

- With Respect to Manufactured Goods: Article 2085
 - A person who manufactures goods and sells them to the public for profit shall be liable for any damage to another person resulting from.
 - No liability shall be incurred where the defect which has caused the damage could have been discovered by a customary examination of the goods.
- Liability for Others
 - According to Article 2027 (3):
 - A person shall be liable where a third party for whom he is answerable in law incurs a liability arising out of an offence or resulting from the law.

- Liability for Others

- Liability for others is further regulated by law.
- These legal regulations are provided under Article 2124-Article 2136.
- The following are some relevant illustrations.
 - With Respect to Bodies Corporate: Article 2199
 - Bodies corporate shall be liable under the law where one of their representatives, agents, or paid workers incurs a liability in the discharge of his duties.
 - With Respect to Employers: Article 2130
 - The employer shall be liable under the law where one of his employees incurs a liability in the discharge of his duties.

• Legal Pre-requisite for Liability

- The liability of the wrong doer (some times also referred as the author of the damage) is to pay compensation to the victim, to make good the damage caused.
- The damage sustained may be financial or moral.
- To be entitled to compensation, the victim has to show the causative link between the damage and the cause of the damage. This is called causation requirement. The cause shall also be proximate to the damage and not remote.
- The author of the damage may have legally permitted defenses.

- **Legal Pre-requisite for Liability**
- For example, in case of **liability based on fault** the defendant may have the following legal defenses.
 - Denying the commission of a fault; or
 - Excluding liability by showing that there is no connection between the damage and the fault;
- In case of **strict liability** (liability without fault) the following may serve as legal defenses. These are
 - The victim's fault (ex. In case of Article 2081(Collision between Vehicles. Exoneration from liability may be total or partial.)
 - Contractual relationship (in case of passengers, the lessee of a house...)
 - Relationship with no benefit(if you provide a lift gratis to a pedestrian and subsequently injury caused to him by car accident)

• **Extent of Compensation**

- The damage occurred may be financial/pecuniary or moral.
- The damage may also be present (actual) or future damage (consequential).
- According to Article 2091 (Extent of Damage)
 - The damages due by the person legally declared to be liable shall be equal to the damage caused to the victim by the act giving rise to the liability.
- The term damage here has a meaning of compensation.
- According to Article 2092 (Future Damage)
 - A future damage which is certain to occur shall be made good without waiting for it to materialize.
- Therefore, damage could be a financial outlay from your pocket or a loss of financial gain that has a probability to come to your pocket. The former is actual damage, whereas, the latter is a consequential damage.
- Unless provided by law moral harm may not be made good by way of damages or financial compensation. If it is provided by law, the extent of financial damages for moral harm is ETB 1000. 00.

Construction Contract

- **Basics of Contract**
- construction contract within the Ethiopian context

Basics of contract

- Contract law in construction works define the relationship of the parties involved with regard to their obligations, responsibilities and privileges in the work and are part of the existing law.
- The law is conventionally divided into topics according to their legal provenance, the law of contract, the law of property and so forth.
- The Civil Code: Has five books
 - Book I : deals with “persons”
 - Book II: deals with “family succession”
(replaced by a new version)
 - Book III: Deals with “goods”
 - Book IV: Deals with “obligations”
 - Book V: deals with “special contracts”

Contract:

- Is 'an *agreement* between two or more persons as *between* themselves to *create, vary or extinguish obligations* of a *proprietary nature*' (art. 1675 of CVC 1960)

➔ The purposes of a contract are to:

- enforce law or bind conditions between or among the parties agree to procure services or works or goods.
- clearly show the Terms and Conditions of contracts the parties agree with.
- clearly show the Rights, Obligations and remedial rights of performances from the contracting parties.
- clearly show handling provisions for price, completion time, requirement variations adjustment systems, Changes in cost and legislations and dispute resolution mechanisms.

Basics of contract

➔ There are basic contents of contract which contracting parties are expected to understand. They are:

- Formation of Contract;
- Terms of Contract;
- Privity of Contract;
- Discharge of Contract; and
- Invalidation of Contract.

I. Formation of a contract

- What should a contract satisfy to be enforceable in front of law?
 - Offer and acceptance (Agreement)
 - Competent parties (Legal capacity)
 - Consent to be bound
 - Consideration
 - Legality of the object
 - Formalities

Offer and acceptance

- **Offer**: An offer is an expression that one party is willing to be bound by specific terms which are set out in the contract.
- According to the Civil Code, an offer or acceptance can be made:
 - In **writing** or orally
 - By signs normally in use
 - By conduct of the parties
- ➔ A contract is complete when an offer by one party is accepted **without condition** by the other party .

Offer and acceptance

- Termination of offer:
- An offer remains open unless it is terminated.
This could occur;
 - Death of offeror or offeree
 - Through refusal (rejection) or counter offers but not just a request for further information
 - None acceptance within the offer time or after **reasonable** length of time
 - Failure of a condition subject to which the offer was made
 - Revocation of the offer (withdrawal of offer)

Offer and acceptance

- **Acceptance:**

- Absolute - i.e. accepting all the terms of the offer
- There must be an indication of consent - i.e. silence does not indicate acceptance
- The acceptance must be communicated to the offeror
- It must be the offeree or his agent which communicates the acceptance

Offer and acceptance in construction: Offer by **contractor** to do a job; acceptance by **client** to the terms of the offer. The issues in **negotiation** should be included as offer by contractor!

Consent and capability

- Capability of parties
- No agreement is deemed an enforceable contract if any of the parties is incapable of contracting
 - Minor
 - Considered mentally incompetent or ill
 - Under the influence of alcohol and other drugs
 - Inexperience in business (if the other party tried to exploit the inexperience)

Consent and capability

- Consents sustainable at law
 - Parties should be willing to be bound by the terms of the contract

Declare that you have read all the incorporated documents and are willingly bound by the terms!

Consideration

- **Consideration** involves a benefit moving from the offeree to the offeror in exchange for the promise
- Consideration should be:
 - Of some value, but not necessarily adequate
 - Additional to the duty in the law
 - Additional to previous contract agreements ,For a future act
- If one party makes a promise and the other party offers nothing in return for that promise, the promise is unenforceable due to lack of consideration.

Objects of the contract

- The object of the contract is the obligation to perform something
- Should be:
 - Defined,
 - Possible,
 - Lawful and
 - Freely determined by the parties

Form of contract:

- If no form is provided by law, contracts can be in any form the parties agreed
- Otherwise, the contract agreement should be presented in the form provided by law
- For example,
 - A contract involving an immovable object should be in a written form and needs to be registered by the authorities
 - Long term contracts, such as guarantees insurance etc, and those entered with public organization should be in writing

Form of contract

- Written contract:
 - According to the Civil Code of Ethiopia 1960, Art.1727
 - *Any Contract required in writing shall be supported by a special document signed by all the parties bound by the contract*
 - *It shall be of no effect unless it is attested by two witnesses*

Communications(6 PPA)

- ➔ Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

II. Terms of Contract

- The terms of contract are provisions or stipulations in a valid contract describing some aspects of the agreements between the parties to contract. The terms define the rights and obligations of the parties in accordance with their agreement. The terms can either be **express, implied or statutory**
 - **Expressed terms** are terms clearly stated in the contract.
 - **Implied terms**: are contract terms which are not written down in a contract or openly expressed at the time the contract is made, but which the law implies

- Example **Implied terms**

- The contractor will carry out the work in a workmanlike manner

- The goods and materials will be of good quality

- The materials and work will reasonably fit for the purpose.

- **Statutory terms:** are terms which are imparted into contracts by legislation. The Civil Code of Ethiopia, procurement law and other pertinent legislation are example of these.

- **Language and Law (Clause 3 PPA)**

- The language of the Contract is English and the law governing the Contract is that of the Federal Democratic Republic of Ethiopia, unless otherwise specified in the Special Conditions of Contract.

- Contract terms can be also be either:
 - **Conditions**: are fundamental to the contract. Failure to adhere to a condition may result in a breach and/or damages.
 - **Warranties**-are subsidiary to the main contract. A breach of warranty will only result in the injured party suing for damages.

III. Privity of Contract

→ Only parties who enter into a contractual agreement will have the right to sue or a liability to be sued due to a contract.

→ Assignment (Transfer from one person to another)

→ A debtor may with the consent of the creditor or without such consent in cases provided by law or usage, delegate to another the performance of his obligation. (CC Ethiopia, Art 1976)

- **Subcontracting (PPA Clause 7)**

- The Contractor may subcontract with the approval of the Engineer, but may not assign the Contract without the approval of the Employer in writing.

Subcontracting shall not alter the Contractor's obligations.

Discharge of Contracts

- Performance
 - A construction contract will be discharged by performance on the part of the contractor when all the works has been completed including maintenance during defects liability period, and when the Engineer has issued all the required certificates and on the part of the employer when he has paid all the payments due.

Discharge of Contracts

- Agreement
 - Mutual agreement (agree to cancel the contract)
 - **By novation:** According to Art. 1826, an obligation may be extinguished by the principle of *novation* when the parties agree to substitute therefore a new obligation which differs from the original one on account of its subject or matter.
 - **By accord and satisfaction:** The parties may accept performance that is different from what was agreed on in the original contract.

Discharge of Contracts

- **by *Frustration*** : Occurs when the contract was executable at time of agreement but subsequent events, over which the contracting parties have no control, make it impossible to fulfill the contract obligations. The Ethiopian civil code deals with frustration under force majeure.[Art.1792]
 - Force majeure (war, earth quake, natural hazard)

Discharge of Contracts

- Breach (failure to carry fundamental obligations under the contract)
 - Leads to **compensation** and/or **termination**
 - Famous in construction as **liquidated damage**

Invalidation of contracts

- Invalidated contract is a contract which is not binding. The two main factors that can invalidate a contract are *mistake* and *misrepresentation*.
 - **Mistake:** the term ‘mistake’ is used to describe the situation in which an ‘offer’ made by one party and its ‘acceptance’ by the other do not actually corresponds.
 - The mistake must be fundamental to void the contract (it is usually be a **mistake of fact** which will voids a contract);
 - Identity of the subject matter
 - Existence of the subject matter e.g. a contract will be void where the subject matter of contract has ceased, unknown to the parties before the time of a contract.
 - Mistake by one party to the promise of the other party being aware of the mistake

Invalidation of contracts

→ Misrepresentation (False

statement): Misrepresentation may be described as the making of an untrue statement relating to fact which includes another party to enter into contract.

- When misrepresentation occurs, the injured party can either state or reject the contract. He or she can also bring an action for either rescission and restitution or damages.

- Fraud (Deception) Cheat!!
- Duress → Pressure

➔ construction contract within the Ethiopian context based on the Public Procurement Agency (PPA) conditions of contract.

GCC

- General Condition of Contract is a document that states the obligations and rights of the parties and details the conditions under which the contract is to be carried out.
- These documents are published by different professional associations, government bodies and also by financiers.
- As the construction industry is dynamic those documents shall be amended / improved through times, FIDIC could be mentioned as an example it has published different conditions of contract over the years (1957-1999).

- As the history of our national conditions of contract indicates the first was published in 1959 by the Ministry of Housing, the second in 1987 by Building Transport Construction and Design Authority, the third in 1994 by Ministry of Works and Urban Development and the fourth and the recent one in 2006 by the Public Procurement Agency of the Ministry of Finance and Development.
- ➔ therefore, our discussion focus on the provisions of the recent one!

- PPA conditions of contract divided the clauses in five categories with 62 clauses,
 - **General**
 - **Time control clauses**
 - **Quality control clauses.**
 - **Cost control clauses.**
 - **Finishing of the contract,**

General

- Under this heading common obligation, rights and instruction are set out which help to minimize disputes and simplify the contract administration processes.
 - As an example **definition and interpretation** could be taken,
 - “It is in the best interest of all parties to a contract that they express their intention without ambiguity. However, the meanings of a contract or some of its terms is often obscure. More often this becomes a source of dispute between the parties. In order to settle such disputes, the disputed terms or a provision has to be interpreted or given a proper meaning.” [John Murdoch & Will Hughes, third edition, construction contracts, Law and Management]

- The category named 'General provisions' is set in PPA are;
 - Definition
 - Interpretation
 - Communications
 - Law and language
 - Priority of documents etc

Interpretation(Clause 2.3)

- The documents forming the Contract shall be interpreted in the following order of priority:
 - (1) Agreement,
 - (2) Letter of Acceptance,
 - (3) Contractor's Bid,
 - (4) Special Conditions of Contract,
 - (5) General Conditions of Contract,
 - (6) Specifications,
 - (7) Drawings,
 - (8) Bill of Quantities or Activity Schedule, and
 - (9) Any other document listed in the Special Conditions of Contract as forming part of the contract

Time control clauses

→ A construction projects consist of many activities. Each activity requires some time for its completion. The cost of execution varies with the time required for its completion. Once the time required for completion of a project is decided it may be stipulated in the contract in any of the following three ways;

- On a given date, or
- Within a definite number of calendar months, or
- Within stipulated number of working days

Time control clauses

- ➔ The provisions made in almost all GCCs usually entitle the employer to be paid for liquidated damage for delay of completion time, in order that the contractor should be careful in avoiding delay in completion.
- ➔ A construction contract usually stipulates circumstances under which the time for completion will be extended. A comprehensive list of valid grounds is to be found in different GCCs clause.
- ➔ Example PPA clause 28 (Extension of the intended completion date), stipulates the occurrence of compensation events and issues of variations as a ground for time extension.

Time Control clauses(PPA)

27. Program

28. Extension of the Intended
Completion Date

29. Acceleration

30. Delays Ordered by the Engineer

31. Management Meetings

32. Early Warning

Time control clauses(PPA)

27.Program

27.1 Within the time stated in the Special Conditions of Contract, the Contractor shall submit to the Engineer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

27.3... If the Contractor does not submit an updated Program within this period, the Engineer may withhold the amount stated in the Special Conditions of Contract from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

Time Control clauses(PPA)

27. Program

27.4. The Engineer's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Engineer again at any time. A revised Program shall show the effect of Variations and Compensation Events.

28. Extension of the Intended Completion Date

28.1 The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

Time Control clauses(PPA)

28. Extension of the Intended Completion Date

28.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

Time control clauses(PPA)

29. Acceleration

29.1. When the Employer wants the Contractor to finish before the Intended Completion Date, the Engineer will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.

29.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

30. Delays and Expenses (PEPA)

30.1 The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.

31. Management Meetings

31.1 Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

31.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

Time Control

32. Early Warning clauses (PPA)

32.1 The Contractor shall warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

32.2 The Contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer.

Quality Control (PPA)

33. Identifying Defects

33.1 The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to **search** for a Defect and to uncover and test any work that the Engineer considers may have a Defect.

34. Tests

34.1 If the Engineer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

Quality Control (PPA)

35. Correction of Defects

35.1 The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Special Conditions of Contract. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

35.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.

36 Uncorrected Defects

36.1 If the Contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

Lecture 4

Chapter Three

Construction Contract within the Ethiopian context (Cont'd)

Cost Control

37. Bill of Quantities or Activity Schedule

- **Bill of Quantities for Admeasurements Contract**

- The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

38.Change in the Bill of Quantities

If the final quantity of the work done: Differs from the quantity in the BoQ,

for a particular item,
by >25%, &

The change exceeds 5% of the Initial Contract Price,

The Engineer shall adjust the rate to allow for the change.

The Engineer shall not adjust rates if:

The Initial Contract Price is “exceeded by $> 15\%$ ”,

Except “with the prior approval” of the Employer.

If requested by the Engineer, the Contractor shall:

Provide a detailed cost breakdown of any rate in the
BoQ;

40 Payment for Variations

The Contractor shall provide **a quotation** for carrying out the Variation when requested to do so.

The Engineer shall:

Assess the quotation,
Which shall be given within 7 days or
within any longer period stated by the Engineer &
before the Variation is ordered.

If the work in the Variation **Corresponds:**

With an item description in the BoQ

&

If the quantity of work is within the limit stated above(125%)

or

The **timing** of its execution do not cause **the cost/ unit quantity to change,**

The rate in the BoQ **shall be used** to **calculate the value of the Variation.**

If the **cost per unit of quantity changes**, or

If the **nature or Timing** of the work in the Variation does not
correspond with items in the BoQ;

The quotation by the Contractor shall be in the form of
new rates;

If the **Contractor's quotation is unreasonable:**

The Engineer may order the Variation & make a change to
the CP,

Which shall be based on:

The Engineer's own forecast of the effects of the Variation.

If the Engineer decides that:

The urgency of varying the work would prevent a quotation
being given &
considered without delaying the work,

No quotation shall be given &

The Variation shall be treated as a Compensation Event.

The Contractor shall not be entitled to additional payment: for

Costs that could have been avoided by giving early warning.

Payment Certificates

The Contractor shall submit:

Monthly statements of the value of the work executed
Less the cumulative amount certified previously.

The Engineer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

The value of work executed shall include:

The valuation of Variations
&
Compensation Events.

The Engineer may :

Exclude Any item certified” in a previous certificate
or

Reduce the proportion of any item previously certified

Payments shall be adjusted for deductions for

Advance Payments
&
Retention

The Employer shall pay the Contractor:

**The amounts certified within 30 days of the date of
each certificate.**

If the Employer makes a late payment:

The Contractor shall be paid interest on the late payment in the next payment.

Interest shall be calculated:

From the date by which the payment should have been made

up to the date when the late payment is made

At the **prevailing rate of interest for commercial borrowing** for each of the currencies in which payments are made.

If an amount certified is increased:

In a later certificate

or

As a result of An award by the Adjudicator/Arbitrator,

The Contractor shall be paid interest upon the delayed payment

Interest shall be calculated: From the date **Upon**
which

The increased amount would have been certified
in the absence of dispute.

43.4 Blank/unfilled Rates

Items of the Works for which:

No Rate

or

No price has been entered in

Will not be paid for by the Employer

&

Shall be **deemed covered by other rates & prices** in the Contract.

Compensation Events

The **Employer** does not give access to the Site by the Site Possession Date *stated in the Contractor's approved work program.*

The **Employer** modifies the Schedule of “**Other Contractors**”

in a way that affects

The work of “the Contractor under the Contract.”

The Engineer orders “A delay”

or

Does not issue “Drawings, Specifications, or Instructions”

The **Engineer** instructs the Contractor:

To **uncover**

or

To carry out additional Tests upon work,

Which is then found **to have No Defects**.

The **Engineer** **unreasonably does not approve** a subcontract to be let.

The **advance payment** is delayed.

The “**effects on the Contractor**” of any of the Employer’s Risks.

The **Engineer** unreasonably delays “**issuing a Certificate of**

Ground conditions are:

Substantially more adverse than could reasonably have
been assumed before issuance of the Letter of
Acceptance

From the information issued to bidders including:

“The Site Investigation Reports”,

“From information available publicly”

&

“From a visual inspection of the Site”

The Engineer Gives “**An instruction**” for dealing with:

An unforeseen condition, caused by the Employer,
or

Additional work required for safety or other reasons.

“Other contractors, public authorities, utilities, or the Employer” does not work *within the dates and other constraints stated in the Contract*, & they cause delay or extra cost to the Contractor.

Other Compensation Events described in the SCC or determined by the Engineer shall apply

If A Compensation Event Would:

Cause “Additional Cost”

or

Prevent The completion of work before the Intended Completion Date,

The Contract Price shall be increased
&/or

The Completion Date shall be extended.

The Engineer shall decide whether and by how much:

The **Contract Price shall be increased** &/or

The **Intended Completion Date shall be extended.**

As soon as **information demonstrating**:

The effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor,

It shall be assessed by the Engineer,

&

The Contract Price shall be adjusted Accordingly.

If the Contractor's forecast is deemed unreasonable,

“The Engineer shall adjust the CP based on the Engineer's own forecast”

The Engineer will assume that the Contractor will react

Clause 44.4

The Contractor shall not be entitled to compensation to the extent that:

The Employer's interests are adversely affected

By the Contractor's not having given early warning

or

Not having cooperated with the Engineer.

Clause 45 Taxes

Unless otherwise specified in the SCC, the Engineer shall not adjust the Contract Price

If taxes, duties, and other levies are changed

That subsequently affect the CP.

47 Price Adjustment

Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC.

If so provided, the amounts certified in each payment certificate, **after deducting for Advance Payment**, shall be adjusted by applying the respective price adjustment factor to the payment amounts due

$$pn = A + b \frac{Ln}{Lo} + c \frac{Mn}{Mo} + d \frac{En}{Eo} + etc$$

Where:

pn is a price adjustment factor to be applied to the amount for each payment certificate;

A is a Constant, specified in the Contractor's Bid, representing the nonadjustable portion in contractual payments;

b, c, d, etc., are weightings or coefficients representing

The estimated proportion of each cost element (labour, materials, equipment usage, etc.) in the Works or sections thereof,

Ln, Mn, En, etc.,

Are the “**current cost indices**” or reference prices of the cost elements **at the date 28 days prior to the deadline** for bid submission; &

Lo, Mo, Eo, etc.,

Are the “**base cost indices**” or reference prices corresponding to the above cost elements **at the date 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related.**

General Price Adjustment Formula

$$P = p \times [1 + \text{Price fluctuation factor}]$$

$$P = p \times \left[1 + a \frac{(F - f)}{f} + b \frac{(L - l)}{l} + c \frac{(C - c)}{c} + d \frac{(S - s)}{s} \right]$$

Where,

P = New price

p = Old price

$a.b.c.d$ = Specified proportions for fuel, labour, material, construction plant and machinery spares, or others as may be specified.

$F.L.C.S$ = Current index for fuel, labour, material, construction plant and machinery spares, or others as may be specified.

The sources of indices shall be:

Those **listed in the Contractor's Bid**, As approved by the Engineer.

Indices **shall be appropriate** for **their purpose** & shall relate to the **Contractor's proposed source of supply of inputs**.

As the proposed basis for price adjustment:

“The Contractor shall have submitted with his bid the tabulation of Weightings and Source of Indices, which shall be subject to approval by the Engineer”

If the value of the index is changed after it has been used in a calculation:

“The calculation shall be corrected

&

An adjustment made in the next payment certificate”

The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

48. Retention

The Employer shall retain:

From each payment due to the Contractor
The proportion stated in the SCC

Until Completion of the whole of the Works;

On completion of the whole of the Works:

Half the Total amount retained
Shall be repaid to the Contractor

&

Half when the Defects Liability Period has passed

&

The Engineer has certified that

All Defects notified by the Engineer to the Contractor
before the end of this period have been
corrected.

On Completion of the whole Works, the Contractor may
substitute retention money with an “on demand” Bank

49. Liquidated Damages

The Contractor shall pay:

Liquidated damages to the Employer

At the rate/day stated in the SCC

For each day that

The Completion Date is later than the Intended Completion Date.

The total amount of liquidated damages shall not exceed the amount defined in the SCC

The Employer may deduct liquidated damages from payments due to the Contractor.

Payment of liquidated damages shall not affect the Contractor's liabilities

If the Intended Completion Date:

is extended after liquidated damages have been paid,

The Engineer shall correct

Any overpayment of liquidated damages

By the Contractor

By adjusting the next payment certificate.

The Contractor shall :

Be paid interest on the overpayment,

Calculated from the date of payment to the date of
repayment,

At the rates specified in Sub-Clause 43

50. Bonus

The Contractor shall be:

Paid a Bonus

Calculated at the rate/calendar day

Stated in the SCC For each day

{Less any days for which the Contractor is paid for
acceleration}

That the Completion is earlier than the Intended
Completion Date.

The Engineer shall certify that:

The Works are complete,

51. Advance Payment

The Employer shall make:

Advance payment to the Contractor
Of the amount stated in the SCC
By the date stated in the SCC,
Against provision by the Contractor

The Advance Guarantee Bond Should be:

In a form & by a bank acceptable to the Employer,
Denominated in Ethiopian Birr
In the amount of the advance payment.

The Guarantee shall remain effective:

Until the advance payment has been repaid,
But the amount of the Guarantee
Shall be progressively reduced
By the amounts repaid by the Contractor.

Interest will not be charged on the advance payment.

The Contractor is to use the advance payment:

Only to pay for Equipment,
Plant, Materials, & mobilization expenses
Required specifically for execution of the Contract.

The Contractor shall:

Demonstrate that
Advance payment has been used
In this way by supplying copies of invoices/documents

The advance payment shall be:

**Repaid by deducting proportionate amounts
From payments otherwise due to the Contractor,**

Following the schedule of completed percentages of the Works on a payment basis.

No account shall be taken of the advance payment or its repayment in assessing:

Valuations of work done,
Variations, price adjustments,
Compensation Events,
Bonuses, or
Liquidated Damages.

52.Securities

The Contract Security:

Shall be provided to the Employer

No later than 15 days

After Receipt of the Letter of Acceptance &

Shall be issued in the form of:

A **Bank Guarantee**, or for
Ethiopian Contractors **only** in the form of a **Performance
Bond**.

The Contract Security shall be:

Issued in the format specified

In the contract &

In an amount specified in the SCC &

By a bank or surety acceptable to the Employer
and denominated in Ethiopian Birr.

The Contract Security shall be valid until:

A date 28 days from the date of issue of the Certificate
of Completion in the case of a Bank Guarantee

&

Until one year from the date of issue of the Certificate
of Completion in the case of a Performance Bond.

53.Dayworks

If applicable:

The Dayworks rates in the Contractor's Bid Shall be used

For small additional Amounts of work

Only when the Engineer has given written instructions

In advance for additional work to be paid for in that way.

All work to be paid for as Dayworks:

Shall be recorded by the Contractor
On forms approved by the Engineer.

Each completed form shall be verified and signed by
the Engineer within two days of the work being done.

The Contractor shall be paid:

For Dayworks subject to obtaining signed Dayworks
forms.

54. Cost of Repairs

Loss/damage to the Works/Materials:

To be incorporated in the Works
B/n the Start Date & The end of
The Defects Correction periods

Shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts/ omissions.

Finishing the Contract

55 Completion

The Contractor shall request the Engineer:

To issue a certificate of Completion of the Works,
&

The Engineer will do so up
on deciding that the work is completed.

56 Taking over

The Employer shall take over the Site
&

The Works within 7 days of
The Engineer's issuing a Certificate of Completion.

57. Final Account

The Contractor shall supply the Engineer with:

A detailed Account of The Total Amount
That the Contractor considers payable under the Contract
Before the end of the Defects Liability Period.

The Engineer shall issue:

A Defects Liability Certificate &
Certify any final payment
That is due to the Contractor
Within 60 days of receiving

The Contractor's account, if it is correct and complete.

If it is not Correct:

The Engineer shall issue
Within 60 days a schedule that states
The scope of the corrections or additions
That are necessary.

If the Final Account is:

Still unsatisfactory after it has been resubmitted,
The Engineer shall decide on the amount payable
To the Contractor & issue a payment certificate.

58.Operating & Maintenance Manuals

If “as built” Drawings &/or O& M manuals are required:

The Contractor shall supply them by the dates stated in the SCC.

If not supplied Accordingly:

The Engineer shall withhold the amount stated in the SCC from payments due to the Contractor.

59.Termination

The Employer/the Contractor:

May terminate the Contract if:

The other party causes a fundamental breach of the
Contract.

Fundamental breaches of Contract shall include,
but shall not be limited to, the following:

The Contractor stops work for 28 days when:

No stoppage of work is shown on the current Program

&

The stoppage has not been authorized by the Engineer;

The Engineer instructs the Contractor:

To delay the progress of the Works,

&

the instruction is not withdrawn within 28 days;

The Employer or the Contractor is made:

Bankrupt or Goes into liquidation

Other than for a reconstruction or amalgamation;

The Contractor does not maintain a Security, which is required;

A certified payment by the Engineer:

Is not paid by the Employer to the Contractor

Within 90 days of the date of the Engineer's certificate;

The Engineer gives Notice that:

Failure to correct a particular Defect
is a fundamental breach of Contract
&

The Contractor fails to correct it
within a reasonable period of time

Determined by the Engineer;

The Contractor has:

Delayed the Completion of the Works

By the No. of days for which

The maximum amount of

Liquidated damages can be paid;

If the Contractor, in the judgment of the Employer:

Has engaged in corrupt,

Fraudulent,

Collusive or

Coercive practices

in competing for / in executing the Contract.

"Corrupt practice" means the:

- ✓ Offering,
- ✓ Giving,
- ✓ Receiving or
- ✓ Soliciting,

Directly or indirectly, of **anything of value**

To influence the action of a public official in the procurement process or in contract execution.

"Fraudulent practice" means:

A misrepresentation of facts in order to influence a procurement process or the execution of a contract;

"Collusive practices" means:

A scheme/arrangement b/n two/more Bidders, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels

"Coercive practices" means:

Harming/threatening to harm, directly/indirectly, persons/their property to influence their participation in a procurement process, or affect the execution of a contract

When **either party** to the Contract:

Gives notice of a breach of Contract to the Engineer
For a cause other than wrong practices cited above,

The Engineer **shall decide** whether the **breach is fundamental** or not.

Despite the above:

the **Employer may terminate** the Contract for convenience.

If the **Contract is terminated:**

The Contractor **shall stop work immediately**

Make the **Site safe & secure, &**

60.Payment upon Termination

If the **Contract is terminated** because of:

A fundamental breach of Contract by the Contractor:

The Engineer shall issue:

A certificate For the value of the work done

&

Materials ordered

Less advance payments Received

&

Less the % age of the work not completed,

Additional Liquidated Damages **Shall Not Apply**

If the total amount due to the Employer:

Exceeds any payment due to the Contractor,

The difference shall be a debt payable to the Employer.

If the Contract is terminated:

For the Employer's convenience/
Because of a fundamental breach
of Contract by the Employer:

The Engineer shall issue: A **certificate for:**

The value of the work done,
Materials ordered,
The reasonable cost of removal of Equipment,
Repatriation of the Contractor's personnel
Employed solely on the Works, &
The Contractor's costs of protecting/securing the Works,
&
less advance payments received up to the date of the
certificate.

61.Property

All Materials on the Site,
Plant,
Equipment,
Temporary Works,
&
Works

Shall be deemed to be the property of the Employer:

if the Contract is terminated because of the
Contractor's default

62. Release from Performance

If the Contract is:

Frustrated by the outbreak of war

or

By any other event

Entirely outside the control of either party,

The Engineer shall certify that: The Contract has been frustrated.

The Contractor shall:

Make the Site safe

&

Stop work as quickly as possible

After receiving this certificate

&

Shall be paid for all work carried out:

Before receiving it

&

For any work carried out afterwards

To which, a commitment was made.

The Special conditions of Contract, PPA- 2006 Version

The following **SCC** shall supplement the GCC

Whenever there is a conflict, the provisions **herein shall prevail** over those in the GCC

GCC 2.3

The following documents also form part of the Contract: [*list any other documents e.g. schedule of information provided by the Contractor*].

GCC 3.1

The language of the Contract is English and the law governing the Contract is that of the Federal Democratic Republic of Ethiopia. [*Amend if an alternative language or law is to be used*].

GCC 11.1

The Employer's risks are as specified in the GCC. [*Amend if the risks in the GCC are to be modified*].

GCC 25.3

The institution whose arbitration procedures shall be used is: *[insert name of institution]*

Arbitration shall take place at: *[state place e.g. Addis Ababa or any other convenient location or delete if arbitration is not applicable]*

Where arbitration is not being used, *replace the text with “Arbitration shall not be used under this contract and disputes shall be resolved in accordance with GCC 25.1”.*

Relation of GCC/SCC to Laws, Codes and Standards

The **Civil Code of Ethiopia-1960** (**The Law**) explicitly refers the importance of GCC & SCC;

Art. 3135

Model **specifications, General clauses & conditions & common directives** may be drawn up by each interested administrative authority and **may be declared to be applicable,**

Art. 3136. -2. Definition

Model specifications: Constitute standard specifications, formulated in advance and in a general way, for the special consideration of public services.

General clauses and conditions: fixes the provisions applicable to all / some of the contracts concluded by a specified administrative authority.

Common directives: fixes the technical provisions applicable

Art. 3137

The provisions of General clauses & conditions:

Concerning the manner in which
A contract is to be concluded

May be invoked by the candidates to the contract

Art. 3138. - 2. Contents of contract

The provisions of:

Model specifications,
General clauses & Conditions or
Common directives,

Concerning the:

Interpretation,
Contents &
Execution of a contract

Shall not apply to a specified contract unless such contract expressly makes reference thereto.

Art. 3139. - Modification to specifications

Where the rights and obligations of the parties:

Are determined by:

Reference to specifications,
General clauses and conditions or
Common directives,

Such specifications, clauses, conditions and directives shall be considered as they existed at the time when the contract was concluded.

The rights & obligations of the contracting parties:

Shall not be affected by modifications subsequently made to such specifications, clauses, conditions and directives.

The **GCC clause 16 of PPA** states that “The Contractor shall construct and install the Works in accordance with the Specifications and Drawings”.

Specifications are derived from acceptable codes and standards, Hence, signifying the direct relevance of GCC to codes and standards.

The **GCC clause 23 of PPA** states that:

“The Contractor shall carry out all instructions of the Engineer, which comply with the applicable laws where the Site is located”,

Signifying the importance of observing other applicable relevant laws during execution of construction activities.

➔ Map the provision of PPA(GCC& SCC to the articles of CIVIL code (Book IV, “XII-Contracts in general)-Presented in the following slides + other related articles.

Article 1675-1676

A contract is an agreement whereby two or more persons as between themselves create, vary or extinguish obligation of a proprietary nature

The provision shall apply to contracts regardless of the nature thereof and the parties thereto

Art. 1731

The provision of a contract lawfully formed shall be binding on the parties as though they were law

Art. 1678-1686

Elements of a valid contract:

- ✓ The parties are capable of contracting and give their consent sustainable at law;
- ✓ The object of the contract is sufficiently defined and is possible and lawful;
- ✓ The contract is made in the form prescribed by law, if any

Art.1696-1707

A contract may be invalidated where A party gave his consent by:

- ✓ Mistake or
- ✓ Under deceit or
- ✓ Duress (pressure).

The party who appeal to his mistake shall establish that he would not have entered into the contract, had he known the truth.

Article 1713-1718

➤ The parties shall be bound by the terms of the contract;

➤ A contract shall be of no effect where the obligations of the parties
or of one of them cannot be determined with sufficient precision;

➤ Unlawful or immoral object:

A contract shall be of no effect where the obligations of the
parties or one of them are unlawful or immoral.

Art. 1793

Cases of force majeure:

- ✓ An official prohibition preventing the performance of the contract;
- ✓ A natural catastrophe such as an earthquake, lightning, or floods;
- ✓ International or civil war;
- ✓ The death/ a serious accident/unexpected serious illness of the defaulter

Contract of Works & Labour Relating to
Immoveable
Art. 3019-3023

The provisions of this chapter (**chapter 3 Contract of works & labour relating to immoveable**) shall apply to:

Contracts of work and labor relating to work to be done in connection with the building, repair or installation of immoveable.

The contract shall be complete where the parties have agreed on the work to be done and on the price.

The works to be done may be described by means of a plan, scheme or other documents.

The contractor shall in such cases comply with the indications given in such documents.

Prior to undertaking a work, the contractor shall, whenever this appears reasonable, satisfy himself that the client agrees to the work to be undertaken.

Contracts relating to immovable shall be executed in writing as per **Art.1723**:

Art. 3027-3030

Rights of client to check quality, progress & payment

The client may at any time require that the amounts appearing in the accounts of the contractor to be checked by experts, Cause to be examined by experts:

- ✓ The progress achieved in the work,
- ✓ The quality of the materials used and the work completed.

The contractor may require that part of the price corresponding to the work completed to be paid to him on completion of such works,

Art.3031-3034

Rights of client for supplementary works

The client may demand that alterations be made in the work as originally planned where such alterations can technically be made and are not such as to impair the solidity of the work.

The client may require a reduction in the price as originally agreed where the alterations required by him reduce the expenses of the contractor.

The contractor may require an increase in price where the alterations required by the client increase his expense, work or liability.

Where the parties do not agree, such reduction or increase

Rights of the contractor for refusal of Variation

The contractor may refuse the alterations required by the client where such alterations affect plans, schemes or other documents on which the parties had agreed.

The contractor may also refuse the alterations where they are of such a nature or importance that they constitute a work absolutely different to the agreed work.

The work shall be deemed to be absolutely different to the agreed work where it implies: An alteration exceeding by twenty percent the value at which the original work was estimated.

Where it appears necessary for **technical reasons** to make alterations in the work as originally agreed, the contractor shall, **except in urgent cases, give notice thereof** to the client.

Procedures for Termination of contracts are also addressed in **Art. 3035-3038** of the Ethiopian Civil Code

Art.3039

Warranty due by contractor

The contractor shall guarantee during ten years from its delivery the proper execution and the solidity of the work done by him;

He shall be liable during this period for such loss or deterioration of the work as is due to a defect in its execution or to the nature of the soil on which the work has been done;

Any provision shortening the period cited above or excluding the warranty due by the contractor shall be of no effect;

Art. 3132

Administrative Contract

A contract shall be deemed as an administrative contract when:

It is connected with an activity of the public service and implies a permanent participation of the party contracting with the administrative authorities in execution of such contracts/services.

Administrative contract formation and other provisions are codified from **Article 3134-3171** of the Ethiopian Civil Code.

Any contract binding the Government or a public administration shall be in writing and registered with a court, public administration or notary.

When performing An Administrative Contract, the officer shall follow:

- ❖ Model specifications,
- ❖ General clauses & Conditions and
- ❖ Common directives {Technical Provisions}

These may be drawn up by each interested Administrative Authority.

The invitation to bid is covered in “Art. 3148-3150 as Notice of allocation by tender”

The Notice of allocation shall show:

- ❖ The place where the specifications may be consulted;
- ❖ The authorities who are to proceed to the allocation;
- ❖ The time prescribed for sending in the tenders;
- ❖ The place, day and hour fixed for the allocation;
- ❖ Amount of security or Guarantees required from the tenders

The notice of allocation **shall be published**, except in cases of **urgency**, not **less than one month** before the expiration of the time prescribed for sending in the

Art 3152-3164 Specification, Allocation

- The specification shall contain an indication of the conditions required from the tenderers.
- The administrative authorities may impose in such specifications all the conditions relating to technical and professional qualifications which they consider desirable.
- They shall specify, where appropriate, the qualifications which are required for admission to tender and the eliminating tests to which

❖ The tenderers shall deposit in the place indicated and within the time specified by the specifications, a deceleration of their intention to tender and their tender.

❖ Such intention shall indicate the name, qualification and address of the candidate.

❖ The tender shall contain an offer of the price and the undertakings of the candidate.

❖ It shall be deposited in a sealed envelope according

The proceedings of allocation shall be held in **public**.

✓ The envelopes shall be **opened in public** & shall be **readout**;

✓ Shall be recorded in **a minute** which shall state all the **circumstances**;

✓ The tenderer who has made the tender which **is most advantageous**

for the administrative authorities **to be provisionally the successful**

tenderer

✓ The office shall take in to account the **price offered** and all

modalities of the tender in **conformity with the**

Contract of Public Works:

Article 3244

“A **contract of public works** is a contract whereby, the contractor, binds himself in favor of an administrative authority to **construct, maintain or repair a public work in consideration of a price**”.

Articles 3246 through 3296

Formation of contract, normal performance of contract, non performance of contract and assignment of or giving the contract security is detailed in the above articles.

Art.3274 -3282

Provisional and Final Acceptance

A **provisional Acceptance** is a joint ascertainment of the works made immediately after the completion of the works;

A provisional acceptance shall **not pardon** the contractor from any **defect** which may appear after it is made;

Destructions/ damage resulting from **force majeure** shall be borne by the **contractor** so long as the works have not been **provisionally accepted**.

The period of **warranty** is a period during which the authorities have the possibility of controlling the proper performance of the works before **their final acceptance**.

Its duration shall be **fixed by the contract**;

During the **period of warranty**, the contractor shall **maintain** the works.

He shall be **liable for defects** and shall repair them when he **receives** from the authorities a **requisition order**;

The **final acceptance** shall be made jointly and a record shall be drawn up.

The **final acceptance** shall release the contractor from his obligation to maintain the works.

Unless otherwise provided, the contractor shall be liable to the administrative authorities for the defects of construction of the works during ten years from the day on which they have entered into possession of the works.

Art. 3283

Unilateral modification of contracts:

The authorities may, against payment of an additional remuneration, require the contractor to perform works which were not mentioned in the contract.

They may not, however, require him to perform a work which by its object:

- ✓ Would be totally different to the work mentioned in the contract; or
- ✓ Which would have no relation to such works, or
- ✓ A work under conditions entirely different to those which have been mentioned in the contract.

Art. 3285

Rights of contractor:

The contractor may cancel the contract where:

The **increase or reduction** of the works as a whole involves **a variation of more than 1/6** of the cost mentioned **in the contract**.

In case of **reduction of the works** as a whole, he shall be entitled to **compensation equal** to the **loss suffered by him** and **profit** of which he is deprived by reason of variation of the contract.

Art. 3286

Unforeseen difficulties:

Where, in the performance of his contract, the contractor encounters:

- ✓ Material difficulties of an absolutely abnormal nature,
 - ✓ unforeseeable at the time of the conclusion of the contract,
- he may require that the contract be revised.

The administrative authorities shall in such case assume at their charge a part of the exceptional expenses due to such unforeseen difficulties, unless they prefer to cancel the contract.

Art. 3287

Duty to Consult Administrative Authorities

Where the difficulty compels the contractor to perform a supplementary work not mentioned in the contract, the contractor may initiate such work only after having obtained a requisition order from the administrative authorities to perform such work.

Where the work is absolutely necessary for the performance of the contract and it is of an urgent nature, the contractor may and shall initiate it even in the absence of a requisition order.

In such case, he shall be entitled to compensation in accordance with the provisions of this code relating to the voluntary management of another person's affairs